

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

Mark Donnelly,

Appellant,

Case Nos. 08-ABL-01-0001
08-LAY-01-0002

v.

Hamilton County Board of Commissioners,

Appellee.

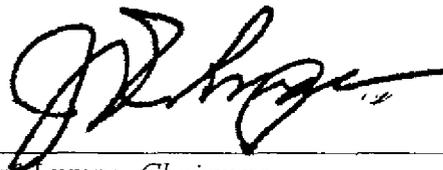
ORDER

These matters 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 respective records 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. However, the Board also finds part of Appellee's objections to be well-taken and notes, accordingly, that the Board lacks jurisdiction over a recall or reinstatement that is associated with an abolishment or layoff.

Wherefore, it is hereby **ORDERED** that the instant abolishment and subsequent layoff be **AFFIRMED**, pursuant to R.C. 124.321, *et seq.*

Lumpe - Aye
Booth - Aye
Sfalcin - Aye



J. Richard Lumpe, *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, November 6, 2008.

Michelle Hursey
Clerk

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

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

Mark Donnelly,

Case No. 08-ABL-01-0001

Case No. 08-LAY-01-0002

Appellant

v.

October 9, 2008

Hamilton County Board of Commissioners,

Appellee

Christopher R. Young

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on August 25, 2008, at approximately 12:45 p.m., following a pre-hearing held the same morning at 10:00 a.m. The Appellant, Mark Donnelly, was present and appeared *pro se*. The Hamilton County Board of Commissioners was present through its designee, Kim Serra, a Senior Human Resource Manager and the Hamilton County Board of Commissioners was represented by Kathleen H. Bailey, Assistant Prosecuting Attorney.

On December 27, 2007, the Appellant, Mark Donnelly received a notice of job abolishment from the Appellee. This action was to be effective January 14, 2008. Thereafter, the Appellant timely filed his appeal on January 2, 2008, as well as this being stipulated to by the parties. Further, at the pre-hearing, the jurisdiction of this Board to proceed with this matter was established.

At the pre-hearing an initial finding was made by the undersigned that the Appellee agency substantially complied with the procedural requirements set forth under Ohio Revised Code Section 124.321 and Ohio Administrative Code Section 123:1-41-10(B) as follows:

- 1) The Appellee informed the Appellant of the reason for the abolishment;
- 2) The Appellee informed the Appellant of the effective date of the action;
- 3) The Appellee informed the Appellant of his accumulated retention points;

4) The Appellee informed the Appellant of his right to appeal to the State Personnel Board of Review within ten (10) days after receiving notice;

5) The Appellee informed the Appellant of his right to request and receive a copy of Ohio Administrative Code Section 123:1-41;

6) The Appellee informed the Appellant of his right to displace other employees if available and to exercise those rights within five (5) days;

7) The Appellee informed the Appellant of his right to reinstatement or reemployment;

8) The Appellee informed the Appellant that he was responsible for maintaining his current address with the Appellee;

9) The Appellee informed the Appellant he had the option to convert accrued leave if the opportunity existed.

Therefore after, the pre-hearing, an initial finding was made by the undersigned that the agency substantially complied with the procedural requirements set forth under Ohio Revised Code Section 124.321 and Ohio Administrative Code Section 123:1-41-10(B). Further, a finding was made that this hearing should proceed on to a full record hearing on the merits.

STATEMENT OF THE CASE

Appellee's first witness was Mr. Ralph Linne, Director of Facilities for the Hamilton County Board of Commissioners, a position he has held since January 2001. Mr. Linne testified that his duties included, but were not limited to, overseeing all capital projects in the central services operations as well as the maintenance of all the buildings and overseeing the administration of the department. The witness testified he is familiar with the Appellant, Mr. Mark Donnelly, as he helped put the paperwork together for the job abolishments of many positions, including Mr.

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Donnelly's position as a Facilities Project Manager, classification specification number 42583.

On direct-examination, Mr. Linne identified numerous exhibits offered by the Appellee, as follows: Appellee's Exhibit 1 was identified as a working document which he received from Gary E. Berger, County Personnel Director, evidencing that Kevin Maue, effective May 31, 2007, had been reclassified from a Project Manager, class number 51610 to a Facilities Project Manager, class number 42538, the same classification which the Appellant held herein, which was explained in February 2007, the Hillcrest School, the Juvenile Facility, as well as a couple of other facilities within Public Works, had folded into the county's facilities department and that is when Mr. Maue came into the department in as a lateral transfer.

The witness then identified Appellee's Exhibit 2 as a July 6, 2007, letter by Todd Portune, the President of the Hamilton County Commissioners, as a letter which he received explaining that the 2008 budget planning meeting had suggested that as much as \$28,000,000 in general fund shortfall between expenses and revenues were projected for 2008 and serious budget reductions would be necessary for all of the budget cabinet people to be looking into.

The witness then identified Appellee's Exhibit 3 as a July 13, 2007 letter sent by Christian Sigman, Assistant County Administrator to all departments including his department, which expressed that all departments had to cut approximately ten percent of their expenditures for the 2008 budget. Mr. Linne then identified Appellee's Exhibit 4 as his specific spreadsheet which he made and that he put together outlining the budget cut of the facilities department of \$1.8 million and/or ten percent of his budget that he submitted back to the county commissioners on or about August 6, 2007. The witness explained he did submit this to the County Commissioner's budget analyst. Mr. Linne further identified that under priority sixteen it shows that a Facilities Project Manager's position was projected to be reduced which included Mark Donnelly's position and that a total of thirteen positions were actually cut, seven unfunded and six funded. The witness explained however there was one position which was changed as a result of the budget cuts. Again, the undersigned noted that the majority of the budget cuts within this document were close to \$935,000.00 being cut out of capital projects, basically which the Appellant was in charge of. The witness then identified Appellee's Exhibit 5 as a document which he received from Jeff Aluotto, on or about September 25,

2007, regarding the ten percent reduction outlining essentially what Appellee's Exhibit 4 had previously showing his reductions of \$1.8 million including the reduction of \$935,000.00 in capital projects. The witness opined that because the capital projects budget was being so severely reduced, this is the reason why the position of Mr. Donnelly, as a Facilities Project Manager was being eliminated.

Mr. Linne then identified Appellee's Exhibit 6 as a letter which was sent out on October 8, 2007, to all Hamilton County Employees explaining to them that the county was facing a significant budget deficit in the general fund and that significant reductions across all departments were forthcoming. The witness also identified Appellee's Exhibit 7 as a letter dated November 9, 2007, from Christian Sigman, the Assistant County Administrator to the County Board of Commissioners detailing approximately \$30,000,000 in reductions within the general fund. The witness testified the letter was sent out after the tax levy was defeated and that essentially 107 positions throughout Hamilton County were eliminated as a result of the budget deficit. Further, the witness detailed the facilities department eliminated thirteen full-time equivalent positions.

On cross-examination, the witness re-identified Appellee's Exhibit 1 and noted that Kevin Maue under PCN 176 had been previously classified as a Mechanical Project Manager and he reported to a Project Manager. Mr. Linne also identified Appellee's Exhibit 3 and reaffirmed there was approximately a \$27.5 million deficit and it was caused by stagnate revenues. The witness, when questioned, stated he was asked by the county personnel department to reduce his budget for 2008 and he had reduced some his expenditures in 2007, as well. Mr. Linne reidentified Appellee's Exhibit 4 and explained he chose the Facilities Project positions due to the lack of funding which was going to continue in the facilities capital projects and that his position was to be laid-off as evidenced by the County Personnel Department. The witness then testified it was Kevin Maue's position which was chosen, and apparently not his, but was noted by the undersigned that that did not appear to be present in the paperwork, but did not make a difference in the outcome in this matter since Mr. Kevin Maue had more retention points than Mark Donnelly as a Facilities Project Manager. The witness was then questioned about various positions which were not targeted for job abolishment but it was noted by the undersigned among objections that the Appellee had the right to choose which position or not which had sought to be abolished. The witness stated he does not know how many positions were advertised since January 2008 or if there were any

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vacant positions within the department. Further, the witness testified there were a Facilities Maintenance Repair Worker 2 which had been hired in general services out of the restricted funds for the MR/DD building, as well as a Plumber was hired in 2008 at the Hillcrest facility, under its restricted funds, as well. The witness went on to explain in May 2007, he had approximately \$18 million fund operating budget and a \$12 million capital and restricted funds operating budget. The witness then explained he in fact chose those whose job would impact the most individuals and/or not and that he chose Mr. Donnelly's position to be eliminated. When questioned as to whom assumed the Appellant's duties upon his departure, Mr. Linne testified both John Michel and Kevin Maue assumed portions of his duties after his departure. When questioned as to why Kevin Maue's job description contained he had to work with prevailing wage, the witness explained probably because he would or had been working with MR/DD sites and/or construction and that was something that was contained within that contract. Further, Mr. Linne testified in 2006-2007 the Appellant, Mark Donnelly, probably saved the county approximately \$350,000.00 on a per year basis for bringing his projects in on time and under budget. However, the witness did note that most of these projects that were sent out always had a cost overrun of approximately twenty percent so as to add to that high of a number. Further, the witness explained it was true that Kevin Maue assumed most of the Appellant's duties upon his departure, however, Kevin Maue in the first week of May 2008, left the department as a Facilities Project Manager and is now holding that position at the MR/DD facility. Mr. Linne testified now the Assistant Director John Michel is now assuming most of his prior duties. Moreover, when specifically asked by the undersigned, the witness testified that the position which Kevin Maue had was in fact abolished two weeks ago and taken off of the table of organization in the first week of August 2008.

On re-direct examination, Mr. Linne testified he did not intend to fill the Facilities Project Manager's position as they were going to have to reduce his facilities budget another ten percent in 2009, as well.

The next witness to testify for the Appellee was Ms. Kim Serra, a Senior Human Resource Manager for the Hamilton County Board of Commissioners. When questioned as to her role in the job abolishment at issue, Ms. Serra testified she supervises her staff under her to ensure that all the procedural aspects of a job abolishment are completed including the correct calculation of retention points. Ms. Serra identified Appellee's Exhibit 8 as the November 16, 2007, rationale from the

county administrator to the human resource department to proceed with the abolishments of various county employees, including the Appellant herein. Ms. Serra identified Appellee's Exhibit 9 as the retention point calculations of both the Facilities Project Managers of Kevin Maue and Mark Donnelly at 175.92 and 114.54, respectively. Further, the witness noted that the Construction Coordinator, Bert Watts' retention point calculation was 115.04. The undersigned noted that Mark Donnelly, who is in a higher classification of a Facilities Project Manager classification specification number 42583, had a continuous service dated of January 23, 2006, with a retention point calculation of 114.54 and Bert Watts, someone that was classified as a Facilities Construction Coordinator classification 42581, a lower classification in the same series, had a continuous date of service of January 26, 2006, three days later than Mark Donnelly and had a higher retention point calculation of 115.04. Ms. Serra then identified Appellee's Exhibit 10 as the classification plan structure report of the Hamilton County Board of Commissioners and noted that both the Facilities Construction Coordinator and Facilities Project Manager classifications as noted previously under the classification specifications mentioned above. The witness identified Appellee's Exhibit 11 as a section out of the Ohio Revised Code Section 124.322 classifications affected; order of layoffs where the undersigned took administrative notice that the order of layoff in these rules shall be based in part on length of service and may include efficiency in service, appointment type, or similar other factors the director considers appropriate as established by the county personnel department. The witness then identified Appellee's Exhibit 12 as the Hamilton County Personnel Department's Administrative Regulations and noted that under Chapter 41-08 Verification of Retention Points (A), employees shall be laid off using the following system for systematic consideration of continuous service and relative efficiency and service. Employees shall be assigned retention points in accordance with the period of continuous service of the employee and for relative efficiency. Then the employees total retention points shall be the sum of the base retention points plus retention points assigned for continuous service and for relevant efficiency and service.

The witness then identified Appellee's Exhibit 13 as Kevin Maue's personnel action form depicting that his continuous effective date of service was October 11, 1990. Ms. Serra then identified Appellee's Exhibit 14 again as Kevin Maue's personnel action form dated June 7, 2007, wherein it was noted he was reassigned from his Project Manager classification within the Board of Commissioners to the County Facilities position with an effective date of May 31, 2007. The witness then

re-identified Appellee's Exhibit 12 and under rule and chapter 41-09 (A) it was noted that the computation of retention points for employees shall be assigned a base of one hundred retention points. Computation of retention points for continuous service shall be made by crediting each full-time employee with one retention point for each completed thirteen weeks of continuous service. And noted that under paragraph B of the same rule, Assignment of retention points for relative efficiency states that under (B)(1) states that Performance evaluations used and only the performance evaluations on file with the County Personnel Department at the time retention point lists are submitted for verification shall be used for the calculation of retention points for relative efficiency. Further, under 41-09 (B)(1)(b) is states in the same rule that using the latest annual performance if the employee has less than two years but more than one year of continuous service. If the employee had a one-year probationary period then the final probationary period evaluation shall be used. Additionally, under 41-09(B)(2), the formulation for assigning retention points for relative efficiency shall be one scores 61 through 68 shall be assigned 6 points, 69 through 76 shall be assigned 7 points and 85 through 92 shall be assigned 9 points, as was done in the cases at hand. The witness then identified Appellee's Exhibit 15 as Mark Donnelly's personnel action form evidencing that on January 23, 2006, he was hired into the position in the Facilities Department as a Cost Engineer that had a probationary period of 360 days. Further, Ms. Serra identified Appellee's Exhibit 16 which noted that on March 1, 2006, Mr. Donnelly was reassigned from the position from Cost Engineer to a Facilities Project Manager in a temporary working level at that time. The witness also identified Appellee's Exhibit 17 which showed that Mark Donnelly's personnel action form showed that on May 1, 2006, he was reassigned to a full-time permanent position of Facilities Project Manager in a temporary working level to a Facilities Project Manager. Additionally, the witness identified Appellee's Exhibit 18, which evidenced that Bert Watts, a Facilities Construction Coordinator's personnel action form showed that he began his date of continuous service on January 26, 2006, and only had a probationary period of 180 days. The witness then identified Appellee's Exhibit 19 as the position description of a Facilities Project Manager which evidenced that someone holding that position had a probationary period of 360 days.

The witness then identified Appellee's Exhibit 20, Mr. Mark Donnelly's performance evaluation and/or final probationary evaluation which was completed on May 2, 2007, which evidenced that his probationary period he had a 75.25 rating points for relative efficiency and/or when referred back to the table in Appellee's

Exhibit 12, under 41-09(B)(2) that would have been equal to 7 relative efficiency points. The witness then identified Appellee's Exhibit 21 which showed that Mr. Bert Watts, as of July 26, 2006, on his final probationary period after 180 days revealed that he had a 67 and/or when referred back to Appellee's Exhibit 12, Chapter 41-09(B)(2), which was equivalent of 6 relative efficiency points on the scale provided. Ms. Serra identified Appellee's Exhibit 22 as Mr. Bert Watts' annual performance evaluation given to him on or about January 10, 2007 which showed that he had 85.15 efficiency points and/or related back to the chart would equate to 9 relative efficiency points.

The witness then reidentified Appellee's Exhibit 9 and explained that that was reason when looking at the points for relative efficiency that Mr. Bert Watts had more points than Mark Donnelly by .5, which showed that Mr. Donnelly could not have bumped Mr. Bert Watts in his position. Further, it was noted by the undersigned that the reviewer of the employee Bert Watts was in fact the Appellant herein. Lastly, the witness identified Appellee's Exhibit 23 which was the actual notification to the Appellant which was given to him on or about December 26, 2007, for the instant abolishment herein noting that his job was being abolished due to reasons of economy.

On cross-examination, Ms. Serra identified Appellee's Exhibit 21 and explained that this was the only format that they had for relative efficiency points and that any and all promotions were not considered in this situation. The witness also re-identified Appellee's Exhibit 19 wherein it was noted that the Facilities Project Manager classification specification number was noted as 42581 and not 42583, wherein the undersigned noted that as simply a clerical mistake which did not bare an outcome on this matter as even Mr. Donnelly was a Facilities Project Coordinator, he still would have not had more relative efficiency points, thus not being able to displace any other employee in the classification series. The witness re-identified Appellee's Exhibit 10 and noted that both the Facilities Project Manager and the Facilities Construction Coordinator are noted with the correct classification specification numbers. Additionally, the witness was questioned and identified Appellant's Exhibit A, which noted that as of October 12, 2007, when the retention points were calculated Bert Watts had 6.77 for continuous service and Mr. Donnelly had 6.80 whereas in Appellee's Exhibit 9 the retention points were recalculated on December 12, 2007, and the calculations were both noted for continuous service as 7.54 for both wherein the witness noted that this was done

simply by where the days fell and how they divided off, but the bottom line was that .03 would not have separated or made a ground on the .50 retention points that the Appellant needed to have to have had displacements rights of Mr. Bert Watts.

The Appellant called himself to the witness stand, Mr. Mark Donnelly. The Appellant testified and reiterated that he was initially hired in with the Hamilton County Department of Facilities on or about January 23, 2006, as a Cost Engineer and then in March he took a temporary working level Facilities Project Manager's position and then soon thereafter, on May 1, 2006, he became a Facilities Project Manager. The witness did not have much to add although he did testify that when he left his position in the second week in January 2008 he was making an approximate salary of \$61,800. Further, the Appellant testified he is presently employed by Helmer Plumbing at a salary of \$55,000, a position which he took on or about May 12, 2008. Further, the witness stated that from December 14, 2007, through May 12, 2008, he did collect unemployment compensation and he was given two full weeks of severance pay after he departed on January 14, 2008. A couple of the questions that the Appellant brought up was why was he not given a review for 2007 and 2008, and why did he have less retention points, when compared to Bert Watts, given the fact that he had longer continuous service by three days.

FINDINGS OF FACT

1. I find that the Appellant, Mark Donnelly, was employed by the Hamilton County Board of Commissioners within the Facilities Department as a Facilities Project Manager.

2. The reasons for the abolishment of the Appellant's position were for reasons of economy.

3. I find that the Appellee followed all the substantial procedural requirements set forth in Ohio Revised Code and the Ohio Administrative Code pertaining to an abolishment resulting in a layoff of the Appellant. Further, that compliance included providing materials to its own Human Resource Department, including the calculation of the Appellant's retention points which the Human Resource Department verified and which demonstrated that there were no employees in the Appellant's classification series in which the Appellant could have displaced.

4. The Appellant's position as a Facilities Project Manager and others were abolished as a result of reasons of economy. The evidence revealed that Hamilton County Board of Commissioners realized that they were facing anywhere between a \$27.5 to \$30 million dollar budget shortfall due to stagnant or declining revenues and that a 10% cut across the Board was made within various departments, including the Facilities Department, which had a 1.8 million dollar budget cut.

5. The issue of bad faith was not raised by the Appellant nor did the Appellant prove by a preponderance of the evidence that the agency acted in bad faith in eliminating his position within the agency.

6. As was revealed by the testimony and documentary evidence presented at the record hearing, and which was quite confusing at first, that the retention point calculations and verification of the terms for points for continuous service and points for relatively efficiency were proven by a preponderance of the evidence to be correct as evidenced on Appellee's Exhibit 9. Although the Appellant, Mark Donnelly, had a continuous service from January 23, 2006, an earlier date than Mr. Bert Watts at January 26, 2006, Mr. Watts had two performance evaluations due to the fact that he had only a 180 day probationary period, wherein Mr. Donnelly had only one performance evaluation done since he came in as a Cost Engineer, then took a temporary working level, then moving on to that full-time position and then having a final probationary period one year later or approximately a year and a half after he was hired. This did lend to confusion of the calculation of the retention points and was understandable that the Appellant herein was confused, as well.

7. The evidence revealed by a preponderance thereof that the Facilities Project Manager who was left behind, Kevin Maue, did in fact leave his position in May 1, 2008 and the position was not abolished until August 9, 2008 and that the Appellant, should have in the very least, been recalled or reemployed from the first of May 2008 through the second week of August 2008. However, it was noted that the Appellant during the above noted period was making a salary of \$55,000 and his final salary was \$61,800 and there should be a set off to that amount.

CONCLUSIONS OF LAW

According to Section 124-1-02(B) of the Administrative Rules of the State Personnel Board of Review, an “abolishment” means:

. . . . The permanent deletion of a position from the organization or structure of an appointing authority due to lack the need for the position due to reorganization for efficient operation, economy, or lack of work.

This definition refers to the position, not the person occupying the position. It also does not mandate whether the duties formerly assigned to that position be reassigned to other personnel, or simply discontinued on the basis of the abolishment, and when that abolishment may result in a layoff, those occurrences are separate and not synonymous. Additionally, Administrative Rule 124-7-01(A)(1) of the State Personnel Board of Review states that an appointing authority has the burden of proof to establish by a preponderance of the evidence that the job abolishment was undertaken due to a lack of continued need for the position due to a reorganization for the efficient operation of the appointing authority, or for reasons of economy, or for lack of work expected to last one year or longer. If the employee/Appellant alleges bad faith in connection with the job abolishment, the employee/Appellant must prove the appointing authority’s bad faith by a preponderance of the evidence. See Administrative Rule 124-7-01(A).

I. COMPLIANCE WITH THE PROCEDURAL REQUIREMENTS

The Appellee had the burden of proof to establish that the job abolishment was procedurally correct. The appointing authority must comply with the administrative procedures set forth in Ohio Revised Code Section 123:1-41-10(B) in addition to presenting adequate justification for the abolishment of the Appellant’s position. These procedures require that the appointing authority inform the employee, whose position is abolished, of the following:

1. The reason for the action;
2. The effective date of the action;
3. The employee's accumulated retention points;
4. The employee's right to appeal to the State Personnel Board of Review within ten (10) days after having received the notice;
5. The employee's right to a copy of Administrative Code Section 123:1-41 upon request;
6. The employee's right to displace another employee if exercised within five (5) days;
7. The employee's right to of reinstatement or reemployment;
8. The employee's responsibility to maintain a current address with the appointing authority;
9. The employee's option to convert accrued leave if the opportunity exists.

The Ohio Administrative Code Section 124-7-01(A)(3) states that:

Abolishments may only be affirmed if the appointing authority has substantially complied with the procedural requirements set forth in sections 124:321 through 124.328 of the Ohio Administrative Code and the administrative rules promulgated pursuant to statues.

See, *Jacko v. Stillwater Health Center* (1982), PBR 82-LAY-03-0876, where an employer has substantially complied with the rules regarding layoffs, the employee's rights were not violated, and the abolishment of their positions will be affirmed.

As was previously stated, it was the finding of this Administrative Law Judge initially that the Appellee substantially complied with all of the applicable statutes and rules pertaining when an abolishment is implemented. Therefore, this Board concludes that the Appellee has substantially complied with all of the applicable statutes and rules. (See, Ohio Administrative Code Section 123:1-41-10(B) and Ohio Administrative Code Section 124.321 through 124.328).

II. PERMENET DELETION OF APPELLANT'S POSITION

A critical guideline in the abolishment of a civil service position is that it must be done in good faith. *Weston v. Ferguson* (1983) 8 Ohio St. 3d 52. In the instant appeal before this Board, the Appellee has presented testimony affirming that the appointing authority, the Hamilton County Board of Commissioners, through the County Facilities Department, by reasons of economy, sought to decrease its costs of its operations by eliminating approximately thirteen (13) positions, including the Appellant's position as a Facilities Project Manager. The evidence reflected through the testimony of Ralph Linne and Kim Serra and through the Appellee's exhibits and/or documentation which was submitted at the record hearing that through the implementation of the statement of rationale and for reasons of economy due to a declining or stagnant revenues, the Hamilton County Board of Commissioners faced a \$27.5 to \$30 million dollar deficit for fiscal year 2008 and that the County Facilities Department was told to reduce its budget by 10% and/or by \$1.8 million dollars which they did, which included eliminating the Appellant's position, in addition to eliminating \$934,000 in capital projects which the Appellant's position mainly worked on. Consequently, this Board finds that the Hamilton County Board of Commissioners acted in good faith when it instituted the instant job abolishment of the Appellant.

As a result, the Appellant's position as a Facilities Project Manager was deleted from the organization, as well.

III. LACK OF CONTINUED NEED FOR THE APPELLANT'S POSITION IS JUSTIFIED BY REASONS OF ECONOMY.

As was previously stated, the Hamilton County Board of Commissioners were faced with a \$27.5 to \$30 million dollar deficit for fiscal year 2008 and across the board cuts needed to be implemented which included a 10% reduction within the County Facilities Department which equated to a \$1.8 million dollar budget cut for that department. The appointing authority, the Hamilton County Board of Commissioners, must demonstrate, by a preponderance of the evidence, that the job abolishment:

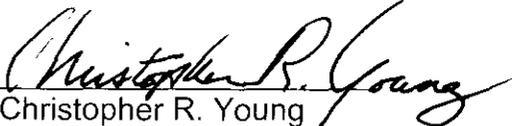
. . . Was undertaken due to a lack of continued need for the position for reasons of economy . . . (O.A.C. 124-7-01(A)(1).

Appellee presented the reasons for this job abolishment was for reasons of economy as its primary justification for the abolishment of the Appellant's position. The testimony presented clearly demonstrated, as a way of achieving the instant reorganization and job abolishment at least within the County Facilities Department thirteen permanent positions were eliminated which included seven vacant positions and six positions, along with eliminating expenditures for capital projects which amounted to \$1.8 million dollars in reductions. Simply put, the revenues had just not been coming in to the county and positions needed to be cut to keep the county and/or departments solvent. Reasons of economy are valid rationalizations for implementation of job abolishments. (See O.A.C. Section 124-7-01(A)(1). In summary, the Appellee has presented that it substantially complied with all the pertinent Ohio Administrative Code and Ohio Revised Code provisions dealing with an abolishment of a position and subsequently due to that abolishment. Further, the Appellee has demonstrated that its rationale of reasons for economy was a valid justification for the abolishment of the Appellant's position, because it appears that through the implementation of the abolishment of the Appellant's position, as well as others within the Department of Facilities led to a 10% decrease in the annual budget for the department and made up its \$1.8 million dollars within the \$30 million to \$27.5 million dollar deficit that the county was facing at that time.

IV. RECOMMENDATION

Because the Appellee has demonstrated by a preponderance of the evidence that the abolishment of the Appellant's position was made in compliance with the requirements of Ohio Administrative Code Section 124-7-01 and that the Appellee substantially complied with all the procedural requirements set forth in Ohio Administrative Code Section 123:1-41-10(B) and in consideration that there was no bad faith proven on the part of the Appellee, it is therefore **RECOMMENDED** that the instant job abolishment and subsequent layoff be **AFFIRMED**.

However, due to the testimony that was received by the undersigned there was a period of time from the first week of May 2008 through at least the second week of August 2008 that the Appellee should have in the very least recalled the Appellant to the position which was vacated at that time by another Facility Project Manager and that he should have been reemployed into that position during that period of time, as the Appellee through testimony established that that position then was subsequently then abolished after it was discovered that it was still left on the books and/or organizational chart. Therefore, the Appellant at this time can not possibly go back into that position, as it has been eliminated, but should have been at least given a chance to be reemployed in that position for that period of time. However, it was also noted by the undersigned that the Appellant had began working on or about May 23, 2008, in a different position making \$55,000, as opposed to \$61,800, the Appellant's ending salary, and that there should be some sort of set-off involved in this case, as well.


Christopher R. Young
Administrative Law Judge