

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

PATRICIA G. LANE,

*Appellant,*

v.

Case No. 11-ABL-04-0113

DEPARTMENT OF REHABILITATION  
& CORRECTION, CENTRAL OFFICE,

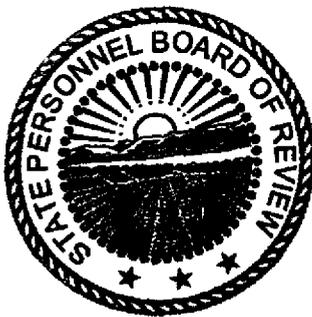
*Appellee*

**ORDER**

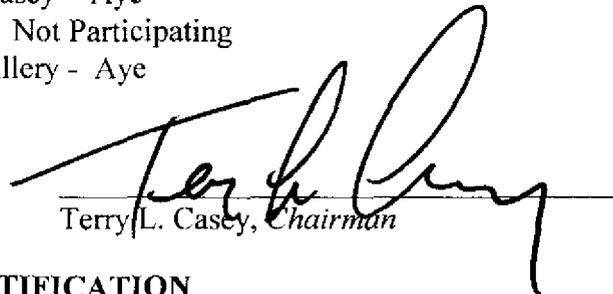
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including 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 Appellant's layoff and subsequent displacement is **AFFIRMED**.



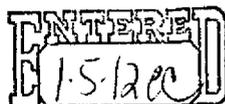
Casey - Aye  
Lumpe - Not Participating  
Tillery - Aye

  
Terry L. Casey, *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 constitutes ~~(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, January 05, 2012.



  
Eric E. Conner  
Clerk

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

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

Patricia G. Lane

Case No. 11-ABL-04-0113

*Appellant*

v.

December 5, 2011

Department of Rehabilitation & Correction,  
Central Office

*Appellee*

Marcie M. Scholl  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

A pre-hearing was held in this matter on July 26, 2011. Present at the pre-hearing were the Appellant, Patricia G. Lane, appearing *pro se* and Appellee Department of Rehabilitation and Correction designee Amy Parmi, represented by Komlavi Atsou, Assistant Attorney General.

The subject matter jurisdiction of the Board was established pursuant to sections 124.03 and 124.328 of the Ohio Revised Code.

Appellant Lane indicated she did not intend to challenge neither the rationale upon which her job abolishment was premised, the notification process utilized by Appellee to inform her of her job abolishment and subsequent displacement rights, nor Appellee's calculation of her retention points. The sole remaining area of dispute before this Board is whether or not Appellant's displacement rights were implemented correctly.

The parties entered into stipulated facts, which are as follows:

1. Appellant Lane was employed by Appellee as a Parole Services Supervisor in the Cleveland Regional office, which is physically located in Cleveland, Ohio.
2. Appellant Lane is currently employed as a Parole Services Supervisor in the Mansfield Regional Office, which is physically located in Elyria, Ohio.

3. Appellee abolished four (4) Parole Services Supervisor positions located within layoff jurisdiction 15.
4. Appellant Lane's position was abolished and she had the second highest retention points of the employees whose positions were abolished.
5. Within layoff jurisdiction 15 there were two vacant Parole Services Supervisor positions; one in the Cleveland office and one in the Mansfield office.
6. The employee with the highest retention points was given her choice of which vacancy she wanted to fill and she chose to fill the vacancy located in the Cleveland office.
7. Appellant Lane was then notified by letter, identified as Appellee's Exhibit 9, that she was going to be placed into the vacant Parole Services Supervisor position in the Mansfield office with the same rate of pay.
8. The employee with the third most retention points remained in the Cleveland office.
9. The employee with the fourth most retention points was located in the Mansfield office and she was displaced into a position in the Cleveland office.
10. Both of the employees with the third and fourth most retention points had less retention points than Appellant Lane.
11. All of the filling of the vacancies and the layoffs and displacements were effective July 17, 2011.
12. There were six total employees classified as Parole Services Supervisor and four of them were not identified for abolishment of their positions. Appellee explained that is because the positions that were abolished were those who had as part of their duty writing BCI and other reports.

13. Appellant Lane confirmed that she is no longer performing the duty of writing the reports and is now performing the exact duties of the four Parole Services Supervisors whose positions were not abolished.

### **CONCLUSIONS OF LAW**

Appellant Lane argued that she should not have been forced to fill the vacancy in the Mansfield Regional Office, as she was of the opinion that she should have been given the choice of filling the vacancy or displacing the employee who had the least amount of retention points. Had she been permitted to displace the employee with the least amount of retention points, then Appellant Lane testified she would have remained in the Cleveland Regional Office. She expressed that she did not believe that the statutes and the provision of the Ohio Administrative Code were followed and she did not feel it was the intent of the Legislature to have an employee with more retention points than another employee end up having to physically move locations while the employee with lesser retention points is able to remain in the same office. Appellee acknowledged the less than desirable outcome for Appellant Lane but argued that the laws and administrative rules were followed and that they had no choice to implement the displacement process as advocated by Appellant Lane.

Layoffs and abolishments within a state agency are undertaken pursuant to the provisions of sections 124.321 to 124.327 of the Revised Code. R.C. 124.322 empowers the director of administrative services to adopt rules establishing a method for determining layoff procedures and an order of layoff of, and the displacement and recall of, laid-off state employees. These rules are codified in the Ohio Administrative Code. As such, both the Revised Code and Administrative Code must be read together when applying the language of the statutes to a factual situation.

R.C. 124.321(D)(3) gives a right to an employee whose position has been abolished to fill an available vacancy in the employee's classification or classification series, but does not mandate acceptance. Appellant argues, however, that should the employee elect not to fill that vacancy, he or she may then displace another employee with fewer retention points. When read together with O.A.C. 123:1-41-12, which sets forth the order of displacement for employees affected by a layoff or position abolishment, it becomes evident that an employee may displace

another employee with fewer retention points only when no available vacancy exists. Reading O.A.C. 123:1-41-12(A) - (C) as permissive, as Appellant suggests, ignores the phrase "or if no vacancy exists" – the language of the rule must be given meaning, and the most logical reading of the phrase creates a condition precedent to an employee's right to displace another employee.

Displacement rights apply within an employee's layoff jurisdiction, rather than within a specific institution or facility. R.C. 124.326. In the instant matter, there was an available vacancy in the Mansfield Regional office for a Parole Services Supervisor. Appellant Lane elected to exercise her displacement rights and was subsequently placed in that vacant position; had Appellant Lane declined that vacancy, her layoff would have been implemented. Because a vacancy existed, Appellant Lane did not have the right to displace another employee with fewer retention points in her classification, classification series, or previously held classification.

This exact same scenario was the subject of a recent decision of the Court of Common Pleas in Franklin County. In the case of *Sifrit v. Dept. of Rehab. & Corr., London Corr. Inst.*, Case No. 10CVF-12-18675 (2011), Mr. Sifrit was employed as a Correctional Farm Assistant Supervisor in London, Ohio and he had the most retention points of the employees whose positions were being abolished. There was a vacant Correctional Farm Assistant Supervisor position located in Lancaster, Ohio, within the layoff jurisdiction of Mr. Sifrit. Mr. Sifrit exercised his displacement rights and was placed into the vacancy located in Lancaster, Ohio. He argued that he should have been permitted to displace an employee with less retention points, thereby allowing him to remain in the facility located in London, Ohio. This Board held that in reading the laws and administrative rules together, Appellee correctly applied them and Mr. Sifrit had no choice but to accept the vacancy or be laid off.

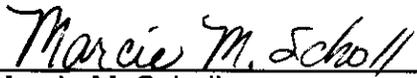
The court agreed and held that the statute (ORC 124.321) and the administrative rule (OAC 123:1-41-12) must be read together and that ". . . due deference must be given to the agency's interpretation of its own rules and regulations." *Sifrit*, pg. 6. The court sided with this Board's interpretation of the language in the administrative rule 123:1-41-12(A), which states: "An employee who is to be laid off or displaced may fill an available vacancy, or if no vacancy exists, displace within his or her classification. . . .", to mean that by choosing the right to displace, the employee must fill an available vacancy before displacing an

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employee. If the employee does not wish to fill the vacancy, then the employee has given up the right to displace and would therefore be laid off.

While the application of the laws and administrative rules do seem to have created a hardship on Appellant Lane by forcing her to physically change the location of her office, those laws and rules cannot be interpreted differently on a case-by-case basis. The laws and rules must be applied consistently and equally to all employees, otherwise it would be complete chaos across all agencies of the state as there would be no standard.

Based upon the information contained in the record, the applicable statutory provisions and the holding in the *Sifrit* case, I find that Appellee properly administered Appellant Lane's displacement rights. I further find that there are no remaining areas of dispute in this matter to be determined by this Board. Therefore, I respectfully **RECOMMEND** that Appellant Lane's layoff and subsequent displacement be **AFFIRMED**.

  
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Marcie M. Scholl  
Administrative Law Judge

:mms