

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Ronald J. Pawlus,

Case Nos. 08-ABL-06-0265
08-LAY-06-0266

Appellant,

v.

Department of Rehabilitation and Correction,
Mansfield Correctional Institution,

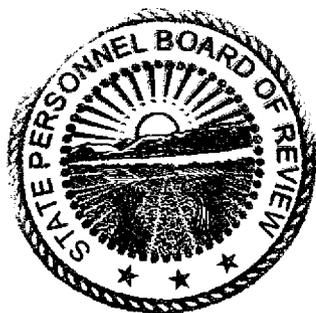
Appellee.

ORDER

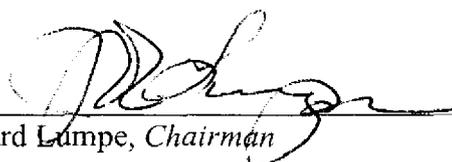
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

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 Appellee's abolishment of Appellant's position and Appellant's resultant layoff be **AFFIRMED**, pursuant to O.R.C. §§ 124.03 and 124.321 *et seq.*



Lumpe - Aye
Sfalcin - Aye
Tillery - 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 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, December 31, 2009.


Michelle Hunsay
Clerk

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

12-31-09
MH

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

Ronald J. Pawlus,

Appellant

Case Nos. 08-ABL-06-0265
08-LAY-06-0266

v.

September 29, 2009

Department of Rehabilitation and Correction,
Mansfield Correctional Institution

Appellee

Marcie M. Scholl
Elaine K. Stevenson
Administrative Law Judges

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for consideration upon Appellant Pawlus' timely filing of a notice of appeal of his job abolishment and resultant layoff. A record hearing in this matter was held on December 8, 9, 11, and 12, 2008. Appellant Pawlus was present at record hearing and appeared *pro se*. Appellee Department of Rehabilitation and Correction was present through its designee, Human Resources Legal Counsel Amy C. Parmi, and was represented by Assistant Attorneys General Joseph N. Rosenthal and Nicole S. Moss.

This Board's jurisdiction to hear these appeals was established pursuant to R.C. 124.03(A) and R.C. 124.328.

STATEMENT OF THE CASE

Appellee's first witness was Kevin Stockdale. He testified he is presently employed by Appellee as Chief of Budget Planning and Analysis, and has held that position for approximately three months. He indicated that prior to accepting his present position, he was employed by the Office of Budget Management (OBM) as a Budget Management Analyst for approximately one year; in that position he was responsible for working with assigned agencies to prepare and monitor budgets. The witness noted that he worked with Appellee, Department of Youth Services and

the Department of Public Safety to prepare budgets and budget requests for the 2008-2009 budget cycle.

The witness recalled that on January 31, 2008, Governor Ted Strickland issued an Executive Order (Appellee's Exhibit 1), requiring state agencies receiving general revenue funds (GRF) to reduce their expenditures in order to close a budget deficit. Mr. Stockdale indicated agencies were required to take a number of actions to reduce their budgets and that some agencies, such as Appellee, were required to reduce their payrolls, as payroll costs are generally the largest component of agency budgets. He explained that payroll costs include employees' base pay, along with additional costs, such as fringe benefits and step increases.

Mr. Stockdale recalled that his role as a Budget Management Analyst was to provide Appellee with guidelines regarding budget reductions; he noted Appellee was required to cut its budget by six to ten percent. The witness stated he reviewed the plan submitted by Appellee to OBM for viability and impact, and submitted a report to his supervisor. He noted Appellee was somewhat restricted in what it could and could not cut from its budget, stating, for instance, that Appellee could not cut food service, and indicated several alternatives were discussed.

The witness testified that Appellee's initial budget reduction plan was rejected by OBM. Mr. Stockdale indicated he worked with Appellee and OBM's Director provided Appellee with guidelines for budget reduction (Appellee's Exhibit 11, Book 3) to prepare a revised plan that implemented OBM's agency budget directives. He stated that the budget reduction plan finally submitted by Appellee and approved by OBM encompassed a total budget reduction of \$71.7M, which included a reduction in payroll of \$52M and affected institutional and administrative operations agency-wide.

Appellee's next witness was Douglas Forbes. He has been employed by Appellee as Deputy Director of Administration for approximately three years and supervises approximately two hundred employees in that position. He indicated he is responsible for Appellee's budget and supervises approximately seven employees who work on that budget. The witness confirmed he prepares Appellee's biennial budget and prepares budget allocation plans for each year. Mr. Forbes explained that Appellee has three funding sources: General Revenue Funds (GRF), which comprise approximately eighty-five percent of Appellee's funding; Prisoner Program Funds; and OPI Funds.

Mr. Forbes explained that OPI (Ohio Penal Industries) makes items such as license plates, furniture, and clothing, and has its own budget; OPI is funded through customer sales to state agencies and local government agencies. He noted that OPI funds pay entirely for commissary staff salaries and no GRF funds are used. The witness observed that OPI sales decreased from \$3M to \$1M, and explained that Appellee purchases approximately eighty-five percent of the products OPI manufactures.

Mr. Forbes confirmed that he participated with the other Deputy Directors in the overall budget reduction planning process, but he did not determine which positions should be cut at each institution. He recalled that Appellee saved approximately \$39M in payroll expenses and was able to save more than \$9M in areas other than payroll, such as reductions in ancillary services, lease agreements, and travel expenses, but still fell short of its \$71M goal. The witness observed that Appellee had also begun offering an Early Retirement Incentive in May of 2007 for approximately 1,400 eligible positions but, to date, only two hundred sixty employees had taken advantage of the incentive.

Mr. Forbes confirmed that payroll expenditures are Appellee's largest expense. He indicated that seven hundred and one positions were abolished, which included one hundred sixty-two positions that were vacant at the time of abolishment. Mr. Forbes stated that, in his opinion, Appellee had to cut positions in order to realize the necessary amount of savings mandated by the Governor's order to reduce the budget. He noted Appellee looked to positions other than security and medical staffing when determining which positions should be abolished but, to his knowledge, no other guidelines were provided to wardens.

Appellee's next witness was David Burrus. He was employed by Appellee for approximately twenty-seven years and retired from the position of Labor Relations Administrator in September 2008. In that position he administered three collective bargaining agreements and oversaw the disciplinary process for union employees. The witness confirmed he was familiar with and participated in the abolishment process; he oversaw the abolishment process for both union and exempt employees that resulted in the June 2008 layoffs.

Mr. Burrus stated the directors and assistant directors made the decision that job abolishments were necessary, and observed that the abolishments affected all of Appellee's institutions. He explained that in Central Office and the Division of Parole and Community Services, the Deputy Director with oversight for each specific area made the determination as to which positions would be abolished. The witness recalled that Director Terry Collins notified each Warden or Regional Director of the number of positions to be eliminated at their facilities, and the Wardens and Regional Directors used their discretion to select specific positions, based upon their facilities' operational needs. He confirmed that Wardens were repeatedly counseled to choose positions for abolishment, rather than people.

Mr. Burrus stated Appellee took additional efforts to reduce the agency's budget, including offering an Early Retirement Incentive program, consolidating some programs, and reviewing contractual obligations. He testified that one unclassified Deputy Warden position at each institution was eliminated, as well as other unclassified positions within Central Office and the Division of Parole & Community Services. The witness noted that some affected unclassified employees exercised their fallback rights to classified positions.

Mr. Burrus confirmed that unclassified position eliminations were implemented prior to the job abolishment of exempt positions because of the issue of fallback rights. He explained that when an unclassified employee exercises his or her fallback rights it is sometimes necessary to create a position for them to "fall back" into; the witness noted this can lead to duplicative positions in some institutions, and when a job abolishment is undertaken, typically the most recently created duplicative position is the position eliminated. Mr. Burrus acknowledged that this practice sometimes resulted in a formerly unclassified employee being placed into a classified position and then laid off from that position shortly thereafter, but indicated that Appellee was legally required to proceed in that manner.

Mr. Burrus explained that once the positions to be abolished had been identified, it was necessary for Appellee to identify the layoff jurisdiction for each position and calculate retention points for each of the incumbent employees. He noted that retention point lists were posted in several locations and any alleged errors were checked by referring to information contained on the OAKS system; DAS also certified Appellee's calculations. The witness explained that retention points are calculated based on years of continuous service, with no break in service. He confirmed that prior service was also considered in the calculation of retention

points, but that DAS would not consider the issue of an error in awarding prior service credit unless it was raised prior to or at the same time that the layoff rationale was submitted. Mr. Burrus testified that an employee may only challenge the calculation of his or her own retention points.

Mr. Burrus stated that once DAS had certified Appellee's retention point calculations, the next step was to determine how each of the affected employees would be impacted by the displacement process; a notification letter was sent to employees (Appellee's Exhibit 4B). He noted that an exempt employee could displace into a vacant bargaining unit position in their classification, but that employees already in the bargaining unit whose positions were abolished would take priority in filling those vacancies. The witness recalled that employees were also notified of some vacancies that would be filled, and were given the option of applying for those positions or for Corrections Officer openings.

The general rationale for the job abolishments and subsequent layoffs was for reasons of economy, which resulted from the projected budget shortfall. Mr. Burrus noted that a separate rationale was prepared for each abolished position, showing how the position's duties would be absorbed.

On cross examination, Mr. Burrus testified that if a particular rationale stated there would be no redistribution of duties, then there should not be any redistribution of duties. He also explained that some vacancies were not filled because they were not funded.

Appellee's next witness, Rhonda Pickens, testified she is presently employed by the Department of Administrative Services as a Human Resources Analyst 2 and stated she is responsible for verifying retention points for agencies seeking to abolish positions. Ms. Pickens indicated she works specifically with Appellee, the Department of Youth Services, the Rehabilitation Services Commission, the Department of Tax and other smaller agencies. The witness noted that the manner in which retention points are accrued and calculated is outlined by the Ohio Administrative Code. She observed that retention points are not accrued in certain situations, such as while an employee is on disability leave.

Ms. Pickens explained that continuous service means that an employee has had no more than a thirty-day break in service. She indicated that accrual of retention points starts over if an employee has a break in service. The witness noted

that it is the agency's obligation to provide information regarding an employee's prior service to DAS, although agencies argue that it is onerous for employees to provide information regarding their prior service. She observed that prior service also affects the calculation of employees' vacation and sick leave.

The witness stated DAS has to have a cut-off date for the submission of information regarding prior service credit in order to keep the abolishment and layoff process on track and that information must be submitted prior to the submission of the rationale. Ms. Pickens testified an employee can only challenge his or her own retention point calculation.

Appellee's next witness was Stuart Hudson, an employee of Appellee for approximately fourteen years. He stated he has been Warden of Pickaway Institution since approximately October 2008 and prior to that, he was Warden of Mansfield Correctional Institution (MCI) since November 2005. He explained MCI is a level three prison, meaning it houses the long term, most violent offenders who have an average stay of approximately five years. In October 2008, MCI had approximately 2,450 inmates and at the level one camp, located on the grounds, there were approximately 400 inmates. One unit was comprised of four pods with 120 inmates in a pod.

Warden Hudson testified he was briefed by the Director in January or February 2008 that abolishments were needed due to a revenue shortfall. He was told that the level three and four institutions were going to move to a social service model, which meant doing away with unit managers. He was told to look deep for excesses, redundancy, etc. in making his cuts. Warden Hudson stated he analyzed his table of organization and was told he had to identify one unclassified deputy warden for abolishment. He chose the Deputy Warden of Administration. Warden Hudson testified he spent a lot of time reviewing his table of organization as he was not told what the social services model would look like. He was given a certain number of positions to abolish and was told to look only at positions, not people. He had to look at what would better the institution. Warden Hudson testified he was also told to come up with all the positions that he could be abolished without considering the unit managers.

Warden Hudson testified he did not want to open Appellee up to any impropriety or malicious intent claims, so he was very careful and looked at all the duties and classification specifications of the positions. He met with his Regional

Director and the person who oversees the prisons and at that point, he was still told to do nothing with the unit managers. He also could not look at the medical services, the food service, the education and recovery sections or at the corrections officers. That left him with the general operation line items and there were limited choices. From a previous position he held as deputy warden, he knew how the business office operated and he looked at those classification specifications.

Warden Hudson testified that at the end of February, beginning of March 2008, right before he did his rationales, he received a fax from Central Office which listed unit manager positions to be abolished. He testified he had no input into the list and although he wanted three unit managers, he found out all of those positions were gone with the exception of one at the camp.

In looking at the rationale for Appellant Pawlus' positions, Warden Hudson testified the rationale says the duties will not be redistributed. He stated he discussed the wording of the rationale with the labor relations section and testified he did not know a lot about the social services model as he never worked under it. Warden Hudson explained that the unit manager system came in around 1980 and it worked well. The social services model is a maintenance model, providing the basic necessities. He explained that with the long term offender, the Appellee wanted to get away with programming and instead concentrate on sustaining the inmates until they eventually transfer to a level one or two prison. The programming went to re-entry and that is what the level one and two prisons are currently doing.

The unit manager duties consisted of quasi-warden duties of a unit. They were over the day to day operations, staff, bed moves and programming needs as well as doing investigations and serving as committee chairs. A unit was comprised of Case Managers, Unit Secretaries, Sergeants, Corrections Officers and files. The Unit Manager supervised all of those people. The Case Manager implemented programming with inmates and the Unit Manager supervised and reported to a Unit Manager Supervisor. At the time he did the rationale, in March 2008, Warden Hudson testified he did not know what the social service model was going to look like. He was told he would eventually receive guidance in that area. There was a transition to the social service model. Meetings were held and he brought together the unit management to see what the future would be and to plan their own destiny. Warden Hudson testified the model is currently working well and the units have been collapsed into a centralized unit.

Two Lieutenants are assigned to each unit, working the same hours as the Unit Managers did. This is to have a supervisory capacity up in the units, although they are transitioning to a security role. They are in charge of sanitation, bed moves and they do reports. The Sergeants report to the Lieutenants. All the Case Managers are in one area now and all the Secretaries are in a common area, along with the inmate files. It is one efficient area under a Unit Manager Administrator and the Lieutenants are not involved in any unit programming processes.

Warden Hudson testified that it is going well so far, although the inmates did not like the change as they don't have the access they once did. The Case Managers like it as they can pass work to others. They do the same job but do not have a Unit Manager over them. The inmates like being more secluded with the Case Managers, as before the change, they only had direct contact with the Lieutenants and Sergeants. Now the Lieutenant is not there every day as they are running shifts, so they are pulled out quite often. Warden Hudson stated he wanted the Lieutenants visible in the yard and during chow. He testified there is one Case Manager for approximately 480 inmates, so they have to get their work done and it helped to get them out of a distracted area and given them secretarial support with someone else to answer phones and portion out the work. Now it is a team effort and is a better model for work production.

On cross examination Warden Hudson stated the Lieutenants and Sergeants should be dealing with cell conflicts and after the Unit Managers left, the Lieutenants did the investigations. He testified he asked the Unit Manager Administrator, Mr. Fields, to come up with the social services model and he assigned a Lieutenant to each zone. Warden Hudson testified he found the Lieutenant did not do a lot, just basically hung out in the Captain's office. He wanted them out and being visible, having a presence since they lost so many employees. Warden Hudson stated the Lieutenants are performing some of the same duties Appellant Pawlus performed.

Appellant's first witness was Jeffrey Gilbert, a Lieutenant at MCI. He testified his general duties consist of making rounds and being the segregation supervisor. Prior to the abolishments, Lt. Gilbert testified lieutenants were never assigned to the units. Also prior to the abolishment, he stated he shadowed the Unit Manager. In looking at Appellant's Exhibit A3, Lt. Gilbert testified he received this document, which listed duties that lieutenants were to do after the abolishments. He stated these were different than the duties he did prior to the abolishments as he was

assigned to manage a unit and his hours were changed. He stated there was one lieutenant to a unit. Lt. Gilbert testified that currently the investigations are done by the lieutenants and they handle any incidents on the units.

On cross examination Lt. Gilbert testified that incident handling is a security function and he confirmed he is frequently called out of the unit to handle operations elsewhere. He also stated that the handling of kites is a security function, not programming. Lt. Gilbert testified he is not currently assigned to a unit and stated that even before the abolishments, he did investigations. He stated that he is not involved in programming and has no interaction with the secretaries or the files.

Appellant Pawlus testified that his rationale states his duties were not going to be distributed. Even before he left his position, the lieutenants were told to shadow the unit managers and to learn their duties. He stated lieutenants are serving as unit managers without the supervision and programming duties. Appellant Pawlus testified that bed moves and cell conflicts were a majority of his duties and the lieutenants are doing those duties now. He stated his duties are still there although he agreed that lieutenants have a security presence that the unit managers did not have. He stated Appellee did not comply with its own rationale.

FINDINGS OF FACT

Based on the testimony presented and evidence admitted at record hearing, and the entirety of the information contained in the record, we make the following findings of fact:

The parties stipulated that Appellee complied with the relevant procedural and notice requirements of the Ohio Revised Code and Ohio Administrative Code in implementing the abolishment of the position encumbered by Appellant Pawlus and his resultant layoff.

On January 31, 2008, The Governor of Ohio issued Executive Order 2008-10S, which instructed state agencies to implement General Revenue Fund (GRF) spending reductions within their agencies due to an impending state budget shortfall. The Governor also instructed the Office

of Budget and Management (OBM) to issue directives to guide agencies in implementing GRF spending reductions.

Appellee took steps to reduce the agency's budget, including offering an Early Retirement Incentive program, consolidating some programs, and reviewing contractual obligations.

Payroll expenditures are Appellee's largest expense and Appellee determined that it had to abolish positions in order to realize the necessary amounts of savings mandated by the Governor's order to reduce the budget. Appellee estimated that the average total payroll cost of each position is approximately \$70,000. Appellee initially identified 701 positions for abolishment, which would result in 37M in cost savings.

The Director of the Department of Rehabilitation and Correction, Terry Collins, notified each Warden or Regional Director of the number of positions to be eliminated at their respective facilities. The Wardens and Regional Directors used their discretion to select specific positions, based upon their facilities' operational needs.

On April 8, 2008, Appellee submitted its rationale for job abolishments to the Ohio Department of Administrative Services (ODAS). Appellee's rationale contained the agency's budget information, general cost savings measures, and the proposed abolishment of several hundred positions to save salary and benefits. Appellee's rationale contained several tables that outlined projected GRF savings based upon staff reductions and other cost savings measures.

Appellee calculated retention points for those employees affected by the abolishment and resultant layoffs. ODAS verified Appellee's calculation of retention points for all affected employees and authorized Appellee to proceed with the layoffs that resulted from the abolishment of positions.

In June 2008, Appellant Pawlus held a position classified as Correction Specialist (Working Title: Unit Manager) at Mansfield Correctional Institution. His position was abolished effective June 21, 2008 and he had no displacement rights.

CONCLUSIONS OF LAW

In the present appeals the Board must consider: (1) Whether Appellee has proven by a preponderance of the evidence that the abolishment of the position encumbered by Appellant Pawlus was for reasons of economy and was effectuated in accordance with sections 124.321 to 124.327 of the Ohio Revised Code and the rules of the Ohio Administrative Code Chapter 123:1-41 *et seq.*, and (2) whether Appellant Pawlus' layoff was effectuated in accordance with sections 124.321 to 124.327 of the Ohio Revised Code and the rules of Ohio Administrative Code Chapter 123:1-41 *et seq.*

Section 124.321 of the Ohio Revised Code governs the abolishment of positions. It states, in pertinent part:

(D)(1) Employees may be laid off as a result of abolishment of positions. As used in this division, "abolishment" means the deletion of a position or positions from the organization or structure of an appointing authority.

For purposes of this division, an appointing authority may abolish positions for any one or any combination of the following reasons: as a result of reorganization for the efficient operation of the appointing authority, for reasons of economy, or for lack of work.

(2)(a) Reasons of economy permitting an appointing authority to abolish a position and to lay off the holder of that position under this division shall be determined at the time the appointing authority proposes to abolish the position. The reasons of economy shall be based on the appointing authority's estimated amount of savings with respect to salary, benefits, and other matters associated with the abolishment of the positions only, if:

- (i) Either the appointing authority's operating appropriation has been reduced by an executive or legislative action, or the appoint authority has a current or projected deficiency in funding to maintain current or projected levels of staffing and operations; and

- (ii) In the case of a position in the service of the state, it files a notice of the position's abolishment with the director of administrative services within one year of the occurrence of the applicable circumstance described in division (D)(2)(a)(i) of this section.

(b) The following principles apply when circumstance described in division (D)(2)(a)(i) of this section would serve to authorize an appointing authority to abolish a position and to lay off the holder of the position under this division based on the appointing authority's estimated amount of savings with respect to salary and benefits only:

- (i) The position's abolishment shall be done in good faith and not as a subterfuge for discipline.
- (ii) If a circumstance affects a specific program only, the appointing authority only may abolish a position within that program.
- (iii) If a circumstance does not affect a specific program only, the appointing authority may identify a position that it considers appropriate for abolishment based on the reasons of economy.

(3) Each appointing authority shall determine itself whether any position should be abolished. An appointing authority abolishing any position in the service of the state shall file a statement of rationale and supporting documentation with the director of administrative services prior to sending the notice of abolishment.

If an abolishment results in a reduction of the work force, the appointing authority shall follow the procedures for laying off employees, subject to the following modifications:

- (a) The employee whose position has been abolished shall have the right to fill an available vacancy within the employee's classification.
- (b) If the employee whose position has been abolished has more retention points than any other employee serving in the same

classification, the employee with the fewest retention points shall be displaced.

- (c) If the employee whose position has been abolished has the fewest retention points in the classification, the employee shall have the right to fill an available vacancy in a lower classification in the classification series.
- (d) If the employee whose position has been abolished has the fewest retention points in the classification, the employee shall displace the employee with the fewest retention points in the next or successively lower classification in the classification series.

* * * * *

Appellee has met its burden of proving by a preponderance of the evidence that Appellant Pawlus' abolishment was due to reasons of economy and that all procedural requirements of effectuating such abolishment were satisfied. Prior to the record hearing, Appellant Pawlus stipulated that Appellee complied with the relevant procedural and notice requirements of the Ohio Revised Code and Ohio Administrative Code in implementing the abolishment of his Correction Specialist (Unit Manager) position at Mansfield Correctional Institution position and his layoff.

The evidence established that on January 31, 2008, the Governor issued an Executive Order requiring agencies, Appellee included, to reduce their GRF expenditures. Specifically, Appellee was ordered by OBM to cut their expenditures by six to ten percent. The evidence also established that approximately eighty-five percent of Appellee's budget is made up of GRF funding.

Section 124.321(2)(a) of the Ohio Revised Code allows an appointing authority to abolish positions based on the estimated savings of an employee's salary and benefits if the appointing authority's operating appropriation has a projected deficiency or if the appropriation has been reduced by executive action. Appellee proved that both of those are true. Appellant Pawlus offered no evidence to dispute either of those facts. Appellee had a budget deficit and was ordered by executive action to reduce their expenditures. Appellee abolished 701 positions in order to reduce its expenditures. The statute provides that the savings in salary and benefits can be the basis for an abolishment due to economy if the abolishment

takes place within one year of such executive action and projected deficit. In the instant case, the Executive Order was issued in January 2008 and the abolishment of Appellant Pawlus' position took place in June 2008.

The appointing authority has the discretion to decide, based on operational needs, which positions to abolish. Warden Hudson testified he was told to abolish the unit manager positions due to the change from a unit management model to a social services model in MCI. There is no doubt that the abolishment of Appellant Pawlus' position saved the Appellee money in terms of his salary and benefits. That is all that Appellee has to prove because the rationale for the abolishment was for reasons of economy. At record hearing, Appellant Pawlus questioned the wisdom of Appellee's decision to abolish unit manager positions as the institutions moved to the centralized social service model of management. Appellant Pawlus argued that the abolishments were not well planned, and as a result, security at Mansfield Correctional Institution was negatively impacted. There was no evidence presented to establish that security has been negatively impacted. Warden Hudson testified the work is getting done and that the new model is working well, as the Case Managers have more time with the inmates and they can all work together as a team. While the lieutenants are doing some of the duties that a unit manager did, they are not doing all of them.

While Warden Hudson confirmed that Appellant Pawlus' rationale states his duties would not be distributed, and they have been, that is not enough to defeat the abolishment. The fact that Appellant Pawlus' duties have been redistributed does not negate the fact that Appellee had a budget shortfall and had to eliminate positions. Appellee was able to abolish Appellant Pawlus' position, redistribute some of the duties (the evidence established his supervisory and programming duties were not redistributed) and still get the work done, all the while saving money. That is exactly what the purpose of the abolishment was. If Appellee had abolished Appellant Pawlus' position due to a lack of work, then he may have had an argument, but that was not the stated rationale. This Board cannot second guess the Appellee's choosing of positions for abolishment, as the law provides that an appointing authority has the sole discretion to choose what positions to abolish.

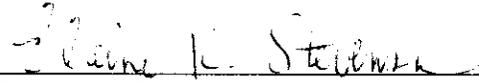
Inasmuch as Appellee has met their burden of proving by a preponderance of the evidence that Appellant Pawlus' position was abolished for reasons of economy and Appellant Pawlus failed to prove any bad faith on the part of the Appellee, it is our **RECOMMENDATION** that Appellant Pawlus' abolishment be

Ronald J. Pawlus
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AFFIRMED, pursuant to sections 124.03 and 124.321, et seq. of the Ohio Revised Code.



Marcie M. Scholl
Administrative Law Judge



Elaine K. Stevenson
Hearing Officer

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