

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Daniel H. Arnold,

Case Nos. 09-ABL-08-0354  
09-LAY-08-0355

*Appellant.*

v.

Stark County,  
Department of Job and Family Services,

*Appellee.*

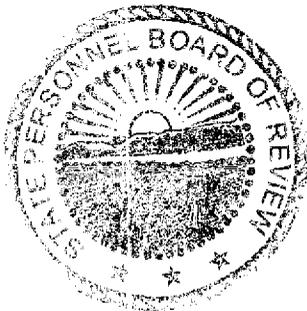
**ORDER**

This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the abolishment of Appellant's position be **AFFIRMED**, pursuant to O.R.C. §§ 124.321 to 124.327.

Lumpe - Not Participating  
Sfalcin - Aye  
Tillery - Aye



*Adriana Sfalcin*  
\_\_\_\_\_  
Adriana Sfalcin, *Vice Chairman*

**CERTIFICATION**

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitute ~~(the original)~~ a true copy of the original order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, October 22, 2010.

*Michelle Hursey*  
\_\_\_\_\_  
Clerk

**NOTE:** Please see the reverse side of this Order **or** the attachment to this Order for information regarding your appeal rights.

10/22/10<sup>MH</sup>

**STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW**

Daniel H. Arnold,

*Appellant*

v.

Stark County Department of  
Job & Family Services,

*Appellee*

Case Nos. 09-ABL-08-0354  
09-LAY-08-0355

August 30, 2010

Jeannette E. Gunn  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

The above-referenced matters came on to be heard on May 13, 2010, due to Appellant's timely appeal from an abolishment of his position as Assistant Program Administrator and subsequent layoff from employment. Appellant was present at record hearing and appeared *pro se*. Appellee Stark County Department of Job & Family Services was present at record hearing through its designee, Deputy Director of Human Resources Valarie Nash and was represented by Leslie Iams Kuntz, Attorney at Law.

**STATEMENT OF THE CASE**

Valarie Nash testified that she is presently employed by Appellee as its Deputy Director of Human Resources and is responsible for oversight of all of the agency's human resources activities. She recalled that in late spring or early summer 2009, Appellee began hearing rumors of a looming financial crisis through conversations with the Ohio Department of Job & Family Services' Directors Association. The witness noted that Appellee was advised in July 2009 that the State of Ohio anticipated making substantial reductions in its funding for county agencies (Appellee's Exhibit 2).

Ms. Nash recalled that because it was made plain to them that their budget reductions would be significant, Appellee began considering how it could reduce operating costs. She observed that Appellee had already begun restructuring the agency and moving some individuals to different positions before it became aware

of the potential funding crisis in 2009. The witness noted that since she began her employment with Appellee in 2008, she had been charged with evaluating the structure of all divisions and layers of management (Appellee's Exhibit 9).

She testified in April 2009 Appellee had made a decision to restructure the management teams within its different divisions to make them more consistent (Appellant's Exhibit 2). The witness explained that the administrators of Appellee's three program areas, Human Services, Children Services and Child Support, were all reclassified as Program Administrators at the beginning of July 2009.

Ms. Nash recalled that by early July 2009, Appellee had reduced expenditures in a number of areas and was working to identify more, had moved and combined facilities, had reviewed all of its contracts for potential savings and was prepared for a potentially widespread reduction in staff. The witness testified that by the end of July, Appellee had determined that it would be unable to financially sustain its present personnel levels and that it would be necessary to abolish some non-bargaining unit positions. She explained that Appellee's primary goal was to identify positions for abolishment that did not impact its provision of direct services to customers, such as supervisory positions. Ms. Nash noted that Appellee also felt that the positions affected should come primarily from those specific funding areas which were receiving the greatest reductions in funding.

The witness stated that Appellee estimated it would save approximately \$500,000 as a result of laying off twelve employees. Ms. Nash identified Appellee's Exhibit 1 as a resolution signed by the Stark County Commissioners on July 22, 2009, regarding the abolishment of non-bargaining unit positions for reasons of economy. She recalled that her office began processing the position abolishments after the Commissioners' resolution was passed, and noted that she met with almost all twelve of the affected employees to let them know about the abolishments.

The witness confirmed that she sent a statement of need regarding the proposed abolishments (Appellee's Exhibit 4) to the Department of Administrative Services (DAS), along with a list of the employees affected and a retention point list (Appellee's Exhibit 5). She observed that upon receiving retention point verification from DAS (Appellee's Exhibit 6), Appellee proceeded with the abolishments and layoff. Ms. Nash testified that a notification letter identifying the reason for the

position abolishments and layoffs as lack of funds was hand delivered to Appellant (Appellee's Exhibit 7).

The witness stated that at the time of the abolishment, Appellant and another employee, Mr. Art Walton, were the only two employees within the agency who occupied positions classified as Assistant Program Administrator, and there were no other positions within that classification series. Ms. Nash recalled that prior to July 22, 2009, Mr. Walton had notified Appellee of his intent to retire, effective September 30, 2009, and confirmed that Mr. Walton's employment did end on that date. She testified that the Assistant Program Administrator positions formerly encumbered by Appellant and Mr. Walton were both abolished; the abolishment of Appellant's position was effective August 11, 2009, and the abolishment of Mr. Walton's position was effective October 1, 2009. The witness explained that Mr. Walton's position would have been included in the abolishment that was effective August 11, 2009, if he had not already informed Appellee that he was retiring.

The witness confirmed that Appellant requested that he be allowed to displace Mr. Walton and acknowledged that Appellant had more retention points than Mr. Walton. Ms. Nash stated that Appellant was not permitted to displace Mr. Walton because Appellee determined that the job duties of the two positions were vastly different. She testified that she did not know whether or not Mr. Walton's position had any position-specific minimum qualifications.

Ms. Nash noted that Appellant worked in the Social Services division in the quality assurance area and Mr. Walton was part of the Business and Fiscal Services division. She explained that the duties performed by Mr. Walton were completely fiscal in nature and observed that if Appellant had been permitted to displace into Mr. Walton's position, he would not have been able to immediately perform the duties of the position or train other employees to do so.

Ms. Nash noted that because Appellant had not held a position in any other classification within the three-year period preceding his position abolishment, he was not eligible to displace into any another classification series.

The witness testified that as a result of its reduction in expenditures, Appellee was able to keep from spending more funds than it had been allocated in 2010 (Appellee's Exhibit 3). Ms. Nash confirmed that some of the twelve employees who were laid off have been recalled to their positions; she indicated that Appellee

evaluated its financial status at the end of 2009 and decided to recall two program evaluators.

Daniel Arnold testified that prior to the abolishment of his position and his subsequent layoff, he was employed by Appellee in a position classified as Assistant Program Administrator. He noted that prior to the layoff he did not know what his classification was and believed that he was a Program Administrator.

Appellant indicated that he was in charge of Appellee's Quality Assurance area and helped them get accreditation in early 2009. He explained that he performed a variety of job duties, including working with contracts, negotiating contracts, creating Requests for Proposals (RFPs), overlooking Title XX funds and expenditures, and providing Title XX information to the agency director. Appellant confirmed that the entire Quality Assurance area was eliminated as part of the layoff.

Appellant testified that he believed Appellant's reclassification of the Human Services, Children Services and Child Support program managers amounted to repositioning of employees in advance of its July 2009 job abolishments and layoffs. He recalled that the movement of employees into the program administrator positions took place in June or early July 2009 (Appellant's Exhibit 2). He noted that he had more retention points than two of the employees who were reclassified from Assistant Program Administrator to Program Administrator, Bonnie Kling and Kelly Jo Jeffries.

Appellant testified that he also believed Appellee acted prematurely in July 2009 by going forward with the job abolishments and layoffs before getting their final budget allocation from the state.

### **FINDINGS OF FACT**

Based upon the testimony presented and evidence admitted at record hearing, I make the following findings of fact:

As the result of information received from the State of Ohio regarding substantial reductions in its funding for the coming fiscal year, Appellee determined in July 2009 that it was necessary to abolish positions and lay off twelve employees.

Appellee estimated that it would save approximately \$500,000 as a result of laying off twelve employees.

Appellant occupied a position classified as Assistant Program Administrator in the Quality Assurance area of Appellee's Social Services division. His position was abolished due to lack of funds, with an effective date of August 11, 2009.

At the time Appellant's position was abolished, Appellee maintained one other position in the same classification, Assistant Program Administrator, which was occupied by Mr. Art Walton. Appellant had more retention points than Mr. Walton. There were no other positions in the same classification series within the agency and Appellant had held no positions other than Assistant Program Administrator within the three years prior to his job abolishment and layoff.

Appellant requested that he be permitted to exercise displacement rights into the position occupied by Mr. Walton. Appellee denied Appellant's request on the grounds that the duties performed by Mr. Walton were too dissimilar to those performed by Appellant. Prior to July 2009, Mr. Walton had informed Appellee of his intent to retire, effective September 30, 2009. Mr. Walton's Assistant Program Administrator position was abolished, effective October 1, 2009.

### **CONCLUSIONS OF LAW**

Abolishment means the permanent deletion of a position from the organization or structure of an appointing authority predicated upon a lack of continued need for the position due to reorganization for efficient operation, economy, or lack of work. R.C. 124.321 (D). This definition presents three tests that must be met in order to abolish a position. First, there must be a permanent (expected to last over one year, O.A.C. 124-7-01 (A)(1)) deletion of a position from the organization. Second, that deletion must be made due to a lack of continued need for the position. Third, the lack of continued need must be justified by either reorganization for efficient operation, reasons of economy, or lack of work. O.A.C. 124-7-01 (A)(1). In order to successfully defend a contested abolishment, not only must an appointing authority demonstrate adequate justification for the abolishment of a position, it must also show compliance with the procedural requirements set forth in the Administrative Code.

In addition, an appointing authority must successfully rebut a valid *prima facie* showing of “bad faith,” should one be demonstrated. Bad faith does not depend upon a finding that an employer acted with a political or personal animus, or failed to comply with procedural requirements, but may also be evidenced by an attempt to subvert the civil service system to allow the selection of handpicked employees to fill jobs that would have been available to workers based on seniority and retention points. See *Blinn v. Bureau of Employment Services* (1985), 29 Ohio App.3d 77.

R.C. 124.321(D)(1) provides that an appointing authority may abolish positions “for any one or any combination” of the three listed reasons: 1) reorganization for efficient operation; 2) economy; or 3) lack of work. R.C. 124.321(D)(2)(a) notes that “economy” is to be determined at the time the abolishment is proposed, based on the appointing authority’s estimated amount of savings with respect to salary, benefits and other matters associated with the position abolishment. Testimony at record hearing established that the August 11, 2009, abolishment was predicated primarily on Appellee’s projected inability to financially sustain its existing staffing levels over the coming year. I find that Appellee’s rationale is sufficient to constitute an abolishment for reasons of economy.

A review of the notification letter provided by Appellant indicates that it was provided to him in a timely fashion and contained the information required by O.A.C. 123:1-41-10. I note that the letter incorrectly states that Appellant’s position was abolished due to a “lack of funds,” rather than “for reasons economy,” however, this error is not sufficient to merit a disaffirmance of the employment action. Appellant was notified of his potential right to exercise his displacement rights, as provided for by O.A.C. 123:1-41-11, and attempted to do so. No assertions were made by Appellant regarding any other procedural areas in which Appellee was deficient. Accordingly, I find that Appellee substantially complied with the applicable notification requirements for the abolishment of Appellant’s Assistant Program Administrator position.

Appellant asserted that Appellee incorrectly administered his displacement rights by refusing to allow him to displace into the Assistant Program Administrator position held by Mr. Art Walton. Appellee acknowledged that Appellant had more retention points than Mr. Walton, but stated that it refused Appellant’s request to displace on the basis that the duties performed by the two positions were dissimilar; that Mr. Walton had previously announced his retirement, to be effective at the end

of September 2009; and that Appellant did not have the ability to immediately perform the duties of Mr. Walton's position.

O.A.C. 123:1-41-11(F) provides that:

No employee shall displace an employee for whose position or classification requires special minimum qualifications unless the employee desiring to displace another employee possesses the requisite minimum qualifications or bona fide occupational qualifications for the position or the classification. The special qualifications must be established by a position description for the position, by classification specification minimum qualifications statement, or by bona fide occupational qualifications for the position(s) or classification. The appointing authority shall be responsible for establishing the necessity of special qualifications for a position.

Appellee provided no testimony or evidence at record hearing to indicate that position specific minimum qualifications had been established for Mr. Walton's Assistant Program Administrator position; at the request of this Board, Appellee submitted a copy of Mr. Walton's position description after the record hearing. An examination of that document did not show that the position description established any special qualifications or that there were any bona fide occupational qualifications established for the position. Although Mr. Walton's position description states in the minimum characteristics column that an incumbent must have fiscal and budgetary management skills, the position description for Appellant's position also carries that notation.

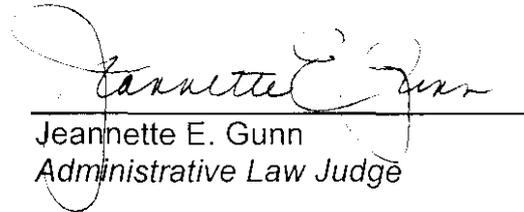
While I acknowledge the operational business reasons offered by Appellee for failing to allow Appellant to displace into Mr. Walton's position, its action was not compliant with the statutory provisions of R.C. 124.321 to 124.327 and related administrative code regulations. Accordingly, I find that Appellee failed to properly permit Appellant to displace into the Assistant Program Administrator position held by Mr. Walton.

With regard to Appellant's assertion of "bad faith" on the part of Appellee, as demonstrated by its alleged repositioning of employees prior to the job

abolishments and layoffs, I find that Appellant has failed to provide this Board with sufficient information to demonstrate a valid *prima facie* showing of "bad faith."

In the matter at hand, testimony at record hearing indicated that Mr. Walton's position would have been included in the August 11, 2009, abolishment, had he not previously indicated to Appellee that he intended to retire shortly thereafter. Mr. Walton's position was ultimately abolished, effective October 1, 2009.

Therefore, upon a review of all of the evidence and testimony presented, and as a matter of equity, I respectfully **RECOMMEND** that the abolishment of Appellant's position be **AFFIRMED**. I further **RECOMMEND** that Appellant receive any back pay and benefits to which he may be entitled as a result of Appellee's failure to properly allow him to displace into the Assistant Program Administrator position held by Mr. Walton.

  
Jeannette E. Gunn  
Administrative Law Judge

JEG: