

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

Jane A. Swider,

Appellant,

v.

Case No. 09-ABL-02-0066

Belmont County Veterans Service Office,

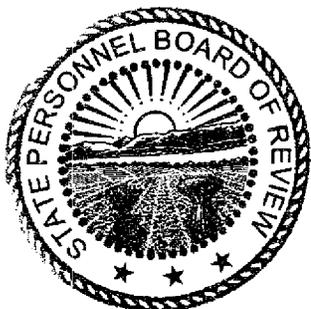
Appellee.

ORDER

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

After a thorough examination of the 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 job abolishment and resultant layoff be **AFFIRMED**, since Appellee has demonstrated by a preponderance of the evidence that the abolishment of Appellant's position and Appellant's layoff were justified for reasons of economy and reorganization for more efficient operation and were carried out in compliance with the requires of O.A.C. §§ 124-7-01 and 123:1-41-1 O(B).



Lumpe - Aye
Sfalcin - Aye
Tillery - Aye

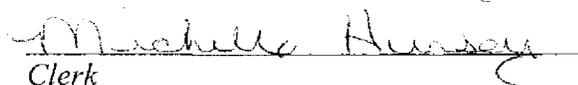


J. Richard Lumpe, *Chairman*

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, February 11, 2010.



Michelle Hunsay
Clerk

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

2-11-10

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

Jane A. Swider,

Case No. 09-ABL-02-0066

Appellant

v.

January 4, 2010

Belmont County Veterans Service Office,

Jeannette E. Gunn

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

The above-referenced matter came on to be heard on September 17, 2009, due to Appellant's timely appeal from an abolishment of her position as Office Manager and subsequent layoff from employment. Appellant was present at record hearing, and was represented by Douglas S. Musick, attorney at law. Appellee Belmont County Veterans Service Office was present at record hearing and was represented by Marc E. Myers and Stephen P. Postalakis, attorneys at law.

The parties stipulated to the subject matter jurisdiction of this Board, pursuant to R.C. 124.03 and R.C. 124.328. The parties further stipulated to Appellee's compliance with the procedural aspects of the abolishment, including the sufficiency of the letter of layoff provided to Appellant, the proper computation of retention points and Appellant's lack of displacement rights.

STATEMENT OF THE CASE

Robert Wallace testified that he is presently one of five members of the Belmont County Veterans' Service Commission (the VSC) and noted that he was appointed in 2004 by the administrative judge of the Belmont County Court of Common Pleas to serve a five-year term. He indicated that the VSC is governed by the provisions of Ohio Revised Code Chapter 59., and that its general purpose is to provide services to veterans, including helping them file claims with the federal government, providing transportation services and providing financial assistance where possible.

Mr. Wallace stated that the VSC meets once a month. He confirmed that he is familiar with the office structure as it existed in 2008 and at the time of Appellant's job abolishment in 2009. The witness noted that the office staff in 2008 consisted of an Executive Director, who was the senior Veteran Service Officer, two additional Veteran Service Officers, two Transportation Officers, one stand-by contract transportation provider and Appellant, who held the position of Office Manager.

Mr. Wallace confirmed that he was generally familiar with Appellant's job duties, and noted that her primary responsibilities were answering the telephone and performing clerical work. He explained that Appellant routed telephone calls to the appropriate employees and scheduled transportation requests. The witness estimated that twelve to eighteen veterans called in each day to request van transportation to appointments, and that Appellant reserved a seat in the van for them if one was available. Mr. Wallace acknowledged that Appellant had performed some tasks related to the budget and payroll, but testified that those duties were transferred to Director Cindy Maupin, at some time in 2008.

The witness recalled that in late spring 2008, as a result of county-wide economic trends they had observed, the VSC examined the overall makeup of the agency to forecast how those trends might affect the agency. Mr. Wallace stated that the VSC hired Clemans, Nelson & Associates, Inc. (CNA) as a consultant in Fall 2008 to evaluate the agency's organization and make recommendations for greater efficiency in operations. He testified that Mr. Todd Allen, a representative of CNA, spoke to the VSC for twenty to thirty minutes at the February 2009 board meeting and provided the VSC with a written report prepared by CNA (Joint Exhibit 7), which comprised an overview of VSC personnel, a brief review of their major duties and job descriptions and some recommendations for improved operations.

Mr. Wallace recalled that the VSC discussed CNA's recommendation both in terms of budget issues and delivery of service. He noted that the VSC had been looking for ways to save money or prevent increased costs for a number of years and recalled that they had been apprised by the Belmont County Commissioners in 2008 that their 2009 budget could be cut by as much as ten percent. Mr. Wallace testified that although the 2009 appropriation for employee salaries was the same as the 2008 appropriation, the final figures for the agency's 2009 budget reflected a twenty percent cut in funding overall.

The witness indicated that the VSC unanimously voted to abolish Appellant's Office Manager position, noting that the vote was unanimous, and confirmed that

Appellant's position was the only one abolished. He observed that the VSC relied not only on the CNA report in deciding to change the structure of the office, but also considered additional information and issues before making its decision. Mr. Wallace stated that the rationale for abolishing Appellant's position was economy and reorganization for more efficient operation.

The witness confirmed that at the same time they talked about abolishing Appellant's position, the VSC also considered the creation of at least one new part-time position to allow for some flexibility within the agency and to address known employee health issues. Mr. Wallace testified that because they had experienced difficulties with employee turnover in the past, the VSC decided to advertise for two part-time positions in the hope that they would be able to retain at least one suitable part-time employee. He emphasized that it was not the VSC's intent to hire a part-time employee to perform the same job duties that were being performed by Appellant, rather, the VSC anticipated that the part-time employee(s) would perform duties related to the provision of direct services.

Mr. Wallace stated that Christy Taylor and Tiffany Stephen were hired in March 2009 to fill the two part-time positions. The witness explained that both Ms. Taylor and Ms. Stephen were hired into general administrative assistant positions and served the standard ninety-day probationary period. He noted that upon completing that probationary period, Ms. Taylor began performing assistant Veteran Service Officer duties and Ms. Stephen went through the certification process to become a van driver. The witness confirmed that while both Ms. Taylor and Ms. Stephen perform some of the duties previously performed by Appellant, the majority of their responsibilities are additional duties not performed by Appellant. He stated that the duties previously performed by Appellant have been redistributed, noting that everyone in the agency now shares responsibility for answering the telephone and for filing their own documents.

Mr. Wallace testified that, to the best of his knowledge, the majority of Ms. Taylor's job duties are related to Veteran Service Officer functions. He explained that a Veteran Service Officer assists veterans by gathering information and filling out claim forms, and accepts applications for financial assistance. Mr. Wallace noted that Veteran Service Officers must be certified by the State of Ohio, which is a process that takes approximately eighteen months to complete. The witness confirmed that the State of Ohio requires Veteran Service Officers to be a veteran themselves, to undergo specific training, and to pass an examination in order to attain certification; Ms. Taylor is in the process of obtaining that certification.

Mr. Wallace testified that the transportation duties performed by Ms. Stephen are different than those performed by Appellant. He explained that Appellant simply scheduled veterans for a seat in the transportation van, while Ms. Stephen actually transports the veterans to and from their appointments. The witness noted that the addition of Ms. Stephen to the van driver staff has allowed Appellee to increase the number of transportation trips it makes and to add transportation services for special-needs veterans.

Mr. Wallace indicated that the salary cost for the two part-time positions occupied by Ms. Taylor and Ms. Stephen is fifty to sixty percent less than for the single full-time position previously occupied by Appellant. He explained that the VSC does not pay benefits, other than retirement, for part-time employees.

The witness testified that as a result of hiring Ms. Taylor and Ms. Stephen, the agency has been able to provide better service to its clients. He noted that it has been more cost efficient for the VSC to have Ms. Stephen transport clients than it is for them to utilize their contract driver. Mr. Wallace also observed that the addition of Ms. Taylor has resulted in the ability to accommodate walk-in clients and to process client claims and applications more quickly. He indicated that the VSC has received only positive feedback from the veterans it serves with regard to the changes.

Ms. Lucinda Maupin testified that she has been employed by Appellee as Director of the agency for approximately six years. She confirmed that she oversees the daily operations of the office and provides day to day supervision for all of the employees. The witness testified that the VSC's main purpose is to provide services to veterans by assisting them in filing claims against the government, providing transportation and assisting them with medical enrollment.

Ms. Maupin confirmed that she is familiar with the job duties that Appellant performed during her tenure of employment with the agency. She noted that Appellant was employed by the agency for a number of years and had performed a variety of tasks during her employment, including preparing paperwork for claims. The witness testified that Appellant stopped performing claim-related duties when the agency was specifically instructed by the Veterans Administration that non-certified Veterans Service Officers were no longer permitted to prepare claims, sign another's name to a claim or even call the Veterans Administration to ask about the status of a veteran's claim. She explained that Ohio Revised Code Section 5901

provides that a Veterans Service Officer must be a veteran and accredited through the Ohio Department of Veterans Affairs. Ms. Maupin noted that employees have to participate in eighteen months of on-the-job training as a Service Officer and pass an examination administered by the Ohio Department of Veterans Affairs. She testified that Appellant is ineligible to become a Veterans Service Officer because she is not a veteran.

The witness confirmed that Appellant sometimes drove the local van to nursing homes to pick up paperwork, but that Appellant never transported veterans. Ms. Maupin indicated that Appellant performed some payroll duties and some budgetary duties at one time, and also kept track of expenses, but noted that those job responsibilities were all transferred to the witness in approximately August 2008. She noted that at the time of her position abolishment, approximately ninety percent of Appellant's time was devoted to answering the telephone, routing calls and scheduling passengers on the transportation van.

Ms. Maupin testified that she did not participate in the decision to abolish Appellant's position. She confirmed that although she makes recommendations for hiring and for operational requirements to the Commissioners, she does not have the authority to make final decisions. The witness recalled that she cautioned the Commissioners regarding the personal impact their decision to abolish the Office Manager position would have on Appellant and noted that although she understood the Board's reasoning, she was concerned about Appellant as a person.

Ms. Maupin testified that as the result of the abolishment of Appellant's position, the job duties she previously performed were redistributed among all of the employees. She noted that the telephone is answered by whoever is available and employees perform their own clerical work now.

The witness stated that the abolishment of Appellant's full time position and the addition of two part-time positions resulted in increased efficiency and the ability to provide more services to veterans. Ms. Maupin confirmed that the 2009 budget reflected a twenty percent cut in funds and observed that the abolishment of Appellant's position allowed the agency to transfer money from personnel to direct services; she estimated that the two part-time employees hired by Appellee devote seventy to eighty percent of their time to the provision of direct services.

Ms. Maupin testified that she drafted the advertisement for the two part-time positions that were added following the abolishment of Appellant's position. She

stated that she understood at that time that the intent was for the part-time employees to perform duties different than those previously performed by Appellant. The witness acknowledged that she used the title "clerical" in the advertisement, rather than "administrative assistant," but indicated that she did not think there was a significant difference between the two terms.

Ms. Maupin recalled that she talked to Appellant about the part-time positions that had been advertised and encouraged her to apply for them, but that Appellant told her that she did not want to apply for the positions. She noted that approximately seventy individuals did apply for the two part-time positions and that three were eventually interviewed by the VSC. The witness stated that the two individuals hired, Ms. Taylor and Ms. Stephen, work approximately twenty-five hours per week, although she observed that Ms. Stephen is currently deploying to Afghanistan and will be gone for about a year.

She testified that the greatest benefit realized by the addition of the two part-time positions is that the agency can now transport more veterans to the Veterans Administration Hospital in Pittsburgh. The witness explained that seventy to eighty percent of Ms. Stephen's time was spent driving veterans in the transportation van to medical appointments in Ohio and Pennsylvania. Ms. Maupin observed that prior to Ms. Stephen's hire, the agency was unable to transport veterans in wheelchairs who could not get on or off the van by themselves. She explained that companions were not previously allowed to accompany veterans on the transportation van because they needed all the seats for veterans. The witness noted that Ms. Stephen's addition to the staff also allowed the agency to decrease its expenses for contracted transportation services.

Christy Taylor testified that she is presently employed by Appellee as an Assistant Service Officer. She stated that she was first employed by Appellee from June 2003 to December 2004, and was rehired into a part-time Administrative Assistant position in March 2009. Ms. Taylor confirmed that she is a veteran.

The witness testified that after she completed her ninety-day probationary period in 2009 she was assigned Assistant Service Officer duties and began learning how to file claims and secure compensation benefits for veterans. She confirmed that she understood at the time she was hired that she would eventually be a Veterans Service Officer.

Ms. Taylor estimated that she spends approximately seventy to eighty percent of her time on veterans work. The witness acknowledged that she spends some of her working time answering telephones, as do all of the employees in the agency, but estimated that she spent twenty percent or less of her time each week on that task. She noted that she was familiar with Appellant's job duties as a result of her previous employment with the agency and noted that she only performs a few of the tasks that were performed by Appellant in her Office Manager role.

Appellant testified that she was employed by Appellee for approximately eighteen years prior to the abolishment of her position and stated that she began her employment with Appellee in June 1991 as a Secretary. She recalled that she held that position for one or two years, and performed duties such as answering the telephone and typing claims for the Veterans Service Officers. Appellant indicated that she later began processing veterans claims on her own; she testified that she ran the office, interviewed veterans for financial assistance claims, and prepared annual and monthly reports. She noted that she was promoted to the position of Office Manager during this time and performed those duties until approximately 2001. Appellant testified that she stopped performing Veterans Service Officer tasks in fall 2007 when Ms. Maupin told her that Veterans Administration regulations no longer permitted her to do so. She confirmed that she is not a veteran.

Appellant identified Joint Exhibit 3 as a position description she completed in September 2008 and confirmed that it contained a fair description of her job duties. She acknowledged that the percentages she provided for her job duties did not equal one hundred percent and explained that it was difficult to estimate the time she spent performing individual tasks. Appellant testified that her most time-consuming job duties were answering the telephone and scheduling veterans for transportation.

Appellant confirmed that she saw the position description for the position of Office Manager that was contained in the CNA report (Joint Exhibit 4) and recalled that Mr. Allen interviewed her regarding her job responsibilities for approximately five or ten minutes. She agreed that the position description accurately described the duties she was performing at the time her position was abolished.

Appellant testified that Appellee did not offer her a different position or ask her to apply for one of the new part-time positions. She confirmed that Ms. Maupin encouraged her to apply for a part-time position, but that she told Ms. Maupin she

thought it would be a "slap in the face." Appellant recalled that she offered to take a pay cut in lieu of having her position abolished.

FINDINGS OF FACT

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

The general purpose of the Belmont County Veterans' Service Commission (the VSC) is to provide services to veterans, including helping them file claims with the federal government, providing transportation services and providing financial assistance where possible. The VSC is governed by the provisions of Ohio Revised Code Chapter 59., and meets once a month.

Faced with a potential ten percent budget cut for 2009, the VSC examined agency operations and hired Clemans, Nelson & Associates, Inc. to evaluate the agency's organization and make recommendations for increased efficiency. After discussion and a review of Clemans, Nelson's recommendations, the VSC voted unanimously in February 2009 to abolish Appellant's Office Manager position. The rationale for the abolishment was economy and reorganization for more efficient operation. Appellant's position was the only one abolished.

Appellant was employed by the agency for approximately eighteen years and performed a variety of tasks during her tenure. At the time of her abolishment, approximately ninety percent of Appellant's work time was devoted to answering the telephone and performing clerical work. Appellant routed telephone calls to the appropriate employees and scheduled van transportation requests. In the past, Appellant had prepared paperwork for claims and performed some tasks related to budget and payroll, however, those duties were reassigned to other employees as the result of guidelines imposed by the Veterans Administration and the Ohio Revised Code.

At the time Appellant's position was abolished, the office staff was comprised of an Executive Director, who was the senior Veteran Service Officer, two additional Veteran Service Officers, two Transportation Officers, one stand-by contract transportation provider and Appellant, who held the position of Office Manager. In March 2009, following the abolishment of Appellant's position, the VSC hired two part-time employees as general administrative assistants to provide direct services

to clients. Upon the successful completion of a ninety-day probationary period, one employee began performing the duties of an assistant Veteran Service Officer duties and the other employee began the certification process to become a van driver.

The majority of the part-time employees' responsibilities are additional duties not previously performed by Appellant and represent direct services provided to veterans. The duties previously performed by Appellant have been redistributed, and everyone in the agency now shares responsibility for answering the telephone and for filing their own documents. Appellant is ineligible to serve as a Veteran Service Officer because she is not a veteran and has not been certified by the State of Ohio to be a van driver. Appellant was encouraged by the Executive Director to apply for the part-time positions, but indicated that she was not interested in doing so.

The abolishment of Appellant's full time position and the addition of two part-time positions resulted in increased efficiency and the ability to provide more direct services to veterans. As the result of the abolishment of Appellant's position, Appellee also realized a savings in salary; the combined salary of the two newly created part-time positions is fifty to sixty percent less than for the single full-time position previously occupied by Appellant.

As previously noted, the parties stipulated to Appellee's compliance with the procedural aspects of the abolishment, including the sufficiency of the letter of layoff provided to Appellant, the proper computation of retention points and Appellant's lack of displacement rights.

CONCLUSIONS OF LAW

Abolishment means the permanent deletion of a position from the organization or structure of an appointing authority predicated upon a lack of continued need for the position due to reorganization for efficient operation, economy, or lack of work. R.C. 124.321 (D). This definition presents three tests that must be met in order to abolish a position. First, there must be a permanent (expected to last over one year, O.A.C. 124-7-01 (A)(1) deletion of a position from the organization. Second, that deletion must be made due to a lack of continued need for the position. Third, the lack of continued need must be justified by either reorganization for efficient operation, reasons of economy, or lack of work. O.A.C.

124-7-01 (A)(1). In order to successfully defend a contested abolishment, not only must an appointing authority demonstrate adequate justification for the abolishment of a position, it must also show compliance with the procedural requirements set forth in the Administrative Code.

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

The parties stipulated that Appellee had complied with the procedural aspects of the abolishment of Appellant’s position, including the sufficiency of the letter of layoff provided to Appellant, the proper computation of retention points and Appellant’s lack of displacement rights. Appellant’s contention at record hearing was that Appellee’s justification for the abolishment of her position was faulty, as there was no economic imperative for the abolishment of her position, and that Appellee acted in bad faith.

Revised Code Section 124.321(D)(1) provides that an appointing authority may abolish positions “for any one or any combination” of the three listed reasons: 1) reorganization for efficient operation; 2) economy; or 3) lack of work. In its rationale, Appellee cited reorganization for efficient operation and economy as justification for the abolishment of Appellant’s position. Revised Code Section 124.321(D)(2)(a) notes that “economy” is to be determined at the time the abolishment is proposed, based on the appointing authority’s estimated amount of savings with respect to salary, benefits and other matters associated with the position abolishment.

Testimony at record hearing established that Appellee had recognized a significant savings with respect to Appellant’s salary and benefits. While Appellee did create two new part-time positions immediately subsequent to the abolishment of Appellant’s position, the employees hired to fill those positions perform job duties significantly different to those performed by Appellant. I find that Appellee’s addition of the two new part-time positions filled by Ms. Taylor and Ms. Stephen did not evidence bad faith. Testimony at record hearing further established that, as the result of the abolishment of Appellant’s position, Appellee was able to provide

additional direct services to its clients, which resulted in more efficient operation of the agency. While abolishment of Appellant's position may not have been an economic necessity, I find that it was a legitimate employment action taken within the bounds of Appellee's authority pursuant to R.C. 124.321(D)(1).

Upon a review of all of the evidence and testimony presented, I find that Appellee has demonstrated by a preponderance of the evidence that the abolishment of Appellant's position and Appellant's layoff were justified for reasons of economy and reorganization for more efficient operation and were carried out in compliance with the requirements of O.A.C. 124-7-01 and O.A.C. 123:1-41-I O(B). Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** the abolishment of Appellant's position and her subsequent layoff.


Jeannette E. Gunn
Administrative Law Judge

JEG: