STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Ryan A. Spindler,

Appellant,

v. Case No. 08-LAY-06-0416

Department of Job and Family Services,

Appellee.

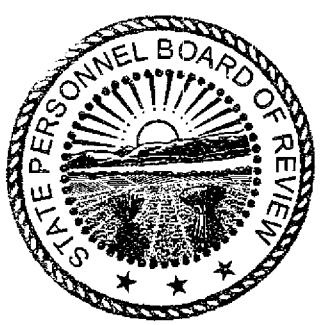
ORDER

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

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 instant appeal be **DISMISSED**.

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, July 23, 2009.

Diana Mills
Clerk

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

ENTERED 7/23/09

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Ryan A. Spindler,	Case No. 08-LAY-06-0416
Appellant	
v.	May 28, 2009
Ohio Department of Job and Family Services,	
Appellee	Elaine K. Stevenson *Hearing Officer*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for a record hearing on January 12 and 13, 2009. The two-day record hearing encompassed the non-consolidated appeals of the following four Appellants: R. Renee Kuhn (SPBR Case Nos. 08-ABL-06-0413 and 08-LAY-06-0414); Ryan A. Spindler (SPBR Case No. 08-LAY-06-0416); and Tonya Hamilton (SPBR Case No. 08-LAY-06-0404). Appellant Kuhn, Appellant Spindler, and Appellant Hamilton were present at both days of record hearing and they appeared *pro se*. Appellant Trenee L. Pruitt (SPBR Case No. 08-LAY-06-0427) was present at the first day of record hearing and was represented by Kendall D. Issac, Attorney at Law. Appellee was present through its designee Janet M. Kaplan, Human Capital Management Administrator, and was represented by Timothy A. Lecklider, Principal Assistant Attorney General.

Prior to the record hearing, Appellants stipulated that Appellee had substantially complied with the relevant procedural and notice requirements of the Ohio Revised Code and Ohio Administrative Code in implementing the 2008 abolishments and layoffs. The parties also stipulated to the jurisdiction of the Board to hear these appeals.

STATEMENT OF THE CASE

On January 12, 2009, Appellee began its presentation of its case-in-chief regarding its rationale for the abolishment of positions and the appeals of *R. Renee Kuhn v. Ohio Department of Job and Family Services* (SPBR Case Nos. 08-ABL-06-0413 and 08-LAY-06-0414).

Appellee's Rationale for the Abolishment of Positions

Appellee called Noah Browning as its first witness. Mr. Browning testified that he is employed by the Office of Budget and Management (OBM) as a Budget Management

Analyst. Mr. Browning indicated that, as a Budget Management Analyst, he is assigned to monitor the budgets of specific agencies. Mr. Browning confirmed that the Ohio Department of Job and Family Services (Appellee) was one of the agencies he monitored. Mr. Browning further confirmed that he is familiar with the Executive Order issued by the Governor of Ohio in January 2008. Mr. Browning explained that the Governor's Executive Order instructed agencies to implement budget reductions due to an impending state budget shortfall. He indicated that the Governor also instructed OBM to issue directives to guide agencies in implementing such reductions. Mr. Browning identified Appellee's Exhibit A as a copy of the January 31, 2008 Executive Order 2008-01S.

Mr. Browning identified Appellee's Exhibit I, which contained copies of three budget directives from J. Pari Sabety, the Director of OBM. Specifically: OBM's February 7, 2008 Budget Directive #1, which implemented Executive Order 2008-01S; OBM's March 19, 2008 Budget Directive #3, approving Appellee's plan to reduce its expenditures; and OBM's July 11, 2008 Budget Directive #5, which authorized Appellee's budget reduction plan to occur in Fiscal Year 2009. Mr. Browning confirmed that Fiscal Year 2009 began July 1, 2008.

Appellee called Janet M. Histed as its next witness. Ms. Histed testified that she is employed by Appellee in the Office of Fiscal Services. Ms. Histed stated that her job title is Chief of the Bureau of Budget Management and Fiscal Analysis, and she indicated that her job duties include monitoring and analyzing budgets and establishing budget allotments. Ms. Histed was asked to review the three OBM budget directives contained in Appellee's Exhibit I. Ms. Histed confirmed that she received all three budget directives, and she indicated that she participated in establishing and implementing Appellee's budget reduction plan for Fiscal Year 2009.

Upon further questioning, Ms. Histed confirmed that Appellee offered an Early Retirement Incentive Plan (ERIP) as part of its cost saving measures. Ms. Histed identified Appellee's Exhibit H as a copy of Appellee's "Revised Plan B Staff Reduction," which showed the ERIP projected cost savings by office. Ms. Histed identified Appellee's Exhibit B as a copy of Appellee's rationale for job abolishments and supporting documentation. Ms. Histed indicated that she was involved in gathering numbers and preparing some of the documents submitted with the rationale. Ms. Histed indicated that she prepared Attachment B of Appellee's Exhibit B, which sets forth the line items the agency planned to reduce. Ms. Histed stated that Attachment C of Appellee's Exhibit B is an estimate of the cost of attrition. Ms. Histed identified Attachment F of Appellee's Exhibit B as a copy of different ERIP scenarios.

Upon cross examination by Appellant Kuhn, Ms. Histed recalled that the ERIP offered by Appellee became effective July 1, 2008. With regard to Appellee's budget

reduction plan, Ms. Histed indicated that Appellee began working on the plan in February 2008. Ms. Histed stated that plan was implemented in Fiscal Year 2009, which began July 1, 2008. Upon further cross examination, Ms. Histed confirmed that some of Appellee's offices were not identified for staff reductions. Ms. Histed explained that Appellee's goal was to reduce spending from the state's General Revenue Fund (GRF), consequently, Appellee focused on reducing staff in the offices that were funded primarily by the GRF. Ms. Histed noted that Appellee contacted the federal government to discuss Appellee's ERIP and was informed that the federal government would not participate in the ERIP. Ms. Histed reiterated that Appellee focused on offices with staff members whose salaries were funded by the GRF and did not select labor grant-funded positions for abolishment. Ms. Histed indicated that to her knowledge the deputy directors were not given specific dollar amounts regarding spending reductions.

Appellee called Ronn L. Kolbash as its next witness. Mr. Kolbash testified that he has been employed by Appellee since June 2000 but he is currently "on loan" to OBM for the "Ohio Shared Services Project," which the witness indicated is a project to expand the Ohio Administrative Knowledge System (OAKS). Mr. Kolbash stated that he was the Assistant Deputy Director of Appellee's Office of Employee and Business Services (EBS) during Appellee's 2008 budget reduction efforts, which included the June 2008 job abolishments and layoffs.

Mr. Kolbash testified that he was a member of Appellee's management team charged with implementing the June 2008 staff reductions. Mr. Kolbash recalled that Brenda Gerhardstein, who was the Director of EBS, and Labor Relations Administrator Carol Borden-Collins were also part of that team. Mr. Kolbash identified Appellee's Exhibit B as copy of Appellee's rationale for the job abolishments and resultant layoffs submitted to the Ohio Department of Administrative Services (ODAS) for review and approval. Mr. Kolbash indicated that Appellee's rationale contained several documents, and he confirmed that he gathered information and assisted in writing Appellee's rationale. Mr. Kolbash explained that Appellee's organizational structure is designed to carry out the core missions of the agency through four primary areas of services/functions: Administration, Operations, Services to Families, and Services to Employers. Mr. Kolbash indicated that page 2 of Appellee's job abolishment rationale shows that Appellee looked at funding streams and focused on GRF-funded areas with respect to making staff reductions. He noted that Appellee offered an ERIP only to employees in positions that would realize a cost savings to the agency, specifically, positions funded by the GRF. The witness further noted that cutting positions funded by the Federal Department of Labor would not realize a cost savings to the agency. Mr. Kolbash stated that the job abolishments implemented by Appellee impacted Administration, Operations, and Services to Families. With regard to Services to Employers, Mr. Kolbash stated that Appellee generally did not implement job abolishments in this area because the positions in this area were funded by the Department of Labor.

Mr. Kolbash testified that Appellee's job abolishments rationale included the agency's internal guidelines for its deputy directors and assistant deputy directors to follow when identifying positions for abolishment. Mr. Kolbash explained that the deputy directors and assistant deputy directors in the offices affected by the job abolishments were instructed to consider the following key factors when identifying a position for abolishment: (1) Was there a duplication of services involved? (2) Was there an outdated classification related to the duties assigned to the position? (3) Was there an appropriate supervisor to employee ratio? Mr. Kolbash recalled that, throughout the abolishment/layoff process, the executive management team held meetings with the deputy directors and assistant deputy directors of the offices affected by the job abolishments. Mr. Kolbash identified Appellee's Exhibit D as containing a section entitled "FAQs Regarding Early Retirement Incentive Plan and Layoffs." Mr. Kolbash indicated that this resource document provided information to employees regarding the job abolishment and layoff process.

On cross examination by Appellant Kuhn, Mr. Kolbash confirmed his prior testimony regarding the instructions for identifying positions for abolishment that were given to Appellee's deputy directors and assistant deputy directors. The witness indicated that the executive management team conducted follow-up meetings with the deputy directors and assistant deputy directors and the team reviewed the deputy directors' submissions of positions selected for abolishment in their respective offices. Mr. Kolbash indicated that the management team asked the deputy directors and assistant deputy directors to give their reasons for the selections they made. Mr. Kolbash indicated that the management team deferred to the assessments made by the deputy directors and assistant deputy directors because these individuals knew the needs of their respective offices and how their offices functioned better than did the executive management team. Mr. Kolbash noted that, ultimately, the Director of the Ohio Department of Job and Family Services approved the agency's job abolishments and the rationale submitted to ODAS. Upon further questioning, Mr. Kolbash explained that the job duties assigned to an exempt position slated for abolishment can be redistributed to another exempt position. Mr. Kolbash noted that positions in a bargaining unit present a different situation, in that the job duties assigned to a bargaining unit position that is slated for abolishment generally cannot be given to an exempt position. Mr. Kolbash indicated that the difference in the abolishment/layoff process of exempt employees as compared to bargaining unit employees is the result of the collective bargaining agreement governing the process for bargaining unit employees. Mr. Kolbash stated that the general rule applied was to keep bargaining unit work in the bargaining unit and exempt work with exempt staff positions.

On redirect examination, Mr. Kolbash stated that Appellee's deputy directors and assistant deputy directors were advised to keep in mind the basic principle that positions are abolished, not employees. Mr. Kolbash explained that layoffs that occur as a result of job abolishments must follow the relevant Ohio Revised Code and Administrative Code

provisions and any relevant collective bargaining agreement. Mr. Kolbash indicated that the deputy directors and assistant deputy directors were instructed to look at the work assigned to the position and the criteria he previously mentioned in his testimony.

Appellee called Carolyn Borden-Collins as its next witness. Ms. Borden-Collins testified that she is employed by Appellee as a Labor Relations Administrator 2. Ms. Borden-Collins stated that she is responsible for Appellee's Labor Relations Program, Civil Rights Program, and its Equal Employment Opportunity Program. Ms. Borden-Collins confirmed that she was part of the executive management team that implemented the job abolishment process in 2008. Ms. Borden-Collins indicated that she assisted in writing the rationale for the agency's job abolishments and she handled the labor issues related to the job abolishments that impacted collective bargaining. The witness identified Appellee's Exhibit B as a copy of Appellee's "Rationale for Job Abolishments." Ms. Borden-Collins confirmed that Appellee's reason for the job abolishments was to reduce costs. The witness further confirmed that the deputy directors and assistant deputy directors were instructed to consider three key factors in identifying a position for abolishment. The witness indicated that the three factors are those listed on page 3 of Appellee's Rationale for Job Abolishments (Appellee's Exhibit B). Ms. Borden-Collins indicated that the deputy directors and assistant deputy directors were also instructed to look at positions for abolishment and to focus on assigned job duties rather than the employees assigned to the positions. Ms. Borden-Collins indicated that the deputy directors and assistant deputy directors were instructed to determine whether duties could be realigned and a position could be abolished without impacting core agency missions. Ms. Borden-Collins indicated that several meetings took place throughout the process to answer questions and to review abolishment decisions. Ms. Borden-Collins identified Appellee's Exhibit B2 as a copy of the rationale for Appellee's job abolishments.

On cross examination by Appellant Kuhn, Ms. Borden-Collins indicated that the executive management team participated in meetings with the deputy directors and assistant deputy directors throughout the job abolishment process. Ms. Borden-Collins indicated that there were no meeting minutes. Ms. Borden-Collins confirmed that the deputy directors and assistant deputy directors were instructed to look at the duties of positions to identify positions where the job duties could be eliminated or absorbed and redistributed. Ms. Borden-Collins noted that an exempt position's job duties could not go from an exempt position to a bargaining unit position, or vice versa. Upon further questioning, Ms. Borden-Collins indicated that the executive management team reviewed the documents submitted by the deputy directors and asked the deputy directors to explain their programmatic needs as they related to the positions they identified for abolishment. Ms. Borden-Collins explained that the executive management team's assignment was to make sure the process for selecting positions for abolishment was followed. Ms. Borden-Collins stated that the executive management team did not substitute its judgment for the

judgment of the deputy directors with respect the programmatic needs of their offices. Ms. Borden-Collins reiterated that in selecting positions for abolishment, the deputy directors and assistant deputy directors were specifically instructed to analyze positions and their functions.

On redirect examination, Ms. Borden-Collins confirmed that the bumping/layoff process stemming from the abolishment of positions was a lengthy process.

On cross examination by Appellant Pruitt's representative, Ms. Borden-Collins stated that Appellee identified 180 positions for abolishment in the rationale submitted to ODAS. Ms. Borden-Collins confirmed that there were 180 positions abolished in 2008. Ms. Borden-Collins indicated that she believed that there were a couple of positions abolished in the bargaining unit assigned to the Civil Rights Bureau. Ms. Borden-Collins stated that Appellant Pruitt's position was not abolished, rather, she was displaced through the bumping process. Ms. Borden-Collins recalled that one secretary position in the Civil Rights Bureau was abolished. Ms. Borden-Collins indicated that no EEO Regional/Program Administrator positions were abolished in the Civil Rights Bureau.

Job Abolishment and Layoff Processes

Appellee called Michelle C. McMillon as its next witness. Ms. McMillon testified that she is employed by Appellee as a Human Capital Management Manager assigned to the Bureau of Human Resources. Ms. McMillon stated that her job duties include overseeing activities related to job audits, position descriptions, and reorganizations. Ms. McMillon stated that her immediate supervisor is Human Capital Management Administrator Janet Kaplan.

Upon questioning regarding Appellee's 2008 job abolishments, Ms. McMillon confirmed that she oversaw the verification of employees' retention points and the preparation of the layoff roster of employees who were to be laid off as a result of the job abolishments. Ms. McMillon explained that Appellee submitted a list of positions with assigned classifications that could possibly be affected by the job abolishments, the names of the employees who encumbered the positions, and the employees' respective employment histories, including dates of service. Ms. McMillon indicated that this information was utilized to calculate the retention points of each employee who could possibly be affected by the job abolishments. Ms. McMillon identified Appellee's Exhibit B3 as a copy of a retention point calculation form for Appellant Kuhn. Ms. McMillon confirmed that a retention point calculation form would have been completed for each employee affected by the abolishment/layoff process. Ms. McMillon noted that this exhibit also contained a copy of the employee's verification and retention point checklist form and the employee's OAKS employee history report. The witness confirmed that each affected

employee would have a retention point verification and checklist form and an OAKS employee history report.

Ms. McMillon identified Appellee's Exhibit C as a copy of the May 23, 2008 letter from ODAS approving Appellee's rationale for the proposed abolishments and layoffs. Ms. McMillon identified page 2 of Appellee's Exhibit C as a copy of the master retention point roster for Layoff Jurisdiction 07. Ms. McMillon identified Appellee's Exhibit C1 as a copy of Appellee's exempt layoff roster with retention points, dated May 23, 2008, and Appellee's Exhibit C2 as a copy of Appellee's Exempt Layoff Roster, dated June 20, 2008. Ms. McMillon indicated that the layoff rosters were submitted to ODAS. Ms. McMillon confirmed that the June 20, 2008 layoff roster was the final approved layoff roster that Appellee posted on its "Interweb."

Appellee called Charlotte Bridges as its next witness. Ms. Bridges testified that she is employed by ODAS as a Human Resources Analyst 2 assigned to the Division of State Services. Ms. Bridges confirmed that she verified Appellee's retention point calculations and she processed the layoff lists for Appellee's 2008 job abolishments and layoffs. Ms. Bridges identified Appellee's Exhibit C as the May 23, 2008 letter from ODAS, approving Appellee's rationale for the 2008 layoffs. Ms. Bridges indicated that Appellee's Exhibit 2 contains a copy of the Exempt Layoff Roster for specific positions. Ms. Bridges indicated that the minor differences in retention points that appear on the layoff rosters were due to the dates the retention points were calculated. She indicated that ODAS began with the first date of the pay period and in this case Appellee may have utilized a different start date. Ms. Bridges stated that she reviewed each employee's OAKS employee history report and the information and documents submitted by Appellee to verify retention points. Ms. Bridges reviewed the documents contained in Appellee's Exhibit B3. She indicated that the retention point calculations form and OAKS employee history report are the types of documents she reviewed for each affected employee.

On cross examination by Appellant Kuhn, Ms. Bridges was referred to the retention point totals for Appellant Kuhn contained Appellee's Exhibit B3 and Appellee's Exhibit C. Ms. Bridges indicated that she did not know why these documents contained different retention point totals for Ms. Kuhn.

Appellee called James K. Lowe as its next witness. Mr. Lowe testified that he is employed by Appellee as a Project Manager assigned to the Office of Employee and Business Services, Human Resources Section. The witness stated that he supervises a team of five employees who manage Human Resources data, and he indicated that the team's activities included creating databases and preparing reports to support management. Mr. Lowe confirmed that his team assisted in the preparation of employee layoff rosters. He noted that his team assisted with the bumping process by creating a

database that included the job abolishments and the bumping and layoff information. He also noted that his team assisted with the ERIP. Mr. Lowe identified Appellee's Exhibit B1 as a copy of Appellee's master roster that showed the positions that were abolished and the resulting bumping and layoffs that occurred. He indicated that roster also included those employees who chose to participate in the ERIP. Mr. Lowe confirmed that the master layoff roster contained in Appellee's Exhibit B1 was generated on October 28, 2008. Mr. Lowe indicated that the roster was the master tracking document for abolished positions and the subsequent actions that took place as a result of the abolishment of positions.

Mr. Lowe reviewed the exhibits in Appellee's Exhibit C. He identified the copy of the master retention point roster for the Training Supervisor classification. Mr. Lowe also identified Appellee's Exhibit C1 as a copy of the exempt layoff roster with retention points, and he indicated that this roster was generated on May 27, 2008. Mr. Lowe noted that his team maintained rosters and reports and updated information throughout the abolishment and layoff process. He then identified Appellee's Exhibit C2 as copy of the exempt layoff roster dated June 20, 2008. Mr. Lowe indicated that the June 20, 2008 roster would have been generated after ODAS approved Appellee's abolishment rationale and layoffs.

Mr. Lowe reviewed several tables of organization contained in Appellee's Exhibit E, taking particular note of the tables of organization dated June 23, 2008 and July 7, 2008. The witness confirmed that his team produced tables of organization during the abolishment/layoff process, and he indicated that the June 2008 table of organization was most likely a pre-abolishment table and the July 2008 table was most likely a post-abolishment table.

Mr. Lowe identified the remaining tables of organization contained in Appellee's Exhibit E specific to Appellants R. Renee Kuhn, Trenee L. Pruitt, Ryan A. Spindler, and Tonya Hamilton.

On cross examination by Appellant Kuhn, Mr. Lowe indicated that he was not certain why there was a difference in retention points for Appellant Kuhn in Appellee's Exhibit B3 and Appellee's Exhibit C. He indicated that the first exhibit contains Appellee's initial calculation of retention points and the second exhibit contains ODAS' determination regarding retention points, which occured some time after Appellee's initial calculations. Mr. Lowe indicated that the dates on the reports indicate the dates the reports were generated/printed.

On redirect examination, Mr. Lowe indicated that Appellee had to calculate employee retention points from a specific date to a specific date. Mr. Lowe stated that he would need to recalculate the points himself to fully explain the 655 retention points versus 667 retention points noted for Appellant Kuhn. Mr. Lowe indicated that ODAS determined that Appellant Kuhn's retention points totaled 667.

Mr. Lowe was referred to Appellee's exhibit book for Appellant Trenee L. Pruitt. He identified Appellee's Exhibit E, which contained several tables of organization, including pre-abolishment and post-abolishment tables.

On cross examination by Appellant Pruitt's representative, Mr. Lowe stated that the information for the tables of organization and other documents related to the abolishment/layoff process came from several sources. Mr. Lowe noted that tables of organization are based on reporting structures within each office, and he indicated that the reporting structures are provided by each office and are updated when changes are made. Mr. Lowe stated that, as far as he knows, the July 7, 2008 table of organization for Appellee's Civil Rights Unit contained in Appellee's Exhibit E is accurate.

Mr. Lowe was referred to Appellee's exhibit book for Appellant Ryan A. Spindler. He identified Appellee's Exhibit E, which contained several tables of organization, including pre-abolishment and post-abolishment tables. Appellant Spindler had no questions regarding the tables of organization contained in Appellee's Exhibit E.

Mr. Lowe was referred to Appellee's exhibit book for Appellant Tonya Hamilton. He identified Appellee's Exhibit E, which contained several tables of organization, including pre-abolishment and post-abolishment tables. Upon cross examination by Appellant Hamilton, Mr. Lowe stated that, as far as he knows, the table of organization dated July 7, 2008 is accurate. Mr. Lowe noted that without copies of the pertinent employee rosters for the same period as the tables of organization, he cannot definitively attest to the accuracy of any of these tables of organization. Mr. Lowe explained that the reporting structures of each office are provided by each offices' management. Mr. Lowe stated that he could not recall the name of the personnel liaison for the Office of Child Support.

Appellant Hamilton referred the witness to Appellee's Exhibit C1, which was previously identified as an exempt retention point roster dated May 27, 2008. Mr. Lowe reiterated that he and his team were charged with providing administrative support for Appellee's 2008 abolishment/layoff process. Mr. Lowe explained that, because he knew that Appellee would need various reports to assist with the abolishment/layoff process, he and his team created a working database to generate these reports and employee rosters. Mr. Lowe stated that Brenda Gerhardstein's team and Labor Relations managed the abolishment/layoff process and his team provided the reports upon request. Mr. Lowe stated that he did not keep track of the reports requested and he did not recall whether or not he received a request for a specific report from Appellee's Office of Child Support. Mr. Lowe stated that his team produced the reports that were posted on the "Interweb" but he could not recall the dates such reports were posted by Appellee. Mr. Lowe indicated that it would not be appropriate to provide a report until the abolishment/layoff had been finalized. Mr. Lowe further indicated that the database created for the job abolishments

and layoffs was a working database and that this database was used throughout the entire process. Mr. Lowe stated that his team and four other managers in Human Resources were the only personnel with access to the abolishment/layoff database.

Appellee called Brenda Gerhardstein as its next witness. Ms. Gerhardstein testified that she was employed by Appellee as the Deputy Director of the Office of Employee and Business Services (EBS), until her retirement on October 1, 2008. Ms. Gerhardstein indicated that, as the Deputy Director of EBS, she was responsible for overseeing activities related to Human Resources and Operations. Ms. Gerhardstein confirmed that she was familiar with the state's budget shortfall and the directives that Appellee received from OBM regarding reducing expenditures in 2008. Ms. Gerhardstein confirmed that she is familiar with the documents contained in Appellee's Exhibit A and Appellee's Exhibit I. Ms. Gerhardstein stated that her office was responsible for implementing the job abolishments and resulting layoffs, and she indicated that her team assisted the deputy directors to ensure that they identified positions for abolishment that fit within the parameters set by the agency. Ms. Gerhardstein stated that her office also was responsible for gathering all the appropriate paperwork for the abolishments and resulting layoffs and submitting that paperwork to ODAS. Ms. Gerhardstein explained that the agency calculated retention points for exempt employees and submitted those calculations to ODAS for verification and certification. Ms. Gerhardstein identified Appellee's Exhibits C, C1, and C2, and she explained the purpose of these documents with respect to the bumping and layoff process. Ms. Gerhardstein stated that, pursuant to administrative rules, the agency is required to post a layoff roster with employees' retention points that have been certified by ODAS. Ms. Gerhardstein indicated that no roster with retention points would have been posted until the retention points were certified by ODAS.

Ms. Gerhardstein identified Appellee's Exhibit B3 as Appellant Kuhn's retention points calculations form that showed 655 retention points. The witness noted that the calculation date was February 29, 2008. Ms. Gerhardstein indicated that the retention points were calculated to the nearest pay period ending date, which, in this case, was February 16, 2008. Ms. Gerhardstein explained how retention points are accumulated. Ms. Gerhardstein reviewed page 2 of Appellee's Exhibit C, which was identified as a retention point roster for Layoff Jurisdiction 07. Ms. Gerhardstein confirmed that this document indicates that Appellant Kuhn's retention points totaled 667. The witness indicated that the difference in retention point totals was due to the accumulation of points during the pay periods from February 16, 2008 through May 2008.

Upon cross examination by Appellant Hamilton, Ms. Gerhardstein recalled that Appellee's certified layoff roster was posted on or about May 27, 2008. Upon further questioning, Ms. Gerhardstein explained that her executive management team provided guidance to Appellee's deputy directors in identifying positions for abolishment. Ms.

Gerhardstein noted that her team was responsible for ensuring that the deputy directors' selections of positions for abolishment were compliant with the agency's guidelines and with the relevant code provisions and applicable collective bargaining agreements. Ms. Gerhardstein stated that the executive management did not take meeting minutes or notes.

Upon further cross examination by Appellant Hamilton, Ms. Gerhardstein testified that, prior to the abolishment/layoff process, Appellee reviewed several positions and submitted requests to ODAS to have certain positions designated as unclassified positions. Ms. Gerhardstein stated that she believed that positions classified as Administrative Assistant 3 or Administrative Assistant 4 that reported to a deputy director were designated as unclassified positions.

Upon redirect examination, Ms. Gerhardstein explained that Appellee had several positions that were not designated as unclassified positions but should have been based upon the assigned job duties. Ms. Gerhardstein indicated that, prior to the beginning of the abolishment/layoff process, Appellee submitted a list of those positions to ODAS, requesting that the positions be designated as unclassified.

Upon re-cross examination, Ms. Gerhardstein indicated that changing a position from classified to unclassified is accomplished by a revocation process. Ms. Gerhardstein indicated that she was not familiar with the specifics of the Administrative Assistant 3 position noted by Appellant Hamilton.

SPBR Case No. 08-LAY-06-0427

On January 12, 2009, Appellee presented its case-in-chief regarding the appeal of *Trenee L. Pruitt v. Ohio Department of Job and Family Services* (SPBR Case No. 08-LAY-06-0427). Appellee called Brenda Gerhardstein as its first witness.

Previous testimony established that Ms. Gerhardstein was employed by Appellee as the Deputy Director of the Office of Employee and Business Services (EBS), until her retirement on October 1, 2008. Ms. Gerhardstein was responsible for overseeing functions and activities related to Human Resources and Operations. Upon direct examination, Ms. Gerhardstein stated that Appellant Pruitt was employed by Appellee in its Bureau of Civil Rights. Ms. Gerhardstein testified that Appellant Pruitt's position was not abolished, rather, she was displaced from her position and laid off during the bumping and layoff process. Ms. Gerhardstein was asked to review Appellee's Exhibit B2. Ms. Gerhardstein confirmed that the EEO Regional/Program Administrator position occupied by Shelba Bradley was abolished and Ms. Bradley bumped into the EEO Regional/Program Administrator position occupied by Appellant Pruitt.

Ms. Gerhardstein was asked to review several documents contained in Appellee's Exhibit D and to explain the bumping process that occurred in Appellant Pruitt's case. The witness explained that there was an employee in the Civil Rights Bureau (Jorge Irizarry) who held the same classification as Appellant Pruitt but who had less retention points than Appellant Pruitt. Ms. Gerhardstein stated that the employee whose position was abolished, Shelba Bradley, could not bump into Jorge Irizarry's position because his position was a position with Position-Specific Minimum Qualifications (PSMQ). Ms. Gerhardstein identified several documents contained in Appellee's Exhibit D that pertained to the PSMQ position, including a job posting for the PSMQ position. Ms. Gerhardstein indicated that the immediate supervisor of that position at that time was Shanna Bagner. Ms. Gerhardstein explained that a PSMQ position is a position that an agency has determined requires specific minimum qualifications in addition to the minimum qualifications of the assigned job classification. Ms. Gerhardstein noted that an agency must submit a rationale and make a request to ODAS to designate a position as a PSMQ position. She indicated that once ODAS has approved a position's PSMQ, an approval letter is issued identifying the PSMQ position. Ms. Gerhardstein identified the January 26, 2005 letter from ODAS (Appellee's Exhibit D) as the letter of approval for the PSMQ for Appellee's EEO Regional/Program Administrator, Class 69133, position control number 24101.0. Ms. Gerhardstein noted that the PSMQ requirement was that the incumbent be fluent in written and spoken Spanish. Ms. Gerhardstein confirmed that the EEO Regional/Program Administrator position with the position control number of 24101.0 was the position held by Jorge Irizarry and that Mr. Irizarry was and is fluent in written and spoken Spanish. Ms. Gerhardstein noted that because Ms. Bradley was not fluent in Spanish, she could not bump into the position held by Mr. Irizarry, and, consequently, the next position Ms. Bradley was able to bump into based upon retention points was the EEO Regional/Program Administrator position occupied by Appellant Pruitt.

Upon cross examination by Appellant Pruitt's representative, Ms. Gerhardstein stated that she did not participate in the approval process to have the EEO Regional/ Program Administrator position approved as a position with PSMQ requirements.

Upon redirect and re-cross, the parties questioned the witness regarding the need for fluency in Spanish for the EEO Regional/Program Administrator position occupied by Mr. Irizarry. Ms. Gerhardstein described the various job duties assigned to different employees in the Bureau of Civil Rights. Ms. Gerhardstein identified Appellant Pruitt's displacement form contained in Appellee's Exhibit D, and she confirmed that Appellant Pruitt checked the box on the form indicating that she was not fluent in written and spoken Spanish.

At the conclusion of Ms. Gerhardstein's testimony, Appellee rested its case and moved to dismiss Appellant Pruitt's appeal because it appeared to be an appeal

challenging the PSMQ established in 2005 for the EEO Regional/Program Administrator position occupied by Jorge Irizarry. Appellant Pruitt's representative argued that his client's appeal was a challenge to the order of layoff. Appellee's motion to dismiss was denied and Appellant Pruitt proceeded to present her case-in-chief.

Appellant Pruitt called Shanna Bagner as her first witness. Ms. Bagner testified that she is employed by Appellee as an EEO Manager. Ms. Bagner confirmed that she was the immediate supervisor of Appellant Pruitt, Jorge Irizarry, and Paul Van Pelt. She indicated that Mr. Irizarry's job title was EEO Investigator (Bilingual). Ms. Bagner was asked to review the table of organization contained in Appellee's Exhibit E. Ms. Bagner confirmed that she supervised the positions contained in the table of organization for the Bureau of Civil Rights. Ms. Bagner further confirmed that all of the positions she supervised were assigned the job classification of EEO Regional/Program Administrator. Ms. Bagner confirmed that Appellant Pruitt had more retention points than Jorge Irizarry.

The witness was referred to the June 23, 2008 table of organization contained in Appellee's Exhibit E. The witness was then asked a series of questions regarding her experiences as an EEO Regional/Program Administrator. Ms. Bagner indicated that she could not recall if she handled any calls from Spanish-speaking individuals during the time period she was an EEO Regional/Program Administrator. Ms. Bagner stated that she did handle one investigation in which she used the assistance of another individual to communicate with the wife of the complainant and she also utilized a language interpretation service provided by another agency. The witness stated that she did not use this service much, but from what she could recall, the service was helpful. Ms. Bagner was asked to review the July 7, 2008 table of organization contained in Appellee's Exhibit E. Ms. Bagner indicated that she believed that this table of organization reflected the organization of the bureau after the abolishments and layoffs. Ms. Bagner confirmed that Jorge Irizarry's name appears on this table of organization and that no bilingual designation appears by his name on this particular document.

Ms. Bagner was asked to review the layoff rationale contained in Appellee's Exhibit B2. Ms. Bagner confirmed that the layoff rationale form indicated that the duties of the position held by Shelba Bradley were to be equally redistributed to the EEO Regional/ Program Administrator positions, as listed in Appellee's Exhibit B2. Ms. Bagner stated that she was not involved in the redistribution of job duties. Upon further questioning, Ms. Bagner recalled that Mr. Van Pelt retired on August 30, 2008. Ms. Bagner indicated that she did not make a request to fill Mr. Van Pelt's EEO Regional/Program Administrator position.

Appellant Pruitt's representative then asked Ms. Bagner a series of questions regarding office activities that occurred during the time she held an EEO Regional/Program

Administrator position, prior to becoming an EEO Manager. Ms. Bagner stated that she had no idea of the average number of calls she handled when she was an EEO Regional/ Program Administrator. When asked if the number of calls could have exceeded ten, the witness indicated that they could have exceeded that number. When asked the average number of calls she fielded from individuals with limited proficiency in English, the witness stated that she had no idea. When asked if it would be fair to say that a day could go by without fielding a call from an individual with limited proficiency in English, the witness stated that a day could go by. When asked if it was a true statement that a week could go by without fielding a call from an individual with limited proficiency in English, the witness stated that she could not answer that question.

Upon further questioning by Appellant Pruitt's representative, Ms. Bagner stated that she does not keep statistics on the calls received by the Bureau of Civil Rights, nor does she keep statistics on the calls handled by Jorge Irizarry. Ms. Bagner stated that she was not involved in the decision-making process regarding the selection of positions for abolishment. Ms. Bagner further stated that she was not involved in any specific budget reduction actions for the Civil Rights Bureau.

Appellant Pruitt testified that she was employed by Appellee and held a position classified as EEO Regional/Program Administrator. Appellant Pruitt stated that she was assigned to the Bureau of Civil Rights. Ms. Pruitt indicated that she held the EEO Regional/ Program Administrator position for approximately seven and one-half years, until she was displaced from her position during the bumping and layoff process that occurred after Appellee abolished a number of positions. Appellant Pruitt stated that she did conduct investigations that involved individuals with limited proficiency in English, and she indicated that she utilized a language interpretation service to assist her with language barrier issues. Appellant Pruitt noted that she also asked Julia Carbonnel to assist as an interpreter for her during the one investigation. Appellant Pruitt stated that, on average, she handled 10 to 15 investigations each year and very rarely did a case that she handled involve language barrier issues. Appellant Pruitt stated that a year could go by where she would not have an investigation that involved a language proficiency problem.

When asked to give statistics on the number of cases handled each year by the Bureau of Civil Rights, Appellant Pruitt stated that she handled primarily only Title VI cases, and, on average, there were 37 to 55 of these types of cases. Appellant confirmed that she requested a number of documents from Appellee. Appellant Pruitt stated that her review of those documents indicated to her that very few investigations required a person fluent in Spanish to handle the investigation. Appellant Pruitt confirmed that she was informed that she could not bump into the position held by Jorge Irizarry because the position was a PSMQ position. Appellant Pruitt also confirmed that Appellee did not have any other positions available for her to bump into.

Upon questioning regarding Paul Van Pelt, Appellant Pruitt indicated that Mr. Van Pelt intended to retire in 2008. When asked if she made any inquiries regarding Mr. Van Pelt's EEO Regional/Program Administrator position, Appellant stated that she did not. When asked if Mr. Van Pelt was still working in his position at the time Appellant Pruitt was displaced from her position, Appellant Pruitt confirmed that Mr. Van Pelt was still working at that time. When asked if anyone communicated with her regarding Mr. Van Pelt's retirement on August 30, 2008, Appellant Pruitt indicated that no one communicated with her regarding Mr. Van Pelt's position.

On cross examination, Appellant Pruitt acknowledged that she was aware that Appellee offered qualifying employees the opportunity to retire through an Early Retirement Incentive Plan (ERIP) established prior to the 2008 job abolishments. Appellant Pruitt confirmed that she recalled the testimony of Ronn Kolbash regarding Appellee's ERIP. Appellant acknowledged that she had no information which indicated that all of the positions that became vacant due to Appellee's ERIP were to be filled.

Upon further cross examination, Appellant Pruitt confirmed that she was familiar with the "FAQs" that were posted by Appellee for employees to review to obtain answers to their questions regarding the abolishment/layoff process. Appellant was asked to review the document containing the "FAQs" in Appellee's Exhibit D. Appellant Pruitt confirmed that "FAQ" #7 states that positions which become vacant through the ERIP will not automatically be backfilled and that any request to fill a position so vacated must be approved by the agency director.

At the conclusion of Appellant Pruitt's testimony, Appellant Pruitt rested her case. No rebuttal witnesses were called by Appellee. Appellee's Exhibits A through I for Appellant Pruitt were admitted into evidence. Appellant Pruitt's documents filed prior to the record hearing were confirmed as part of the record in SPBR Case No. 08-LAY-06-0427.

<u>SPBR Case Nos. 08-ABL-06-0413 and 08-LAY-06-0414</u>

On January 13, 2009, Appellee completed its presentation of its case-in-chief regarding the appeals of *R. Renee Kuhn v. Ohio Department of Job and Family Services* (SPBR Case Nos. Case Nos. 08-ABL-06-0413 and 08-LAY-06-0414). Appellee called Vanessa Niekamp as its next witness.

Vanessa Niekamp testified that she is employed Appellee as an Administrative Assistant 4 in the Office of Child Support. Ms. Niekamp indicated that she assists the Deputy Director of the Office of Child Support and she performs functions pertaining to Human Resources and Labor Relations. Ms. Niekamp confirmed that she participated in meetings and conducted analysis of positions and operations to identify positions for

abolishment within the Office of Child Support. Ms. Niekamp was asked to review the documents contained in Appellee's Exhibit B. Ms. Niekamp confirmed the instructions regarding criteria for identifying positions for abolishment, and she indicated that the Office of Child Support's management team followed these instructions. Ms. Niekamp indicated that were 20 occupied positions that were abolished in the Office of Child Support, and she confirmed that one of those positions was occupied by Appellant Kuhn. Ms. Niekamp indicated that she participated in the decision-making process and assisted in preparing the rationale that supported the abolishment of the position occupied by Appellant Kuhn. Ms. Niekamp identified Appellee's Exhibit B2 as a copy of that rationale and a position description for the Training Supervisor position occupied by Appellant Kuhn.

Ms. Niekamp testified that, in 2008, Appellant Kuhn was responsible for supervising nine Training Officer positions that comprised the Training Unit in the Office of Child Support. Ms. Niekamp indicated that the Training Unit was responsible for training employees on the use of the Support Enforcement Tracking System (SETS). Ms. Niekamp stated that the decision to abolish the Training Unit positions and the Training Supervisor position held by Appellant Kuhn was based upon management's analysis of its operations. Ms. Niekamp indicated that the analysis revealed a duplication of efforts in the area of training. Ms. Niekamp explained that, prior to the 2006 transfer of the Training Unit to the Office of Child Support, the Office of Child Support utilized its Business Analysts and Human Services Program Developers to provide technical assistance and training. Ms. Niekamp indicated that after the Training Unit was transferred to the Office of Child Support, those Business Analysts and Human Services Program Developers continued to provide training to child support enforcement agencies. Ms. Niekamp noted that the Training Unit did not provide a direct service to child support recipients. Ms. Neikamp stated that, based on the analysis she just described, the Deputy Director of the Office of Child Support identified the nine Training Officer positions in the Training Unit and the one Training Supervisor position occupied by Appellant Kuhn for abolishment. Ms. Niekamp identified the pre-abolishment and post-abolishment tables of organization contained in Appellee's Exhibit E. Ms. Niekamp also identified the Business Analyst positions and the Human Services Program Developer positions on the tables of organization. Ms. Niekamp stated that the Business Analysts and Human Services Program Developers in the Office of Child Support have always conducted training, and she noted that the Human Services Program Consultants also provide technical assistance.

On cross examination by Appellant Kuhn, Ms. Niekamp stated that Deputy Director Douglas Thompson and Assistant Deputy Director Carri Brown were involved in the decision-making process regarding the positions selected for abolishment in the Office of Child Support. Ms. Niekamp indicated that to her knowledge Assistant Deputy Director Aldridge was not involved in the decision-making process. Ms. Niekamp explained that the team looked at every position within the Office of Child Support and applied the criteria she

mentioned earlier in her testimony. Ms. Niekamp confirmed that the team reviewed the operations of the Office of Child Support and all positions within the office. Ms. Niekamp stated that positions were abolished, not employees. Upon further questioning, Ms. Niekamp stated that no groups were targeted for job abolishments. Ms. Niekamp noted that the decision-making team was continually instructed on how to go through the process of selecting positions for abolishment during meetings with Appellee's executive management team. Ms. Niekamp stated that the management team was advised to look at positions, not employees. Ms. Niekamp indicated that positions that became vacant under ERIP were not considered prior to identifying positions for abolishment. Ms. Niekamp stated that she never heard any comments that Deputy Director Thompson selected more positions for abolishment than needed.

Upon further cross examination by Appellant Kuhn, Ms. Niekamp stated that she, along with Deputy Director Thompson and Assistant Deputy Director Brown, created the restructuring plan for the Office of Child Support. Ms. Niekamp noted that the Business Analyst classification specification allows incumbents to conduct training. Ms. Niekamp further noted that management staff has always had the authority to conduct training. Ms. Niekamp was referred to the individual layoff rationale document regarding Appellant Kuhn and the abolishment of her position. Ms. Niekamp confirmed that this rationale form indicates that Appellant Kuhn's duties would not be redistributed. Ms. Niekamp explained that since all nine Training Officer positions were abolished, there was no need to redistribute Appellant Kuhn's supervisory duties. Ms. Niekamp indicated that the restructuring plan allowed for training to continue utilizing the Business Analysts and Human Service Program Analysts, who were already part of the Office of Child Support and who already performed technical assistance and some training.

Appellant Kuhn referred to several documents throughout her cross examination. Those documents were eventually labeled and identified as Appellant Kuhn's Exhibits 1, 2, 3, and 4. Appellant's Exhibit 1 was identified as a schedule of training conducted by the Office of Child Support. Ms. Niekamp indicated that the schedule was created after the Training Unit was eliminated. Appellant Kuhn's Exhibit 2 was identified as a draft of the restructuring plan for the Office of Child Support. Appellant Kuhn's Exhibit 1 and 2 were admitted into evidence. Ms. Niekamp stated that she authored the document marked as Appellant Kuhn's Exhibit 3, and she indicated that document pertained to a grievance. Appellee's counsel stated that the document was created pursuant to an internal grievance filed by an OCSEA employee pursuant to the collective bargaining agreement. Appellant Kuhn's Exhibit 3 was not admitted into evidence. Appellant Kuhn's Exhibit 4 was identified by Ms. Niekamp as a document that she authored to assist in identifying positions for abolishment within the Office of Child Support.

Upon further cross examination by Appellant Kuhn, Ms. Niekamp stated that the position description for the Training Supervisor position held by Appellant Kuhn provided for the performance of supervisory duties, and she indicated that these basic types of supervisory duties can be performed by any employee who is part of the leadership team. Ms. Niekamp indicated that the leadership team includes the Deputy Director, the Assistant Deputy Directors, various Unit Supervisors, the Bureau Chief of the Enforcement Tracking System, the witness, the Bureau Chief of Program Services, the Supervisor of County Services, the Case Management Supervisor, County Unit Supervisors, the Section Chief of Policy, the Section Chief of the Call Center, and others. Ms. Niekamp stated that all of the members of the leadership team have supervisory duties specific to their particular work areas. Ms. Niekamp recalled that the employee who was Policy Unit Supervisor participated in the ERIP, and she indicated that the Section Chief assumed the responsibilities of this employee's position until the position could be filled. Ms. Niekamp further stated that it was determined that the Policy Unit Supervisor position needed to be filled. Ms. Niekamp explained that, after reviewing the position description and the job duties assigned to the Policy Unit Supervisor position, management determined that the position was not properly classified and consequently reclassified the position as Human Services Program Administrator 3. Ms. Niekamp confirmed that program training is separate from the initial SETS training performed by the Training Unit.

Appellee called Janet M. Kaplan as its next witness. Ms. Kaplan testified that she is employed by Appellee in the Office of Employee and Business Services, Human Resources Unit. Ms. Kaplan stated that she is the Manager of the Human Resources Unit, and she indicated that the unit handles personnel matters, including providing technical expertise regarding the abolishment/layoff process. Ms. Kaplan was referred to Appellee's Exhibit B2. The witness confirmed that she was familiar with the abolishment rationale, calculation of retention points, and the creation of layoff rosters. Ms. Kaplan was asked to describe the abolishment/layoff process. She provided the same description as the previous witnesses. With regard to the master roster of retention points contained in Appellee's Exhibit C, Ms. Kaplan noted that ODAS determined that Appellant Kuhn had 667 retention points as opposed to 655. Ms. Kaplan explained that the difference in the calculated number of retention points for Appellant Kuhn was due to the different dates used to calculate her retention points. Ms. Kaplan noted that the difference had no impact on the outcome because Appellant Kuhn had the least retention points of all the employees assigned to the Training Supervisor classification. Ms. Kaplan was referred to Appellee's Exhibit D. Ms. Kaplan confirmed that Appellant Kuhn's displacement forms indicated that there was no position Appellant Kuhn could bump into.

Upon questioning regarding Appellee's ERIP, Ms. Kaplan testified that the purpose of the ERIP was to realize a cost savings through early retirement. Ms. Kaplan indicated that Appellee determined that only a certain percentage of positions vacated due to the

ERIP could be backfilled, and she noted that agency needed to maintain 30% to 50% vacancy from the ERIP to realize a cost savings with this program. Ms. Kaplan stated that the executive management team determined which positions that were vacated due to the ERIP could be backfilled. Ms. Kaplan recalled that, initially, Appellee's Human Resources Unit was given a list of to fill. Ms. Kaplan indicated that a list was submitted to ODAS to fill these vacancies but that process was stopped when Appellee's executive management team was notified of ongoing budget problems and the possibility of the need for further staff reductions.

Ms. Kaplan testified that SETS training is a specific job duty assigned to the Training Officer positions in the SEIU/District 1199 bargaining unit. Ms. Kaplan indicated that each position has core responsibilities. With regard to position descriptions, Ms. Kaplan explained that a position description might need to be updated but the job classification assigned to the position provides a broad range of possible job duties that could be performed by an employee assigned to the classification.

Upon cross examination by Appellant Kuhn, Ms. Kaplan stated that when her unit received a request to backfill a position that was vacant due to the ERIP, her unit and Fiscal Services reviewed the requests. Ms. Kaplan further stated that her unit would defer to the knowledge and expertise of the deputy directors as to the staffing needs of their respective offices.

At the conclusion of Ms. Kaplan's testimony, Appellee rested its case and Appellant Kuhn proceeded to present her case-in-chief.

Appellant Kuhn called Stanley Sikorski as her first witness. Mr. Sikorski confirmed that he was a Training Officer in the Training Unit in the Office of Child Support and that his position was abolished. He further confirmed that Appellant Kuhn was his immediate supervisor prior to his job abolishment. Mr. Sikorski indicated that he held that Training Officer position for approximately six years. Mr. Sikorski stated that he is currently a Training Officer in the Office of Children and Families. Mr. Sikorski explained that after his Training Officer position in the Office of Child Support was abolished, he bumped into his current Training Officer position. Mr. Sikorski stated that he is responsible for developing training materials. Mr. Sikorski opined that, in the Office of Children and Families, training plays a more important role than it did in the Office of Child Support. He indicated that training seemed to play a secondary role in the Office of Child Support.

Upon further questioning, Mr. Sikorski indicated that there were more than 25 SETS training sessions offered by the Office of Child Support. The witness stated that the training classes in the Office of Child Support were designed to cover all areas of SETS, and he indicated that the training officers conducted training at five regional training centers

located throughout the state. Mr. Sikorski confirmed that the training officers were stationed at these regional training centers. The witness further confirmed that the regional training arrangement was convenient for the counties. Mr. Sikorski indicated that he could not speak to the training provided by counties, but he noted that the smaller counties did not have training labs as did the larger counties and the regional training centers manned by the Office of Child Support's training officers. Mr. Sikorski estimated that the training officers conducted training classes approximately eight to nine days each month. He noted that it takes a substantial amount of preparation to conduct these training classes. Mr. Sikorski confirmed that all 88 counties at some point or another took training through the Office of Child Support. The witness was asked to review Appellant Kuhn's Exhibit 1. He indicated that the types of training listed on that document were conducted by the Office of Child Support.

Appellant Kuhn called Valerie Gullatte-Smith as her next witness. Ms. Gullatte-Smith testified that she is employed by Appellee as a training officer. Ms. Gullatte-Smith stated that the job duties listed in Appellant Kuhn's Exhibit 2 are not the duties she performed, or currently performs, as a training officer. She stated that certain duties listed are duties that Appellant Kuhn performed as the Training Supervisor. The witness recited the specific duties that Appellant Kuhn performed. Ms. Gullatte-Smith stated that the last SETS training occurred in May 2008.

On cross examination, Ms. Gullatte-Smith confirmed that she is a member of the OCSEA bargaining unit. The witness further confirmed that she was reinstated as a training officer pursuant to the outcome of a union grievance. Ms. Gullatte-Smith stated that she does not supervise training officers.

Appellant Kuhn called Douglas Thompson as her next witness. Mr. Thompson stated that he was employed by Appellee as the Deputy Director of the Office of Child Support during the budget crisis that resulted in the June 2008 job abolishments and layoffs. Mr. Thompson stated that the Office of Child Support is responsible for overseeing the child support program and ensuring that the state follows all pertinent procedures and policies of the federal government.

Upon further questioning, Mr. Thompson confirmed that he received the Executive Order issued by the Governor in January 2008 and the subsequent OBM directives regarding reducing expenditures. Mr. Thompson stated that he participated in several meetings regarding the budget shortfall and the process for identifying positions for abolishment in the Office of Child Support. The witness indicated that the deputy directors were instructed to reduce GRF line items and to reduce such spending by a certain dollar amount. He noted that Appellee went through two budget reductions during this period, and he recalled that his office management team worked closely with EBS during the

abolishment process. Mr. Thompson stated that Vanessa Niekamp and Carri Brown were part of the office management team that made the decisions regarding which positions to abolish in the Office of Child Support. He explained that the management team looked at the positions in the Office of Child Support and the functions of the office. He indicated that the Office of Child Support provides direct services and the office plays a supervisory role for counties providing such services at the county-level.

At the conclusion of Mr. Thompson's testimony, Appellant Kuhn rested her case. No rebuttal witnesses were called by Appellee. Appellee's Exhibits A through F, H, and I for Appellant Kuhn were admitted into evidence. Appellant Kuhn's Exhibits 1, 2, and 4 were admitted into evidence. Appellant Kuhn's Exhibit 3 was not admitted. Appellant Kuhn proffered that exhibit.

SPBR Case No. 08-LAY-06-0416

On January 13, 2009, Appellee presented its case-in-chief regarding the appeal of *Ryan A. Spindler v. Ohio Department of Job and Family Services* (SPBR Case No. 08-LAY-06-0416).

Appellee called Janet M. Kaplan as its first witness. Ms. Kaplan testified that she is employed by Appellee in the Office of Employee and Business Services, Human Resources Unit. Ms. Kaplan stated that she is the Manager of the Human Resources Unit, and she indicated that her unit handles personnel matters, including providing technical expertise regarding the abolishment/layoff process. Ms. Kaplan reviewed Appellee's Exhibit B2, and she confirmed that she was familiar with the abolishment rationale, calculation of retention points, and the creation of layoff rosters.

Ms. Kaplan reviewed and identified Appellee's Exhibits B1 and B3 in the exhibit book for Appellant Spindler. The witness also reviewed Appellee's Exhibit C1 and C2. Ms. Kaplan confirmed that these exhibits pertain to Appellant Spindler's layoff, including his OAKS employee history report, calculation of retention points form, and the exempt layoff roster that included those individuals who participated in ERIP. The witness confirmed that Appellant Spindler's name appears on page 18 of the layoff roster. Ms. Kaplan confirmed that Appellant Spindler was laid off from his position as a Medicaid Health Systems Administrator 1. Ms. Kaplan identified the documents contained in Appellee's Exhibit D, and she confirmed that the documents pertain to Appellant Spindler's layoff.

Ms. Kaplan was asked to review Appellant Spindler's OAKS history employee report contained in Appellee's Exhibit B3. Ms. Kaplan stated that the OAKS employee history report indicates that, from October 30, 2006 to November 11, 2007, Appellant Spindler held a Medicaid Health Systems Specialist 2 position in a collective bargaining unit for SEIU/District 1199. Ms. Kaplan indicated that, on November 11, 2007, Appellant was

promoted to a Medicaid Health Systems Administrator 1 position, which was an exempt position. Ms. Kaplan testified that, pursuant to Article 28.01 of the 2006 - 2009 SEIU/District 1199 union contract with the State of Ohio, Appellant Spindler could not carry-over any seniority credit he accumulated while he was in an 1199 bargaining unit as a Medicaid Health Systems Specialist 2. Ms. Kaplan noted that the terms of the collective bargaining agreement governed the time period that Appellant Spindler was in the bargaining unit.

Upon cross examination, Ms. Kaplan stated that the positions classified as Medicaid Health Systems Administrator were not in the 1199 bargaining units. Upon further questioning, Ms. Kaplan reiterated that the 2006 - 2009 SEIU/District 1199 union contract only pertains to positions covered by the agreement and that the Medicaid Health Systems Administrator positions were not part of the bargaining unit.

Upon further cross examination, Ms. Kaplan was asked to review "FAQ" #11, (Appellee's Exhibit D). Appellant Spindler identified his Exhibit 1 as a copy of an email he received from Jana Tucker, dated May 29, 2008. Appellant Spindler indicated that this email concerns the ability of an exempt employee to bump back into a previously held bargaining unit position if the employee has the necessary seniority credits. Ms. Kaplan noted that the employee must have seniority credits to be able to bump back into the employee's previously held position in a bargaining unit.

Upon redirect examination, Ms. Kaplan confirmed that the employee must have seniority credits to be able to bump into an occupied position in an1199 bargaining unit. Ms. Kaplan indicated that Appellant Spindler had no seniority credits pursuant to the previously mentioned provisions of the 2006 - 2009 SEIU/District 1199 union contract. Ms. Kaplan confirmed that collective bargaining agreements generally contain a "recognition" clause that sets forth the classifications/positions covered by the agreement. Ms. Kaplan confirmed that the 2006 - 2009 SEIU/District 1199 union contract differs from the OCSEA union contract, in that the 1199 contract does not allow an employee to retain the seniority credits earned during the employee's tenure in an 1199 bargaining unit after the employee leaves the bargaining unit.

At the conclusion of Ms. Kaplan's testimony, Appellee rested its case and Appellant Spindler proceeded to present his case-in-chief.

Appellant Spindler called Joseph E. Doodan as his first witness. Mr. Doodan testified that he is employed by Appellee as the Section Chief of Non-Institutional Benefits Management. The witness was asked to review page 3 of Appellee's Exhibit B. Mr. Doodan stated that he did not meet with staff from the Office of Employee and Business Services. Mr. Doodan indicated that he believed there were three positions abolished in his section, and possibly two employees who retired. Mr. Doodan indicated that Bill Wood bumped into

the position occupied by Jana Tucker. The witness indicated that another employee held a position similar to Appellant Spindler's position. Mr. Doodan then mentioned another employee's position and tenure. Mr. Doodan indicated that Appellant Spindler's job duties were handled by another employee for a short period of time, and, thereafter, those duties were distributed to three other employees. Mr. Doodan stated that he did not know whether any one of those three other employees were in the bargaining unit.

On cross examination, Mr. Doodan indicated that he did not know that Appellant Spindler's position was not abolished. Upon further cross examination, Mr. Doodan acknowledged that he played no role in the abolishment decision-making process or in the bumping and layoff process.

Appellant Spindler called Brian T. Panke as his next witness. Mr. Panke testified that he has been employed by Appellee as a Medicaid Health Systems Administrator 1 in the Bureau of Managed Care for approximately two and one-half years. Mr. Panke indicated that his previous position was as a Medicaid Health Systems Specialist 2 in the Bureau of Policy. Mr. Panke confirmed that he received an email from Human Resources during the layoff process that indicated he could bump back into his previously position in a bargaining unit because he held that position within the last three years. Mr. Panke stated that he was informed that his seniority credits would allow him to bump into the bargaining unit, at which time his seniority credits would be reduced to zero.

On cross examination, Mr. Panke indicated that he did not have a copy of the email that he received regarding the layoff and bumping process. The witness was asked to review pages 17 and 18 of Appellee's Exhibit C2. Mr. Panke confirmed that, based upon his retention points, he was not laid off.

Appellant Spindler testified that he reviewed the relevant provisions of the Ohio Revised Code and Ohio Administrative Code, and he had conversations with several individuals at ODAS and OAS regarding seniority credits. He stated that the information he received indicated that he should have been able to bump back into the1199 bargaining unit as a Medicaid Health Systems Specialist 2. Appellant Spindler noted that the bargaining unit layoff roster shows that Diana Miller had 6 seniority credits. Appellant Spindler indicated that he accrued more seniority credits during his tenure in a Medicaid Health Systems Specialist 2 position in the bargaining unit than did Ms. Miller and, therefore, he should have bumped into Ms. Miller's position. Appellant Spindler noted that his exhibits contain a copy of the union layoff roster, (Appellant Spindler's Exhibit 2). Appellant Spindler stated that his interpretation of the 2006 - 2009 SEIU/District 1199 union contract differs from Appellee's interpretation. Appellant Spindler further stated that he believes that the contract and the relevant provisions of the Revised and Administrative Codes allow him to bump back into his previously held position in the bargaining unit, as he previously stated.

At the conclusion of his testimony, Appellant Spindler rested his case. No rebuttal witnesses were called by Appellee. Appellee's Exhibits A through I for Appellant Spindler were admitted into evidence. Appellant Spindler's documents previously filed were confirmed as part of the record of SPBR Case No. 08-LAY-06-0416. Appellant Spindler's Exhibits 1 and 2 were admitted into evidence at the record hearing.

SPBR Case No. 08-LAY-06-0404

On January 13, 2009, Appellee presented its case-in-chief regarding the appeal of *Tonya Hamilton v. Ohio Department of Job and Family Services* (SPBR Case No. 08-LAY-06-0404).

Appellee called Janet M. Kaplan as its first witness. Ms. Kaplan's previous testimony established that she is employed by Appellee in the Office of Employee and Business Services, Human Resources Unit. Ms. Kaplan is the Manager of the Human Resources Unit. The Human Resources Unit handles personnel matters, including providing technical expertise regarding the abolishment/layoff process.

Ms. Kaplan identified exhibits contained in Appellee's exhibit book for Appellant Hamilton. Ms. Kaplan identified Appellee's Exhibit B3 as a copy of the retention point calculations form for Appellant Hamilton, Appellant's Hamilton's verification of retention points checklist, and her OAKS employee history report. Ms. Kaplan identified Appellee's Exhibit C1 as a copy of the exempt layoff roster with the order of retention points and employee classifications. Ms. Kaplan noted that the document contained corrections as of the service date. Ms. Kaplan stated that the layoff roster marked as Appellee's Exhibit C2 was produced after ODAS verified Appellee's calculation of retention points. The witness noted that this layoff roster included the positions abolished, employees laid off, and employees who participated in the ERIP. Ms. Kaplan identified other documents in Appellee's Exhibit C, including the May 23, 2008 letter from ODAS approving the layoffs for Layoff Jurisdiction 10 and the copy of Appellee's retention point roster for the Management Analyst Supervisor 2 classification in Layoff Jurisdiction 10. Ms. Kaplan confirmed that Appellant Hamilton had the least retention points of all of the employees in the Management Analyst Supervisor 2 classification within Layoff Jurisdiction 10. Ms. Kaplan further confirmed that Brenda Freeman's Management Analyst Supervisor 2 position was abolished and the retention points calculations showed that Ms. Freeman could bump into Appellant Hamilton's Management Analyst Supervisor 2 position.

Ms. Kaplan reviewed and identified the documents contained in Appellee's Exhibit D. Ms. Kaplan confirmed that Appellee's Exhibit D contains a copy of the displacement rights form completed by Appellant Hamilton and a worksheet showing that Brenda

Freeman bumped into Appellant Hamilton's Management Analyst Supervisor 2 position. Ms. Kaplan also confirmed that Appellee's Exhibit D contains a copy of a change in headquarters county consent form signed by Appellant Hamilton on August 5, 2005, consenting to a change in headquarters county to Athens County, effective August 21, 2005.

On cross examination, Ms. Kaplan explained the twenty percent rule for job classifications. At the conclusion of Ms. Kaplan's testimony, Appellee rested its case. Appellant Hamilton proceeded with her case-in-chief.

Appellant Hamilton called Brenda Freeman as her first witness. Ms. Freeman testified that she is currently employed by the Office of Child Support as a Management Analyst Supervisor 2. Ms. Freeman stated that, in 2008, she held a Management Analyst Supervisor 2 position with the working title of Reconciliation Section Chief. Ms. Freeman indicated that the Management Analyst Supervisor 2 position she held was abolished in July 2008.

Upon further questioning, Ms. Freeman recalled that Vanessa Niekamp and Carri Brown met with her on or about May 1, 2008 to notify her of the abolishment of her Management Analyst Supervisor 2 position. Ms. Freeman recalled the details of her discussion with Ms. Niekamp and Ms. Brown regarding the abolishment of her position and her displacement rights based upon her retention points. Ms. Freeman indicated that she was informed that she had the most retention points in her job classification and therefore she would be able to bump into another Management Analyst Supervisor 2. Ms. Freeman recalled that she was told that she would not be able to bump into Appellant Hamilton's Management Analyst Supervisor 2 position.

Upon further questioning, Ms. Freeman confirmed that she came back to work when she bumped into the Management Analyst Supervisor 2 position held by Appellant Hamilton. Ms. Freeman recalled that she asked how the duties would be distributed for the Payment Analysis and Reconciliation section (PAR) for purposes of creating a proper audit trail. Ms. Freeman recalled that her supervisor had no concerns regarding how the job duties were redistributed within PAR. Ms. Freeman indicated that she absorbed all the duties of three employees, including Appellant Hamilton's job duties.

Appellant Hamilton called Vanessa Niekamp as her next witness. Ms. Niekamp's previous testimony regarding her position and job duties were noted. Ms. Niekamp confirmed that she and Carri Brown conducted two meetings on May 1, 2008, one meeting with the management staff and the other with Brenda Freeman. Ms. Niekamp stated that she advised the management staff to be sensitive to the transition Brenda Freeman was going through after having her position abolished. Ms. Niekamp indicated that all staff

members were given a summary document regarding the bumping process and who they could contact to ask about that process. Ms. Niekamp recalled that she drew a chart to explain how the bumping process works within job classifications. Ms. Niekamp acknowledged that she did not mention that the bumping process also involves layoff jurisdictions. Ms. Niekamp confirmed that the new table of organization after the job abolishments showed one Section Chief for PAR. Ms. Niekamp further confirmed that the position that remained was the Management Analyst Supervisor 2 position held by Appellant Hamilton prior to her layoff. Ms. Niekamp stated that the documentation given to affected employees was provided by the Office of Human Resources. Ms. Niekamp stated that she did not ask anyone in Human Resources how the bumping process would work for a particular employee. Ms. Niekamp stated that the reason she did not know at the time of the May 1, 2008 meeting that Brenda Freeman could bump into Appellant Hamilton's position was because she did not know the retention points of the affected employees at that time. Ms. Niekamp noted that she did know that there were Management Analyst Supervisor 2s who had less time with the Office of Child Support than Appellant Hamilton, but she did not know the retention point totals of each employee. Ms. Niekamp explained that the initial documentation and information provided to Brenda Freeman and the other managers focused on the overall process for bumping and exercising displacement rights, but did not discuss how the displacements would occur in the office. Ms. Niekamp indicated that the table of organization presented at the May 1, 2008 meeting showed the Management Analyst Supervisor 2 position that was abolished and showed all the positions that remained and who occupied those positions before any bumping occurred. Appellee stipulated that the issue of layoff jurisdictions and their impact on the bumping process were not discussed at the May 1, 2008 meetings.

Appellant Hamilton offered a closing statement in her case-in-chief. Appellant Hamilton stated that she was employed by the State of Ohio for seventeen years and was bumped from her Management Analyst Supervisor 2 position in the Office of Child Support in 2008. Appellant Hamilton stated that it is her belief that Brenda Freeman's position was targeted for abolishment and that Brenda Freeman would not have bumped her except for the abolishment. Appellant Hamilton further stated that it is her belief that Vanessa Niekamp provided management with bad information for which someone should be held accountable. Appellant Hamilton asserted that when job abolishments are contemplated by an agency, management should be required to review all policies pertaining to the abolishment process because people's lives are greatly impacted by these decisions. Appellant Hamilton stated that these decisions should not be based on individuals or experience. Appellant Hamilton offered her recollections of the discussion that occurred during the May 1, 2008 meeting with Vanessa Niekamp and Carri Brown. Appellant Hamilton stated that she believes that the duties of each position should be known before any abolishment action is taken. Appellant Hamilton then made several statements challenging Appellee's decision to abolish the position held by Brenda Freeman, and she

indicated that the proper separation of duties cannot occur with one Management Analyst Supervisor 2 section chief for PAR. Appellant Hamilton also questioned the distribution of supervisory responsibilities after the job abolishments.

At the conclusion of her testimony, Appellant Hamilton rested her case. No rebuttal witnesses were called by Appellee. Appellee's Exhibits A through I for Appellant Hamilton were admitted into evidence. Appellant Hamilton did not introduce any exhibits during the presentation of her case.

FINDINGS OF FACT

Based upon the testimony and evidence presented at record hearing, and the entirety of the information contained in the record of SPBR Case No. 08-LAY-06-0416, I make the following findings of fact:

1. As previously noted, the parties stipulated that Appellee complied with the relevant notice requirements of the Ohio Revised Code and Ohio Administrative Code in implementing Appellant Spindler's layoff.

2. On January 31, 2008, the Governor of Ohio issued Executive Order 2008-10S, which instructed state agencies to implement 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 spending reductions.

3. On May 2, 2008, Appellee submitted its "Rationale for Job Abolishments for Reasons of Economy" to the Ohio Department of Administrative Services (ODAS). Appellee's rationale contained the agency's background information and budget background information, general cost savings measures, the agency's adoption of an early retirement incentive plan, the proposed abolishment of 180 positions to save salary and benefits, and an analysis of cost considerations. Appellee's rationale contained several tables that outlined projected General Revenue Fund (GRF) savings based upon staff reductions and other cost savings measures.

4. Appellee calculated retention points for those employees affected by the job abolishments and resultant layoffs. The Ohio Department of Administrative Services 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. ODAS verified Appellant Spindler's retention point total as 139.

5. Appellant Spindler began his employment with Appellee in October 2006. From October 30, 2006 to November 10, 2007, Appellant Spindler held a position with Appellee classified as Medicaid Health Systems Specialist 2, classification number 65293. The Medicaid Health Systems Specialist 2 position was a classification in the SEIU/District 1199 bargaining unit. The 2006 - 2009 SEIU/District 1199 union contract with the State of Ohio governs the terms and conditions of Appellant Spindler's employment during his time in the bargaining unit.

6. On November, 11, 2007, Appellant was promoted to a position classified as Medicaid Health Systems Administrator 1, classification number 65295. The Medicaid Health Systems Administrator 1 classification is an exempt classification. Appellant Spindler was assigned to Appellee's Bureau of Health Plan Policy, Benefit Management Section, which is located in Franklin County. Franklin County is in Layoff Jurisdiction 07.

7. Appellee's Exempt Layoff Roster with Retention Points established that there were 67 Medicaid Health Systems Administrator 1 positions in Layoff Jurisdiction 07 in May and June of 2008. Appellant Spindler had a total of 139 retention points. Appellant Spindler's retention point total was less than the retention point totals of all of the employees who held the Medicaid Health Systems Administrator 1 job classification in Layoff Jurisdiction 07.

8. On June 18, 2008, Appellee notified Appellant Spindler that there were no positions that he could displace into in Layoff Jurisdiction 07, based upon his retention point total of 139. Because Appellant Spindler had the lowest retention point total within his classification, he was displaced and then laid off effective on July 5, 2008.

9. The contract interpretation issue raised by Appellant Spindler's appeal precludes this Board from determining whether Appellant Spindler had any displacement rights under the provisions of O.A.C. 123:1-41-12(C).

CONCLUSIONS OF LAW

On June 26, 2008, Appellant Spindler timely filed a notice of appeal from his layoff. Section 124.321 of the Ohio Revised Code governs the layoff of employees. The pertinent part of the statute reads as follows:

> (A) Whenever it becomes necessary for an appointing authority to reduce its work force, the appointing authority shall lay off employees or abolish their positions in accordance with

> sections 124.321 to 124.327 of the Revised Code and the rules of the director of administrative services.
>
> (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 a reorganization for the efficient operation of the appointing authority, for reasons of economy, or for lack of work.
>
> . . .
>
> If an abolishment results in a reduction of the work force, the appointing authority shall follow the procedures for laying off employees . . .

* * * *

The testimony and evidence established that Appellee complied with sections 124.321 to 124.327 of the Ohio Revised Code and the rules of Ohio Administrative Code Chapter 123:1-41 when the agency abolished 180 positions for reasons of economy. The job abolishments resulted in a reduction of Appellee's work force. As noted above, if an abolishment results in a reduction of the appointing authority's workforce, the appointing authority is required to lay off employees 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*.

Prior to the record hearing, Appellant Spindler stipulated that Appellee complied with the relevant notice requirements of the Ohio Revised Code and Ohio Administrative Code in implementing his layoff. Appellant Spindler's sole issue at record hearing was that he was not permitted to exercise his displacement rights pursuant to O.A.C. 123:1-41-12(C).

The parties do not dispute that Appellant Spindler was displaced and subsequently laid off from a position that was exempt from collective bargaining. O.A.C. 123:1-41 governs layoffs of exempt employees in the classified civil service. O.A.C. 123:1-41-12

provides that a displaced employee may exercise the right to displace another employee if such a right to displace exists. Displacement rights of an employee may only be exercised within the employee's appointing authority and within the pertinent layoff jurisdiction. If the displaced employee does not have the right to displace another employee, then the displaced employee shall be laid off. The order of displacement occurs, first within the pertinent classification, then within the lower levels of the pertinent classification series, and then within a previously held classification, if the employee fulfills all the requirements of O.A.C. 123:1-41-12(C).

The evidence established that Appellant Spindler was employed by Appellee in the Bureau of Health Plan Policy as a Medicaid Health Systems Administrator 1, classification number 65295. The Bureau of Health Plan Policy is located in Franklin County. Franklin County is located in Layoff Jurisdiction 07. See, O.A.C. 123:1-41-13. The evidence presented at record hearing established that there were 67 Medicaid Health Systems Administrator 1 positions in Layoff Jurisdiction 07 in May and June of 2008. At that time, Appellant Spindler had accumulated a total of 139 retention points pursuant to O.A.C. 123:1-49-09. Appellant Spindler's retention point total of 139 was less than the retention point totals of all the employees who held the Medicaid Health Systems Administrator 1 job classification in Layoff Jurisdiction 07. Pursuant to the displacement process that occurred as a result of the agency's abolishment of positions, Appellant Spindler was unable to displace into another Medicaid Health Systems Administrator 1 position or to displace into a position at a lower level within this classification series. Therefore, Appellant Spindler was laid off effective July 5, 2008.

At record hearing, Appellant Spindler did not dispute Appellee's calculations regarding his retention points or Appellee's assertions that there were no available positions he could displace into within the Medicaid Health Systems Administrator 1 classification and class series in Layoff Jurisdiction 07. However, Appellant Spindler argued that he should have been able to displace into his previously held position as a Medicaid Health Systems Specialist 2 in the 1199 bargaining unit under the provisions of O.A.C. 123:1-41-12(C). In support of his argument, Appellant Spindler noted that he held the Medicaid Health Systems Specialist 2 position within the three years preceding the date he was laid off, as required by O.A.C. 123:1-41-12(C). Appellant Spindler also noted that he satisfied the other requirements of O.A.C. 123:1-41-12(C), and he had a sufficient number of seniority credits to bump another employee in the 1199 bargaining unit. It is Appellant Spindler's position that the sequence of his employment with the State of Ohio and the pertinent sections of the 2006 - 2009 SEIU/District 1199 union contract with the State of Ohio indicate that he had the right to carry over the seniority credits he accumulated while in the 1199 bargaining unit in 2006 and 2007.

At record hearing, Appellee argued that Appellant's Spindler's employment history and Article 28.01 of the 2006 - 2009 SEIU/District 1199 union contract with the State of Ohio indicated that Appellant Spindler was prohibited from carrying over any seniority credits he accumulated while in the 1199 bargaining unit as a Medicaid Health Systems Specialist 2. Appellee further argued that because Appellant Spindler had no seniority credits in 2008, he could not displace into his previously held position in the bargaining unit under the provisions of O.A.C. 123:1-41-12(C).

Upon review of Article 28.01 of the 2006 - 2009 SEIU/District1199 contract with the State of Ohio, I find that both Appellant Spindler and Appellee present reasonable interpretations of the contract language. Consequently, the issue of whether Appellant Spindler had any displacement rights pursuant to O.A.C. 123:1-41-12(C) can only be answered by a ruling based upon an interpretation of the aforementioned contract. Unfortunately, the parties' dispute regarding the meaning of Article 28.01 of the 2006 - 2009 SEIU/District 1199 contract is not a dispute this Board has jurisdiction to resolve under the statutory authority given to the Board by the Ohio General Assembly. Appellant Spindler's contract dispute with Appellee may be a dispute that the State Employment Relations Board has authority to address pursuant to an unfair labor practice charge or that a pertinent court of common pleas has authority to address pursuant to the appropriate pleading.

Based on the foregoing, I find that the contract interpretation issue raised by Appellant Spindler's appeal precludes this Board from determining whether Appellant Spindler had any displacement rights under the provisions of O.A.C. 123:1-41-12(C). Accordingly, I **RECOMMEND** that the instant appeal be **DISMISSED**.

Elaine K. Stevenson

Elaine K. Stevenson
Hearing Officer

EKS:/