

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Dolly M. Smith,

Appellant,

Case Nos. 09-ABL-09-0403
09-LAY-09-0404

v.

Harrison County,
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 appeals.

After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the instant job abolishment and subsequent layoff be **AFFIRMED**, since Appellee has demonstrated by a preponderance of the evidence that the abolishment of the Appellant's position was made in compliance with the requirements of O.A.C. § 124-7-01 and that the Appellee substantially complied with all the procedural requirements set forth in O.A.C. § 123:1-41-10(B) and in consideration that there was no bad faith proven on the part of the Appellee.

Lumpe - Aye
Sfalcin - Aye
Tillery - Aye



J. Richard Lumpe
J. Richard Lumpe, *Chairman*

CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitute ~~the original~~ a true copy of the original order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, December 13, 2010.

Michelle Hunsley
Clerk

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

0-13-10mb

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

Dolly M. Smith,

Case No. 09-ABL-09-0403

Appellant

v.

November 10, 2010

Harrison County,
Dept. of Job & Family Services,

Christopher R. Young
Administrative Law Judge

Appellee

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on September 27, 2010, at approximately 10:30 a.m., following a pre-hearing held the same morning and concluded with the simultaneous filing of post hearing briefs on November 1, 2010. The Appellant, Dolly M. Smith, appeared at the record hearing, and was represented by Michael A. Moses, Attorney at Law. The Appellee, the Harrison County Department of Job and Family Services was present through its designee, Mr. Scott Blackburn, the Director of the Harrison County Department of Job and Family, and was represented by Mr. Frank Hatfield and Mr. Edward S. Kim, Attorneys at Law.

On August 31, 2009, the Appellant, Dolly M. Smith, received a notice of job abolishment from the Appellee. This action was to be effective October 3, 2009. Thereafter, the Appellant timely filed her appeal on September 9, 2009, as well as timely filing of this appeal being stipulated too by the parties. Further, at the pre-hearing, the jurisdiction of this Board to proceed with this matter was established.

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

- 1) The Appellee informed the Appellant of the reason for the layoff;
- 2) The Appellee informed the Appellant of the effective date of the action;

- 3) The Appellee informed the Appellant of her accumulated retention points;
- 4) The Appellee informed the Appellant of her right to appeal to the State Personnel Board of Review within ten (10) days after receiving notice;
- 5) The Appellee informed the Appellant of her right to request and receive a copy of Ohio Administrative Code Section 123:1-41;
- 6) The Appellee informed the Appellant of her right to displace other employees if available and to exercise those rights within five (5) days;
- 7) The Appellee informed the Appellant of her right to reinstatement or reemployment
- 8) The Appellee informed the Appellant that she was responsible for maintaining her current address with the Appellee;

However, it should be noted that the Appellee did fail to inform the Appellant that she had the option to convert accrued leave, if the opportunity existed.

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

STATEMENT OF THE CASE

Appellee's first witness to testify was Ms. Joyce Brown, the Assistant Director of the Harrison County Department of Job and Family Services. When questioned, the witness testified that while she has been employed with Harrison County Department of Job and Family Services for approximately 33 years she took over as the Assistant Director in 2004. Along this line questioning, the witness explained that she directly supervises approximate five employees and numerous divisions and is familiar with the Appellant's job duties.

When questioned, the witness identified Appellee's Exhibit 1, page 1, as a table organization for the Hamilton County Department Job and Family Services as it stood on October 1, 2009, prior to the abolishment at issue. Moreover, the witness identified page 2 of said exhibit as a table of organization as it stood on January 1, 2010. As can be seen by the document, Ms. Dolly Smith occupied a Quality Control Reviewer's position, and had a position control number of 22000.0. Additionally, when questioned, the witness testified that Harrison County does utilize a class plan and that it is in fact in writing. The witness then identified Appellee's Exhibit 2 as a July 25, 2000, resolution of the Harrison County Commissioners adopting the Ohio Department of Administrative Services' class plan through Administrative Rule 123:1-7-27, which in effect adopted new job classification titles with revised series numbers as detailed in an attachment labeled "A". It was noted that on page 13 of said exhibit that this plan included a Case Control Reviewer's position, classification specification number 30123, which was at that time the same thing as an Eligibility Case Control Reviewer, classification specification number 30123. However, as explained by the witness this changed a couple years later. The witness identified Appellee's Exhibit 13 as a resolution adopted by the Harrison County Board of Commissioners on June 5, 2002, where it was noted that the Department of Administrative Services changed/or updated wherein the Case Control Reviewer's position, classification specification number 30123, was deleted from the County's class plan and that the position of a Quality Control Reviewer, classification specification number 30181 was added in its stead. The witness further testified that after June 5, 2002 the Appellant held the Quality Control Reviewer's position and that no further changes have been made since that time.

Further, the witness testified that as of October 3, 2009, layoffs were being considered by the Director, Mr. Scott Blackburn. However, the witness testified that she did not select any position to be abolished, nor did she recommend any position to be abolished, as well. Moreover, the witness reiterated that it was director Scott Blackburn who was authorized to abolish positions, and that her position was also subject to the layoff. However, witness explained that her position was not in fact laid off, upon further consideration by the Director.

On cross-examination, the witness testified that she did have general discussions with the Director about the impending layoffs as to how to best staff the Income Maintenance Unit, specifically with regard to the Eligibility Referral Specialists 1s and 2s. Further, witness testified that she did not discuss Ms. Smith's position at all with the Director. Moreover, the witness testified that she handled the

public records request and that she did not supply counsel with a copy of Appellee's Exhibit 13 and that she just recently received this from the Harrison County Board of Commissioners. Additionally, witness explained that she first saw Appellee's Exhibit 13 in 2002 as she would've had to effectuate a personal action form at that time, as she at that time was a Human Resource Officer with the Harrison County Department of Job and Family Services.

The witness then identified Appellee's Exhibit 2 as a series of documents outlining the classification changes of a new number of individuals within the agency. The witness turned to page 23 of said exhibit and identified that Ms. Smith was previously classified as an Income Maintenance Case Control Reviewer, and that her new classification was that of an Eligibility Case Control Reviewer, and that this took effect in July 2000. Moreover, the witness when questioned identified on page 16 of said exhibit that pursuant to O.A.C. section 123:1-7-27 that an Income Case Control Reviewer's position, classification specification number 30123, is on said document, but that classification specification number 30181, noting an Quality Case Reviewer's position is not. Upon further questioning, the witness testified that in 2002, Ms. Smith went from an Eligibility Case Control Reviewer, classification specification number 30123, to a Quality Case Reviewer, classification specification number 30181, via the Harrison County Board of Commissioners resolution dated June 5, 2002, previously identified as Appellee's Exhibit 13. When questioned specifically whether or not Ms. Smith was notified of this change, the witness testified that Ms. Smith was never given anything in writing, but that she did have a conversation with her at that time. However, the witness could not recall what exactly she told Ms. Smith at that time. Additionally, the witness when questioned testified that she most likely did not have a conversation with Ms. Smith regarding how her layoff and/or displacement rights would be effectuated by the change.

The witness identified Appellee's Exhibit 9 as a position description of a Quality Control Reviewer's position, the position that was occupied by Ms. Smith dated June 15, 2002. When questioned, the witness testified that this form was completed by Betty Kellar regarding the updating of the title change of Ms. Smith. The witness could not recall specifically if DAS gave them a classification specification of a Quality Case Reviewer's position, but the overall push to have this done was initiated by DAS.

The witness then identified Appellant's exhibit B, specifically page 3, as a job description of Eligibility Case-Control Reviewer's position dated September 4, 2000,

the position which Ms. Smith held at that time. When compared to a Quality Case Reviewer's position job description located on page one of said exhibit, the witness agreed when questioned that they are exactly alike, only a title change. Again, the witness reiterated that there was nothing in writing provided to Ms. Smith about the change, nor was she aware that the change would affect her displacement rights.

When questioned, the witness identified Appellee's Exhibit 1, page 1, as the table of organization as it stood prior to the abolishment at issue dated October 1, 2009, that the lines through the blocks indicated the positions which were abolished. However, the witness, when questioned, testified that her position was initially slated to be abolished in October, but that they changed her layoff in mid-September or so. The witness, when questioned as to why they changed their mind opined that Mr. Jackson who had been an Eligibility Referral Specialist 2 who worked in the workforce investment unit, a unit which she supervised, bumped down into an Eligibility Referral Specialist 1's position and that she was needed to train the new person handling the work in the workforce investment unit. The witness explained that the other Quality Case Reviewer, Betty Paolucci's position was also abolished and that she was laid off.

The witness identified Appellant's exhibit W as a series of e-mails, starting with page 305 indicating estimated cost savings options that was sent to all staff, followed by page 306 an e-mail from Mr. Blackburn regarding personnel cost savings calculations, followed by page 307 a scheduling of a final vote of all staff. The witness, when questioned, testified that it was her understanding that if they did not vote for any concessions that there would've been a larger number of staff laid off, and that eventually they had voted to some concessions, resulting in a smaller number of staff being laid off.

Further, the witness testified that since 2002 only Ms. Smith's title changed and no other duty. Further, it was the witness' understanding that Ms. Smith did not have any displacement rights as a Quality Case Reviewer.

On re-direct examination, the witness testified that she became aware that Ms. Smith did not have a displacement rights in August 2009 as she had called DAS who walked her through the layoffs steps, as her situation was not that unlike the Smith's. Ms. Brown explained that there were three steps; with the first seeing if there are any other persons occupying the same position with less retention points, thereby displacing that individual; with the second seeing if there are any vacant

positions in the same classification; followed by the third step, looking to see if she held a previous position within the last three years which she may wish to exercise her displacement rights therein. The witness explained that Ms. Smith had held the position of Quality Case Reviewer since 2002, and that she did not have displacement rights into Ms. Paolucci's Quality Case Reviewer's position since her position was abolished, as well.

Upon questioning, the witness when referring back to Appellee's Exhibit 1 stated that both Ms. Culver and Mr. Jackson both Eligibility Referral Specialist 2s, as members of the collective bargaining agreement, bumped down into Eligibility Referral Specialist 1 positions. Upon further questioning, the witness testified that she is not a member of the union, nor was Ms. Smith, and was not subject to the terms and conditions of the collective bargaining agreement.

On re-cross examination, the witness testified that she talked to Mr. Blackburn about the exempt staff's lack of bumping rights after the conversation she had with DAS. Further, the witness identified Appellant's exhibit W, page 334 and noted that on September 30, 2009, her layoff notice was rescinded.

Upon questioning by the undersigned, the witness testified that Ms. Smith's position as a Quality Case Reviewer most likely was paid more money than an Eligibility Referral Specialist 2.

Appellee's next witness to testify was Mr. Michael Vinka, a Harrison County Commissioner, who has held his position since January 7, 2007. When questioned, the witness testified that he is familiar with the layoff that occurred at the Harrison County Department of Job and Family Services. Further, the witness testified that he, as well as other commissioners, authorized the Director of the Harrison County Department Job and Family Services, Mr. Scott Blackburn to determine the number of positions to be laid off in order to balance the department's 2010 budget. The witness recalled that the reasons given for the layoffs were due to budget cuts amounting to close to 40% reduction in state funding. Moreover, the witness identified Appellee's Exhibit 4 as the resolution that was passed on or about August 28, 2009, which gave Mr. Blackburn the authority to process approximately 13 layoffs, nine bargaining unit positions and four non-bargaining positions which were to be effective October 3, 2009. Additionally, when questioned, the witness testified that the Commissioners did not identify any position to be abolished and or laid-off, as that was Mr. Blackburn's sole and exclusive selection.

On cross-examination, the witness testified that the appointing authority for the Harrison County Department of Job and Family Services is in fact Mr. Scott Blackburn, but that they have the final say so. When reviewing Appellee's Exhibit 4, the witness testified there was nothing in this resolution specifically regarding Ms. Dolly Smith's position or any information about rescinding Ms. Joyce Brown's position, as well. The witness also identified Appellant's exhibit W, page 334, and noted that on or about September 30, 2009, Ms. Joyce Brown's position that was slated to be abolished was rescinded. When asked why the Board of Commissioners allows Mr. Blackburn to rescind Ms. Joyce Brown's position, testified that it was his understanding that her position was needed in the midst of this reorganization of staff. Further, the witness testified that he did not specifically talk to Mr. Blackburn about anyone's displacement rights, let alone Ms. Smith's.

On redirect examination, the witness testified that pursuant to the resolution, previously identified as Appellee's Exhibit 4, notifications of the effected personnel were going to be distributed soon after the resolution was passed. The witness also identified Appellee's Exhibit 10 as a copy of the notification to Ms. Dolly Smith regarding the abolishment of her position due to reasons of economy.

On re-cross-examination, the witness when reviewing Appellee's Exhibit 4 the Board's resolution testified that there is no reference to Ms. Dolly Smith's position, or anything regarding a Quality Case Reviewer's position. Moreover, the witness testified to the best of his recollection that there were no attachments to the Board's resolution.

Appellee's third witness to testify was Mr. Scott Blackburn, the Director of the Harrison County Department of Job and Family Services, a position that he has held since December 2004, although he had held the interim Director's position since November 2003. When questioned as to his job duties and/or responsibilities, the witness explained that he handles all of the administration matters, all the personnel matters and budgetary concerns of the agency, as well as acting as the head of the agency, while reporting to the Harrison County Commissioners. The witness testified that has prior experience at the Harrison County Department of Job and Family Services included being employed as a Fiscal Officer at the agency, a position which he held dating back to November 1996.

When questioned, the witness testified that he was very much aware of the layoffs at issue, as he was the one who figured out the budget and its concerns in mid August 2009. The witness explained that he alone calculated the cost savings and the positions that were selected, as well as implemented the layoffs as granted to him via the resolution that was passed by the County Commissioners. The witness identified Appellee's Exhibit 4 as a copy of the County Commissioners' resolution that gave him the authority to choose the personnel to be selected to be laid off in order to balance the department's budget. Specifically, when questioned, the witness testified that he selected the Appellant's position to be laid-off, as well as selecting the number of positions to be laid-off. The witness identified Appellee's Exhibit 1 as a table of organization of the Harrison County Department of Job and Family Services as it stood prior to the abolishment and layoffs at issue, and explained that the lines through the positions were all of the positions that were selected to be laid-off, although two positions bumped down in the lower classifications. Further, the witness testified that for reasons of economy, and/or budget cuts, were the reasons that the reorganization had to take place.

The witness testified that he analyzed the expenditures, reviewed all of the expenses at the agency, and looked at the revenues and/or funding from the federal and state governments that were going to be cut, and from that he created spreadsheets to aid his analysis to implement the layoffs at issue. The witness identified Appellee's Exhibit 3 as a series of spreadsheets that he put together in mid-August 2009. On page 1 of said document, the witness explained that through his calculations the grand total of net savings needed to keep the agency's budget in line through June 30, 2010, totaled \$437,827.34, \$325,947.59 from the Public Assistance and \$111,879.75 from the Child Service Fund, as those funding sources were going to have a negative revenue stream. After calculating the amount needed to stay within the 2010 fiscal budget, the witness then identified Appellee's Exhibit 3, page 2 as a nine-month concession and cost savings goals to be able to reach that decrease in funding. As can be seen from the document the witness explained there were certain cost-saving adjustments, like selling agency vehicles and garage rent savings, less concessions of 70 from 80 hours pay for bargain and non-bargaining unit employees, as well as laying off 13 employees to be able to reach that expected shortfall of \$437,000. The witness then stated that beginning on page 3 of Appellee's exhibit 3 it reveals the state's new accounting system known as the CFIS report which for all intents and purposes tells the agency what its budget is going to be for fiscal year 2010. Further, the witness explained that he first 11 pages starting with page 3 are the source documents for the Child Services Fund, and that the

remaining pages are the source documents for Public Assistance. The witness explained that the spreadsheets of the CFIS report is how he documented his cost savings analysis.

The witness when questioned identified Appellee's Exhibit 7 is a calculation of expenditures if people were to be laid off for the remaining part of the year. As can be seen on page 2, over to the first part of page 3 on Appellee's exhibit 7, the witness testified that it reveals the cost to keep employees fully staffed through the remainder of the year. Moreover, when questioned, the witness testified that on the second half of page 3 on Appellee's Exhibit 7 it revealed the layoff net cost savings totaling \$302,530.30. The witness testified further that the original amount of positions that were targeted amounted to 19 positions, but that in the end only 12 positions were laid off as a result of earlier concessions reducing the work week to 70 hours. It should be noted that on the third page of Appellee's Exhibit 7 it appears to show layoff net savings calculations that included 13 positions and/or persons, but one of those positions was occupied by Ms. Betty Kellar who in fact retired.

The witness when questioned identified Appellee's Exhibit 6, as listings of both union and non-union positions at the agency, and noted that frontline staff to background management positions was affected by the instant job abolishment and issue. The witness testified that Eligibility Referral Specialist 2s and 1s, a Social Service Worker 2 and 1, a Clerical Specialist, a management position and (2) Quality Control Reviewer positions were selected to be abolished. The witness testified that the selection process was his and his alone and again reiterated that it affected both union employees and non-union employees, as well. The witness then identified Appellee's Exhibit 5 as the percentages of bargaining unit versus non-bargaining unit personnel being laid off which essentially amounted to approximately 33% from both groups. When questioned, the witness testified that Ms. Smith never held the position of Eligibility Referral Specialist 2 during her tenure at the agency. Further, the witness when questioned testified that Ms. Smith, as a Quality Control Reviewer, was not the only Quality Control Reviewer laid-off as Ms. Betty Paolucci was also laid-off. The witness testified that his goal when selecting the personnel to be abolished was that he wanted to keep people that had public contact, so as to service the public, but that did not always pan out.

The witness then identified Appellee's Exhibit 10 as the Appellant's notice of the instant job abolishment and resultant layoff, along with her notice of bumping/displacement form, and wishing to exercise the same attached as page 2

to this exhibit. Mr. Blackburn stated that although the Appellant wanted to have the opportunity to displace, the form itself does not guarantee any position. Further, the witness testified that there were no vacant Quality Control Reviewer positions at the time of the layoff, nor were there any Quality Control Reviewer positions at the agency after the layoff. Additionally, the witness explained that the Quality Control Reviewer position is not within a classification series, as it is a standalone classification. Furthermore, the witness explained that when looking into the bumping process, and when reviewing Ms. Smith's employment history, Ms. Smith had only held a Quality Control Reviewer's position within the last three years. Furthermore, when questioned, the witness explained that since he has been serving as the Interim Director, as well as, the Director of the Harrison County Department of Job and Family Services, dating back to November 2003, Ms. Smith has never requested a job audit of her position.

The witness, when questioned, identified Appellee's Exhibit 9 as a position description for Ms. Dolly Smith as a Quality Control Reviewer dated June 15, 2002. Additionally, the witness was then directed to Appellee's Exhibit 1, page 8, as a January 6, 2004, table of organization of the Harrison County Department of Job and Family Services that identified Ms. Smith's position titled as an Eligibility Case Control Reviewer. When questioned as to the difference between Appellee's Exhibit 9, wherein it was noted that Ms. Smith held the position of an Quality Control Reviewer dated June 15, 2002, and the January 2004, table of organization previously identified as Appellee's Exhibit 1, page 8, the witness opined that DAS had updated a couple of positions in 2002, and could not state a reason why her position had not been updated on the 2004 table of organization. However, the witness affirmed, when questioned, that on page 9 of Appellee's Exhibit 1, the 2005 table of organization reveals that Ms. Smith's position was then at that time marked as a Quality Control Reviewer.

On cross-examination, the witness testified he has known Ms. Dolly Smith since 1996, and that he had worked on her same floor and is familiar with her job duties for the most part. When questioned, the witness testified that he has prepared the reason table organizations for the department. The witness testified that he began his term as Interim Director for the agency in November 2003 and became the Director in December 2004. When questioned as to the table of organization dated January 6, 2004, the witness testified that he had recently become the Interim Director at that time and that he did not prepare this document, as it would have most likely been prepared by Ms. Joyce Brown. Additionally, the

witness testified that Ms. Smith in addition to the duties outlined in her position description as an Quality Control Reviewer noted on Appellee's exhibit 9, also was a fallback supervisor for both Betty Kellar and Carol Davy, but only in their absence.

The witness testified, when questioned, that on any Ohio Revised Code section 124.34 order of removal or suspension it is the County Commissioners who have the authority as the appointing authority to initiate these actions, not himself as Director of the Harrison County Department of Job and Family Services. The witness then identified Appellee's Exhibit 4 as a resolution from the Harrison County Board of Commissioners that authorized himself as Director to determine the number the position is to be laid off in order to balance the Department of Job and Family Services' budget. When questioned if the Board's resolution expressly gave him the authority to abolish Ms. Smith's position or anyone's in particular, or a Quality Control Reviewer's position, the witness answered in the negative. However, the witness testified that the resolution did give him the authority to abolish nine bargaining unit positions, as well as four non-bargaining unit positions, as that was his understanding. The witness also identified Appellant's exhibit W, at page 334, and noted that this document dated September 30, 2009 rescinded Ms. Joyce Brown's abolishment/layoff, thus only eliminating three non-bargaining unit positions. The witness explained that this had been the first time he had gone through any kind of job abolishment and/or layoffs and didn't really realize the full impact of how much Ms. Brown worked or how many hats she was wearing, including the supervision of the workforce investment unit, since the supervisor of that unit through displacement could not supervise the unit after the abolishment was implemented. Moreover, the witness testified, when questioned, that there were no other entire classification series laid off other than the Quality Control Reviewer's classification.

Next, the witness identified Appellee's Exhibit 7 as a net savings spreadsheet which he put together, and agreed that the agency would have saved \$6000 more if Ms. Joyce Brown had been laid off as opposed to Ms. Dolly Smith. Further, the witness testified that in November 2009 he and/or the agency laid off a fiscal officer, a non-bargaining unit position, so as to have shown fairness, to the Union as Ms. Brown's job abolishment had been rescinded. The witness also identified Appellee's Exhibit 10 as the instant notice of job abolishment that was provided to Ms. Dolly Smith on or about August 31, 2009, that allowed her to have recall rights up until October 3, 2010. When questioned, the witness testified that there have been recalculations regarding the agency's budget and that they are looking at another

\$77,000 deficit for fiscal year 2011 and that no employees, to date, from the previous abolishment have been recalled. Further, the witness testified that the agency has managed to stay within its budget, along with stating that Ms. Smith was not a supervisor at the agency, as well.

The Appellant began her case-in-chief by calling Mr. John Snodgrass, the former Director of the Harrison County Department of Job and Family Services to the witness stand. The witness testified that he had worked at the Harrison County Department of Job and Family Services for approximately 19 years, while holding the position of Director for the last 13 years up until the end of 2003 when he became disabled. When questioned, the witness explained that he does know Ms. Dolly Smith and is familiar with the work that she performed up until the time of his departure. The witness then identified Appellee's Exhibit 1, starting at page 9 through 12 as a series of tables of organizations dating from 2003 to 2000 wherein it was noted that Ms. Smith held the position of Eligibility Case Control Reviewer, PCN 22,000.0. When reviewing the 2000 table of organization the witness noted that there was a classification change from Income Maintenance Workers to Eligibility Referral Specialist the following year. The witness stated that there were number reasons why this classification change took place, but that the impetus to do this was brought forward by the Department of Administrative Services as the positions evolved, coupled with the advances in technology, along with the work training partnership act, as a reason for this change at that time. However, the witness testified that Ms. Smith's duties, along with most at the agency, did not change as result of this classification change, nor did Ms. Smith's duties change up until the time that he left in late 2003.

The witness then identified Appellant's exhibit B, page 1 as a position description of a Quality-Control Reviewer, Ms. Dolly Smith's position, dated June 15, 2002, that included his signature. When questioned why he would've changed Ms. Smith's classification from an Eligibility Case Control Reviewer to an Quality Control Reviewer at that time explained that the agency had a very good error rate, or lack of errors, that generated incentive revenue for the agency, and that is why he would've decided to have Ms. Smith review other worker's work to reduce the error rate to collect additional monies. When reviewing page 3 of Appellant's Exhibit B the witness noted that Ms. Smith held the position of Eligibility Case Control Reviewer as of September 4, 2000, and that there was really no difference in the duties of her position description from that of the Quality Case Reviewer's position. The witness then identified pages 4 and 5 of Appellant's Exhibit B, as another position

description of Ms. Smith's dated December 29, 1999, that revealed that she held the classification of a Income Maintenance Case Control Reviewer and/or Eligibility Case Control Reviewer, as the word "eligibility" was scratched out and replaced by "income maintenance" language on the position description which the witness recalled as not being accurate. Upon further questioning, the witness testified that Ms. Smith when made a Quality Case Reviewer in 2002 most likely would've not received an increase in pay, but would have received an increase in pay when she was first promoted out of the Union from an Income Maintenance Worker's position, to the Eligibility Case Control Reviewer's position. Moreover, the witness testified that while Ms. Smith did not have direct supervisory authority over any staff, she did have functional supervisory authority.

On cross-examination, the witness testified that Ms. Smith never held the position of Eligibility Referral Specialist 2, classification specification number 30122, but that she most likely would've held the Income Maintenance Worker 2's position, prior to becoming an Eligibility Case Control Reviewer. When questioned, the witness testified that he was the Director on June 5, 2002, but could not recall when a resolution was passed by the Harrison County Board of Commissioners that deleted the Case Control Reviewer's position classification number 30123 and replaced it with a Quality Control Reviewer's position classification specification number 30181. When questioned if he communicated this change to Ms. Smith testified in the negative, and could not recall if anyone at the agency communicated this to Ms. Smith. The witness when questioned with regards to Appellant's exhibit B., first page, testified that the "Note; this is my current position description" appears to be Ms. Smith's writing, not his.

On re-direct examination, the witness when questioned explained that the whole class plan change occurred in 2000.

The Appellant's next witness to testify was Ms. Carol Davy, an Eligibility Referral Supervisor 1, with the Harrison County Department of Job and Family Services a position she's held since 1985, and having worked in the Income Maintenance Unit for the last 33 years. The witness, when questioned, testified that she is familiar with Ms. Dolly Smith as she has been her supervisor off and on since 1985 until Ms. Smith's recent layoff. Further, the witness testified that Ms. Smith's duties have basically remained the same over last 10 years or so with her working as a Quality Control Reviewer. The witness explained that Ms. Smith used to occupy a position of an Income Maintenance Worker 3 in the Union, and because

the agency wanted to lower its error rate while receiving more incentive money to become more efficient, Ms. Smith was promoted out of the Union and accepted a non-bargaining position, an Eligibility Case Control Reviewer. The witness then identified Appellee's Exhibit 1 as a series of tables of organizations depicting the reporting structure which the most part revealed that Ms. Smith reported to her from 2006 forward and that from 2005 back in time Ms. Smith reported to either her or Ms. Betty Kellar, an Eligibility Referral Supervisor 2. Again, the witness reiterated that she was aware of Ms. Smith's duties and that she provided, among other things, functional supervision of Eligibility Referral Specialists. When questioned as to the title change of Ms. Smith from Eligibility Case Control Reviewer to that of a Quality Control Reviewer, the witness explained that was brought about due to the state most likely changing the terminology of various positions at that time

No cross-examination of the witness was elicited.

Ms. Dolly Smith, the Appellant, then took the stand to testify. Upon questioning, the witness explained she had been employed at the Harrison County Department of Job and Family Services for approximately 25 years and that her last position that she occupied was that of a Quality Case Reviewer. The witness testified that she started out as Income Maintenance Aide, was then promoted to Income Maintenance Worker 1, followed by an Income Maintenance Worker 2, followed by being promoted to Income Maintenance Worker 3, was then promoted outside of the Union to the position of Income Maintenance Case Reviewer, which was renamed to the position of Eligibility Case Control Reviewer which was then re-titled to the position of Quality Control Reviewer in 2002, the last position which she held at the agency.

The witness then identified Appellant's exhibit B., the second page thereof, and stated that the document titled classification change showed her classification change being made from an Income Maintenance Case Control Reviewer to an Eligibility Case Control Reviewer in 2002, and noted that at that time she was out of the bargaining unit. When questioned, the witness testified that her duties for which he held the position of Income Maintenance Case Control Reviewer to Eligibility Case Control Reviewer to Quality Control Reviewer did not change very much. The witness explained that her duties consisted of mainly assisting the Eligibility Referral Specialists, training them, sitting in on their interviews for them to determine eligibility for public assistance and/or food stamps. Further, the witness explained that during the whole time she occupied these above noted positions she continued

to have direct contact with clients when some of the Income Maintenance Workers or Eligibility Referral Specialist were absence. Moreover, when questioned with regards to Appellant's exhibit B, the first page thereof, the witness identified this as a position description that accurately described her duties for the position of Quality Control Reviewer which was dated June 15, 2002. The witness explained that she did not have any input into the preparation of this document. The witness then identified Appellant's exhibit B, the third page thereof, as a position description accurately described her duties for the position of Eligibility Case Control Reviewer which was dated September 4, 2000, and again stated she did not have any input into the preparation of this document, as well. Lastly, the witness identified Appellant's exhibit B, the fourth page thereof, as a position description that accurately described her duties for the position of Income Maintenance Case Control Reviewer, and again stated she did not have any input in the preparation this document, along with the noting that this was a position which she was promoted in to out of the Union. When questioned, the witness testified that she was provided copies of these documents by Ms. Joyce Brown, but noted that at no time did anyone tell her that she could contest the duties outlined in her position descriptions. Further, the witness testified that she did have a conversation with Ms. Joyce Brown regarding her change from going from an Eligibility Case Control Reviewer to that of a Quality Control Reviewer, and it was explained to her that this was a title change only, no change in her duties and that she nor anyone at the agency mentioned that she had a right to file a job audit at that time.

Next, the witness identified Appellant's exhibits C through N, explaining that each of these different exhibits generally show some of the job duties which she was performing from 2005 through 2008 which revealed that she was directly assisting with eligibility work, answering questions from Eligibility Referral Specialists, assisting in training Eligibility Referral Specialists, while having direct client contact at various times throughout that amounted to approximately 50% or more over time. Further, the witness identified Appellant's exhibits O and P, as a series of running record comments and/or QA targeted review documents and stated that she often worked on these documents to complete and check on supplements, while entering "Fiats" to correct the date or backdate the supplement, whatever the case may be. The witness stated that when she would be handling these type of activities or duties, such as entering "Fiats" into the computer system, this is something that eligibility referral specialist's cannot do, and that when completing these type activities she did not have direct client contact for the most part.

Ms. Smith was then questioned if she had a meeting with Mr. Blackburn prior to her job being abolished, which she answered in the affirmative. The witness explained that there was a meeting that took place with the non-bargaining unit personnel that included her and Ms. Betty Paolucci, the other Quality Control Reviewer, wherein her supervisor Ms. Kellar asked why she and Betty were being targeted, only to have the response from Mr. Blackburn that "people on the street want us out of there". The witness testified that Mr. Blackburn did not say anything else, but that she also asked about her bumping rights as she expressly told Mr. Blackburn she wanted to bump, and that he accepted, and advised her that he would check on it. The witness testified that on or about September 18, 2009, she recalled Mr. Blackburn calling her into her his office, along with Ms. Brown and attorney Edward Kim, wherein Mr. Kim told her that she did not have any bumping rights. Again, the witness explained that Mr. Blackburn said he would again check on this along with her telling Mr. Blackburn that she was not aware when they changed her specification that she wouldn't have any bumping rights as a Quality Control Reviewer. The witness testified that she just assumed that she would still have bumping rights in her position as a Quality Control Reviewer. The witness identified Appellant's exhibit W, page 317 and page 330, as a series of e-mail confirming the above conversation with Mr. Blackburn, wherein it was noted that she found out that she was not going to be allowed to bump at all, let alone back into the bargaining unit.

The witness then identified Appellee's Exhibit 13 and stated that in June of 2002 she held the position of Eligibility Case Control Reviewer and that there was no change in her job duties were her position was re-titled to a Quality Control Reviewer.

On cross-examination, the witness, when questioned, testified that it is true that after June 15, 2002, she occupied the position of a Quality Control Reviewer with the classification specification number of 30181.

On re-direct examination, the witness testified that she was aware of the change in the title of her position on June 15, 2002, but not necessarily the classification specification number change.

FINDINGS OF FACT

1. I find that the Appellant, Dolly M. Smith was employed by the Harrison County Department of Job and Family Services as a Quality Control Reviewer, classification specification number 30181, at the time she was notified of her position being abolished on or about August 31, 2009, which was to be effective October 3, 2009. Further, the parties stipulated to the timely filing of Ms. Smith's appeal to this Board.

2. The reasons for the abolishment and resultant layoff of the Appellant position were for reasons of economy.

3. I find that the Appellee followed all the substantial procedural requirements set forth in Ohio Revised Code and the Ohio Administrative Code pertaining to an abolishment resulting in a layoff of the Appellant.

4. I find that on or about August 2009, the Harrison County Department of Job and Family Services was notified that its state and federal funding for fiscal year 2010 would be reduced from \$2,155,585 to \$1,696,246 necessitating the need to lay off approximately 19 of 38 Harrison County Department of Job and Family Services employees. However, as result of some cost-saving measures the number of employees that eventually was laid off was reduced to 13. The evidence revealed that there was a voluntary acceptance of reduction of paid work hours from 40 to 35 hours per week, and the agency sold some vehicles, as these concessions reduced the number from 19 to 13 employees to be laid off.

5. Additionally, I also find that on or about August 29, 2009, the Harrison County Commissioners enacted Resolution 32-09 authorizing the layoff of 13 Harrison County Department of Job and Family Services employees to take effect October 3, 2009, and that Harrison County Department of Job and Family Service's Director Mr. Scott Blackburn was authorized to select positions to be abolished and to execute the resulting layoffs. However, it should be noted that the actual number of employees that were laid off was reduced to 12 as result of the voluntary retirement of Ms. Betty Kellar, an Eligibility Referral Specialist Supervisor 2.

6. The Appellant, Ms. Dolly Smith occupied one of two Quality Control Reviewer positions, classification specification number 30181, a couple of the positions that were selected to be abolished, among others. The evidence also

revealed that there were no positions to which the Appellant could displace after exhausting her civil service displacement rights pursuant to Ohio Revised Code section 124.321, as the position of Quality Case Reviewer was in a standalone classification series, and that the Appellant was laid off effective October 3, 2009.

7. When selecting positions to be laid off, Director Blackburn sought to retain positions with direct client contact, as well as other positions essential to maintaining operations during an approximate 25% reduction in funding. However, the evidence revealed by, preponderance thereof, due to the budget constraints both direct and indirect client contact positions were involved in the abolishment at issue. Moreover, Director Blackburn performed a cost-benefit analysis and he selected nine different classifications, both in the union and outside of the union, in order to achieve the balancing of the agency's budget, proving the agency's rationale for the abolishment for reasons of economy.

8. With respect to displacement rights, the evidence revealed that there were no vacant positions within the Harrison County Department of Job and Family Services that the Appellant could displace into. The Appellant's argument regarding her displacement the rights, was not well taken. The testimonial and documentary evidence revealed that the Appellant after holding a couple of income maintenance workers positions dating back into the 1980s, positions in the Union, was eventually promoted outside of the Union in the late 1990s, coupled with a raise thereof, to the position of Income Maintenance Case Reviewer, which was renamed to the position of Eligibility Case Control Reviewer which was then re-titled to the position of Quality Control Reviewer in 2002, the last position which she held at the agency. The evidence also revealed that a resolution dated June 5, 2002, from the Harrison County Board of Commissioners, Resolution 2002-22-28, deleted the position of ("Eligibility") Case Control Reviewer, classification specification number 30123, as an adoption of the Ohio Department of Administrative Services' new classification concept, and changed the position to a Quality Control Reviewer, classification specification number 30181, a different class series from the previous position. The evidence revealed that Ms. Smith at that time was advised by Ms. Joyce Brown that her title was being changed around the same time of the resolution being passed, but was not told specifically by Ms. Brown that her position was in a different class series. However, the documentary and testimonial evidence revealed that at various times from 2002 until the present the Appellant had constructive notice of her position and classification specification number having been changed, as her position description had been updated to reflect the classification specification

number change, and that this position description was in her personnel file. Additionally, while the Appellant made the argument that her duties did not substantially change the time that she held the position of Income Maintenance Case Reviewer to that of a Quality Control Reviewer, at no time did she ever challenge from 2002 until her position being abolished the changing of her classification series, through a reduction appeal or a job audit, as well.

9. The issue of bad faith on the part of the Appellee in implementing the instant job abolishment was not proven by a preponderance of the evidence, nor was it raised by the Appellant.

CONCLUSIONS OF LAW

In this layoff appeal, the Appellee must prove by a preponderance of the evidence that the Appellant, Dolly Smith's layoff was effectuated in accordance with sections 124.321 to 124.327 of the Ohio Revised Code and the rules of Ohio Administrative Code Chapter 123:1-41 *et seq.* Appellee has met its burden.

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

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

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

employee/Appellant must prove the appointing authority's bad faith by a preponderance of the evidence. See Administrative Rule 124-7-01(A).

COMPLIANCE WITH THE PROCEDURAL REQUIREMENTS

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

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

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

Abolishments may only be affirmed if the appointing authority has substantially complied with the procedural requirements set forth in sections 124.321 through 124.328 of the Ohio Administrative Code and the administrative rules promulgated pursuant to statutes.

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

As was previously stated, it was the finding of this Administrative Law Judge initially that the Appellee substantially complied with all of the applicable statutes and rules pertaining when an abolishment is implemented, although the Appellant was not notified that she had a right to convert accrued leave. Notwithstanding Appellee's lack of notifying the Appellant of her right to convert accrued leave, this Board concludes that the Appellee has substantially complied with all of the applicable statutes and rules. (See, Ohio Administrative Code Section 123:1-41-10(B) and Ohio Administrative Code Section 124.321 through 124.328).

PERMENET DELETION OF APPELLANT'S POSITION

A critical guideline in the abolishment of a civil service position is that it must be done in good faith. *Weston v. Ferguson* (1983) 8 Ohio St. 3d 52. In the instant appeal before this Board, the Appellee has presented testimony affirming that the appointing authority, the Harrison County Department of Job and Family Services,, by reasons of economy, in August 2009, was notified that its state and federal funding for fiscal year 2010 would be reduced from \$2,155,585 to \$1,696,246 necessitating the need to lay off approximately 19 of 38 Harrison County Department of Job and Family Services employees. However, as result of some cost-saving measures the number of employees that eventually was laid off was reduced to 13. The evidence revealed that there was a voluntary acceptance of reduction of paid work hours from 40 to 35 hours per week, and the agency sold some vehicles, as these concessions reduced the number from 19 to 13 employees

to be laid off. Additionally, the Harrison County Commissioners enacted Resolution 32-09 authorizing the layoff of 13 Harrison County Department of Job and Family Services employees to take effect October 3, 2009, and that Harrison County Department of Job and Family Service's Director Mr. Scott Blackburn was Eligibility Referral Specialist Supervisor 2.

The Appellant, Ms. Dolly Smith occupied one of two Quality Control Reviewer positions, classification specification number 30181, and a couple of the positions that were selected to be abolished, among others. The evidence also revealed that there were no positions to which the Appellant could displace after exhausting her civil service displacement rights pursuant to Ohio Revised Code section 124.321, and that the Appellant was laid off effective October 3, 2009. Moreover, Director Blackburn performed a cost-benefit analysis and he selected nine different classifications, both in the union and outside of the union, in order to achieve the balancing of the agency's budget.

Consequently, this Board finds that the Hamilton County Board of Commissioners acted in good faith when it instituted the instant job abolishment of the Appellant.

As a result, the Appellant's position as a Quality Case Reviewer was deleted from the organization, as well.

THE APPELLANT COULD NOT DISPLACE ANY OTHER POSITION AT THE AGENCY

It should be noted that the Appellant did contest her right to displace her as a Quality Control Reviewer, classification specification number 30181, in this matter. Based upon the below reasoning, the undersigned concludes that Ms. Smith could not displace any other position at the agency, as there were no other lower classifications in the same classification series, coupled with the fact that all of the Quality Control Reviewer's positions were eliminated as a result of the implementation of the instant job abolishment, and that the Appellant had not held any previous position at the agency within the last three years.

As a review, section 124.324 of the Ohio Revised Code governs the layoff and displacement procedures. That statute states as follows, in part:

(A) A laid-off employee has the right to displace the employee with the fewest retention points in the following order:

(1) Within the classification from which the employee was laid off;

(2) Within the classification series from which the employee was laid off;

(3) Within the classification the employee held immediately prior to holding the classification from which the employee was laid off, except that the employee may not displace employees in a classification if the employee does not meet the minimum qualifications of the classification or if the employee last held the classification more than three years prior to the date on which the employee was laid off.

With respect to displacement rights, the evidence revealed that there were no vacant positions within the Harrison County Department of Job and Family Services that the Appellant could displace into. The testimonial and documentary evidence revealed that the Appellant after holding a couple of income maintenance workers positions dating back into the 1980s, positions in the Union, was eventually promoted outside of the Union in the late 1990s, coupled a raise thereof, to the position of Income Maintenance Case Reviewer, which was renamed to the position of Eligibility Case Control Reviewer, classification specification number 30123, which is in the same class series as Eligibility Referral Specialist 2s and 1s still in today, albeit positions within the Union. However, the Appellant's position was then re-titled to the position of Quality Control Reviewer, classification number 30181, in 2002, the last position which she held at the agency, which is also in a different class series. The evidence also revealed that a resolution dated June 5, 2002, from the Harrison County Board of Commissioners, Resolution 2002-22-28, deleted the position of ("Eligibility") Case Control Reviewer, classification specification number 30123, as an adoption of the Ohio Department of Administrative Services' new classification concept, and changed the position to a Quality Control Reviewer, classification specification number 30181, a different class series from the previous

position. The evidence revealed that Ms. Smith at that time was advised by Ms. Joyce Brown that her title was being changed around the same time of the resolution being passed, but was not told specifically by Ms. Brown that her position was in a different class series. However, the documentary and testimonial evidence revealed that at various times from 2002 until the present the Appellant had constructive notice of her position and classification specification number having been changed, as her position description had been updated to reflect the classification specification number change, and that this position description was in her personnel file. Additionally, while the Appellant made the argument that her duties did not substantially change the time that she held the position of Income Maintenance Case Reviewer to that of a Quality Control Reviewer, at no time did she ever challenge from 2002 until her position being abolished, the changing of her classification series, through a reduction appeal or a job audit, as well.

Thus, the Appellant's argument regarding her displacement the rights, was not well taken.

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

Appellee presented the reasons for this job abolishment was for reasons of economy as its justification for the abolishment of the Appellant's position. As such, the appointing authority, the Harrison County Department of Job and Family Services, must demonstrate, by a preponderance of the evidence, that reason for the job abolishment:

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

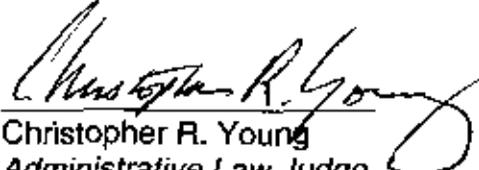
The testimony presented clearly demonstrated, as a way of achieving the instant reorganization and job abolishment, the appointing authority, the Harrison County Department of Job and Family Services, by reasons of economy, in August 2009, was notified that its state and federal funding for fiscal year 2010 would be reduced from \$2,155,585 to \$1,696,246 necessitating the need to lay off employees. However, as result of some cost-saving measures the number of

employees that eventually was laid off was reduced to 13. The evidence revealed that there was a voluntary acceptance of reduction of paid work hours from 40 to 35 hours per week, and the agency sold some vehicles, as these concessions reduced the number from 19 to 13 employees to be laid off. Additionally, the Harrison County Commissioners enacted Resolution 32-09 authorizing the layoff of 13 Harrison County Department of Job and Family Services employees to take effect October 3, 2009, and that Harrison County Department of Job and Family Service's Director Mr. Scott Blackburn was authorized to select positions to be abolished and to execute the resulting layoffs. However, it should be noted that the actual number of employees that were laid off was reduced to 12 as result of the voluntary retirement of Ms. Betty Keller, an Eligibility Referral Specialist Supervisor 2 that included the Appellant's position.

In summary, the Appellee has presented that it substantially complied with all the pertinent Ohio Administrative Code and Ohio Revised Code provisions dealing with an abolishment of a position and subsequently due to that abolishment. Further, the Appellee has demonstrated that its rationale of reasons for economy was a valid justification for the abolishment of the Appellant's position, because it appears that through the implementation of the abolishment of the Appellant's position, as well as others within the Harrison County Department of Job and Family Services, the agency was able to stay within its projected budget.

RECOMMENDATION

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


Christopher R. Young
Administrative Law Judge