

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

Tonya L. Temple,
Vonda Secoy

Case Nos. 09-LAY-02-0067
09-LAY-02-0075

Appellants.

v.

Hamilton County Sheriff,

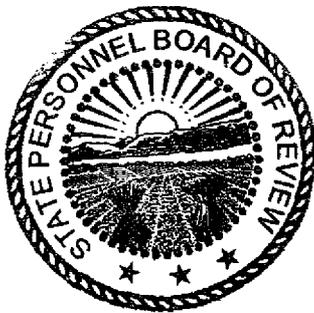
Appellee.

ORDER

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

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

Wherefore, it is hereby **ORDERED** that Appellee's abolishment of Appellants' positions and subsequent layoffs be **AFFIRMED**, pursuant to O.R.C. §§ 124.321 to 124.327 and O.A.C. Chapter 123:1-41 *et seq.*



Lumpe - Aye
Sfalcin - Aye
Tillery - Aye

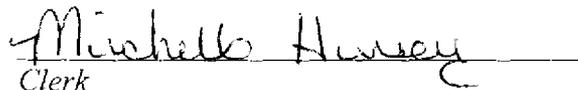


J. Richard Lumpe, *Chairman*

CERTIFICATION

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

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitute ~~(the original)~~ a true copy of the original order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, November 19, 2009.



Michelle Hursey
Clerk

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

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

Tonya L. Temple,
Vonda Secoy

Case No. 09-LAY-02-0067
Case No. 09-LAY-02-0075

Appellants

v.

October 19, 2009

Hamilton Co., Sheriff,

Appellee

Christopher R. Young
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on September 30, 2009, at approximately 10:30 a.m., following a pre-hearing held the same morning at 10:00 a.m. The Appellants, Tonya Temple and Vonda Secoy, were present and appeared *pro se*. The Hamilton County Sheriff's Office was present through its designee, Karen Giblin, an Administrative Assistant Bureau of Records Central Warrants and Identification, and the Hamilton County Sheriff's Office was represented by Kathleen H. Bailey, Assistant Prosecuting Attorney.

On February 18, 2009, both of the Appellants, Tonya Temple and Vonda Secoy, received a notice of job abolishment from the Appellee. This action was to be effective March 5, 2009. Thereafter, the Appellants timely filed their respective appeals on February 18, 2009 and February 20, 2009, as well as timely filing of these appeals being stipulated to by the parties. Further, at the pre-hearing, the jurisdiction of this Board to proceed with this matter was established.

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

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

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3) The Appellee informed the Appellants of their accumulated retention points;

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

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

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

7) The Appellee informed the Appellants of their right to reinstatement or reemployment

8) The Appellee informed the Appellants that they were responsible for maintaining their current address with the Appellee;

9) The Appellee informed the Appellants that they 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

The Appellee began its case-in-chief by calling Ms. Connie Bernard, the fiscal officer for the Hamilton County Sheriff. Ms. Bernard testified she has held her present position since 1992, and that her duties included, but were not limited to, providing supervision over the fiscal area of the Sheriff's office that included budgeting, foreclosure work, accounts payable, payroll and the processing of personnel issues.

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At the start of Ms. Bernard's testimony the parties entered into a stipulation that their rationale that was provided to the Appellants regarding lack of funds and or reasons of economy was not going to be contested by the Appellants and that the rationale was fine.

The witness, when questioned, testified that in late November and or early December 2008 she was present at a departmental managers meeting wherein Ms. Gail Wright explained to all of the managers present that there were impending layoffs coming in the near future. At that time, the witness explained that all the managers were to look at all of the employees under their purview to see if they were in the right classification or not, and to see if they had any employees that they could do without. Furthermore, the witness explained that it was at the insistence of the human resources department of the County to look at the employees to see if they were in the right classification or not, because of the earlier concerns which the County had with respect to layoffs which were implemented by the Department of Job and Family Services.

On cross-examination, Ms. Temple questioned Ms. Connie Bernard. The witness identified Appellant's exhibit D, page D, and identified the data entry operators 3s and 2s retention point calculations were sent over to the human resources department on December 8, 2008, and calculated on that same date. Additionally, the witness identified Appellant's exhibit D, page E, and identified the court data entry 3s and 2s (the appellants positions were that of a court data entry 2) retention point calculations were sent over to the human resources department on January 29, 2009, and calculated on that same date. When questioned as to why the court data entry positions retention point calculations were calculated at a later date than the court data entry positions, the witness explained that there were four separate layoff actions within the Hamilton County Sheriff's office, that being; in December 2008, in January 2009, in February 2009 and in March 2009. Further, the witness, when questioned, explained that the data entry operators 3s and 2s are a different classification series all to themselves, and not a class with a parenthetical subtitle belonging to the court data entry 3s and 2s.

Appellee's next witness to testify was Ms. Jessica Jones, an Administrative Secretary for the Hamilton County Sheriff's office. Ms. Jones testified that she has

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held her present position for approximately last two years, and that her duties included, but were not limited to, preparing correspondence for the Sheriff, handling any FMLA matters, and aiding in the processing in the layoff procedures by providing information and by calculating retention points for the affected personnel.

The witness, when questioned, testified that Appellee's Exhibit 1 represented a series of tables of organizations in the Sheriff's office, depicting various divisions and sections. The witness also identified Appellee's Exhibit 2 as the class plan that is in place and utilized by the Hamilton County Sheriff's office. It should be noted that the data entry operator classification series and the court data entry classification series were two separate and distinct classification series. The witness then identified Appellee's Exhibit 3 as the Hamilton County Personnel Department's Administrative Regulations which were in effect at the time of the processing of the instant layoff action. It was noted that administrative regulation 41-09(E) was and/or is in effect and that the methodology for the computation for retention points for the Sheriff's office, and it does not include performance evaluations within the retention point calculations themselves, and that only continuous service is actually counted.

The witness then identified Appellee's Exhibit 18 as the classification specification for a Court Data Entry 2, classification specification number 11332, and opined that both Ms. Temple and Ms. Secoy held this classification. As such, the witness testified that both of the Appellants could only bump into a Court Data Entry 1 position and or classification specification number 11331. The witness testified that there were no Court Data Entry 1 positions at the Hamilton County Sheriff's office for which the Appellants could displace into. The witness also identified Appellee's Exhibit 19 as the Hamilton County Sheriff's office layoff list which listed both Ms. Temple and Ms. Secoy as having 150.54 and 144.10 retention points, respectively

However, it should be noted that the main contention in this appeal brought by both of the Appellants was the fact that Margarita Mergy who was recently reclassified as a Court Data Entry 3 effective on January 22, 2009, only one week before the retention point list was calculated, had only 149.80 retention points, less than Ms. Temple's retention points.

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The witness then identified Appellee's exhibits 21 through 24 and 17, as the layoff notices and status of both of the Appellants and the statement of rationale that was provided by the Appellee in this matter.

There was no cross-examination by either of the Appellants of this witness.

The Appellee's next witness to testify was Ms. Karen Giblin, the Administrative Assistant of the Bureau of Records Central Warrants and Identification. The witness testified that she held her present position since 1993 and that she reports directly to Major Dattilo, along with having seven subordinate supervisors reported directly to her.

The witness then identified Appellee's Exhibit 25 as a January 6, 2009, letter which she helped prepare for Major Dattilo which was sent to Ms. Gail Wright within the administrative office regarding Margarita Mergy. The witness testified that Major Dattilo had questioned whether Ms. Margarita Mergy was in the proper classification after a meeting of managers had occurred in late November or early December 2008, where it was discussed whether employees under their command were properly classified, prior to implementing the layoff procedures. The witness testified that Ms. Margarita Mergy who was a Court Data Entry 2 working in the sex offender unit of the records division for approximately 5 1/2 years, who in the absence of Larry Guthier who was classified as a Court Data Entry 3, had been picking up his duties and that she was responsible for writing warns, registration of sex offenders, making sure mailings are done on time and accurately, as well as arresting offenders who come in with outstanding warrant or capias. Further, the witness explained that as a result of Major Dattilo's letter a job audit was performed on Ms. Margarita Mergy's position, where ultimately it was found that she should be reclassified to a Court Data Entry 3.

When questioned, the witness testified that Ms. Mergy's job duties, revealed among other things, that she received tips about sexual offenders, she would investigate those tips, she would issue warrants, and initiate any arrests. Further, the witness explained that Ms. Mergy also had peace officer training, so she could arrest, along with having the power of signing warrants and arresting any Volunteers of America walk offs, after she was notified of the same. Additionally, the witness explained that among Ms. Mergy's many duties she was a spokesperson for the

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sexual offenders unit and that she would run the unit in the absence of Larry Guthier and Adam Breeze. Moreover, the witness explained that when she compared the duties of Ms. Margarita Mergy to that of Larry Guthier, they were almost identical.

Further, when questioned, the witness testified that both Ms. Temple and Ms. Secoy did not work in the same sex offender unit, but in the jail records unit.

Upon cross-examination by Ms. Temple, the witness when questioned explained that they had not considered promoting Ms. Mergy prior to the implementation of the impending layoffs since the economic conditions had not been favorable. Moreover, the witness explained that it was only brought up to see if they could reclassify Ms. Mergy's position after the Hamilton County's human resource Department had explained that in previous job abolishment's that resulted in layoffs, some people were not properly classified. Additionally, when questioned, the witness testified that Mr. Adam Breeze did work in the sexual offenders unit, but that he only performed identification work.

Upon cross-examination by Ms. Secoy, the witness identified Appellee's Exhibit 26 as the classification specification of a Court Data Entry 3 position, the classification specification which Ms. Margarita Mergy was placed into as result of the job audit. It should be noted that Appellee's Exhibit 18 is the classification specification of a Court Data Entry 2 position, the position held by both of the Appellants herein. It was noted by the undersigned that under the Court Data Entry 2 classification specification the person occupying that position is to review and interpret legal documents/forms and extracts data; operates personal or Court management systems computer to enter data and update information from complex court related (legal) documents; produces computer generated records and reports of a legal nature; reviews and verifies quality of data input; serves as liaison with law enforcement/court related agencies to clarify or confirm data. However, on the other hand, under the Court Data Entry 3 classification specification the person occupying that position interpret laws related to division policies and procedures to perform complex specialty duties and takes corrective action to resolve complicated problems including, but not limited to issuing warrants and notifying law enforcement agencies of the corrections.

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The Appellee's next witness to testify was Evelyn Stephenson, a Classification and Compensation Specialist for the Hamilton County Department of Human Resources. When questioned, the witness testified that she has held her present position for approximately 15 years and that her duties included, but were not limited to reviewing the class plan of Hamilton County, advising the County agencies regarding human resource issues, along with performing job audits. When questioned, the witness testified that in late November or early December 2008 Ms. Gail Wright from the Hamilton County Sheriff's office contacted her office and talked about the upcoming and or impending layoffs with the Hamilton County Sheriff's office. The witness recalled stating to Ms. Wright that the Sheriff's office needs to make sure its table of organization is correct, by ensuring that everybody is in the appropriate classifications, prior to requesting the layoffs to be performed. As a result, the witness testified that the Sheriff's office requested a job position audit of Ms. Margarita Mergy's position.

The witness testified that she then performed a position audit of Ms. Margarita Mergy's position. The witness testified she then pulled both the classification specifications for a Court Data Entry 2 and Court Data Entry 3 positions. The witness identified Appellee's Exhibit 26 and 18 as the classification specifications for a Court Data Entry 2 and Court Data Entry 3 position, respectively. Further, the witness identified Appellee's exhibits 27 and 28 as the job descriptions for a Court Data Entry 2 and Court Data Entry 3 positions, respectively. The witness identified Appellee's the Exhibit 29 as her analysis wherein she made the determination that Ms. Margarita Mergy should be reclassified to a Court Data Entry 3. The witness also identified Appellee's Exhibit 30 as a letter dated January 20, 2009, back to Sheriff Leis wherein the human resources department reviewed the job duties of Ms. Margarita Mergy and determined that she should be reassigned and/or reclassified to the position of a Court Data Entry 3, effective January 22, 2009.

When questioned, the witness testified that she was aware of impending layoffs for the Sheriff's office, but not for the particular position of Ms. Margarita Mergy's.

Upon cross-examination by Ms. Temple, the witness testified that she received a request for a job audit on or about January 13, 2009 and identified

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Appellee's Exhibit 31 as the position analysis questionnaire that was submitted on behalf of Ms. Margarita Mergy. Further, when questioned, the witness identified Appellee's Exhibit 3 the Hamilton County Personnel Department Administrative Regulations, chapter 3 position audits and classification assignment, more specifically 3-01(B) and (F) and testified that these rules laid out were followed with the exception that this was not an on-site audit.

No cross examination questions were asked by Ms. Secoy.

Appellant, Tonya Temple, began her case-in-chief by calling herself to the witness stand. Ms. Temple testified she has been employed by the Hamilton County Sheriff's office for approximately 8 years in the position of a Court Data Entry 2. The witness identified Appellee's Exhibit 25, and wondered why it took 5 1/2 years for the Sheriff's office to reclassify Ms. Margarita Mergy one week prior to the submission of the retention points list, and simply not promote her sometime ago.

The witness identified Appellant's exhibit D, page H, which revealed that although Ms. Margarita Mergy was reclassified effective January 22, 2009, the agency was withholding her salary adjustment for her one-year probationary period. Additionally, the witness identified Appellant's exhibit J, page M, as the September 10, 2009 budget forecast regarding the 2010 general fund budget forecast impact statements. Moreover, the witness identified Appellant's exhibit J, pages N through S, which for all intents and purposes revealed that the Sheriff's office was still facing another 33.5 full-time equivalent employee reduction in the future.

FINDINGS OF FACT

1. I find that the Appellants, Tonya Temple and Vonda Secoy, were employed by the Hamilton County Sheriff's Office within the Jail Records Unit as Court Data Entry 2s.

2. The reasons for the abolishment and resultant layoff of the Appellants' position were for reasons of economy and lack of funds. At the start record hearing the parties entered into a stipulation that the Hamilton County Sheriff's Office rationale that was provided to the Appellants was not going to be contested by the Appellants and that the rationale was fine.

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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 Appellants. Further, that compliance included providing materials to its own Human Resource Department, including the calculation of the Appellant's retention points which the Human Resource Department verified and which demonstrated that there were no employees in the Appellant's classification series in which the Appellants could have displaced.

4. The Hamilton County Personal Department Administrative Regulations regarding the verification of retention points is noted under chapter 41-08. Further, movement into and out of affected classifications is noted under section 41-08 (F) which states, "Once an appointing authority has submitted the list of retention points and employees to the County personnel department, the appointing authority may not move employees into or out of affected classifications by means of promotions, intra-office transfers, voluntary demotions, lateral or classification changes, or reassignments, except that transfers out of an agency or implementation of the findings of a position audit completed prior to the date of the submission of the list for verification of retention points shall be implemented."

5. The evidence revealed that the Appellee submitted the list for retention points for all of the affected employees on January 29, 2009.

6. The issue of bad faith was raised by the Appellants in that their fellow co-worker, Margarita Mergy, who was previously classified as a Court Data Entry 2, the same as them, who was one week prior to the submission of the retention point list effective January 22, 2009, was reclassified to a Court Data Entry 3, who had 149.80 retention points, compared to 150.54 retention points for Tonya Temple and 144.10 retention points for Vonda Secoy who remained classified as Court Data Entry 2s. The evidence revealed by a preponderance that the Appellee agency acting upon the Hamilton County Human Resources Department's advise, due to previous job abolished actions within the County, tried to ensure that the employees under the Hamilton County Sheriff's Office were in their proper classifications prior to the submission of the retention point list for the affected classifications and/or positions. Further, the evidence revealed that while Ms. Margartia Mergy was

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reclassified from a Court Data Entry 2 to a Court Data Entry 3, one week prior to the submission of the retention point list, a process which began on January 13, 2009, her duties clearly were different than both of the Appellants' duties as a Court Data Entry 2, as she received tips about sexual offenders, she would investigate those tips, she would issue warrants, and initiate any arrests. Moreover, it was explained that Ms. Mergy also had peace officer training, so she could arrest, along with having the power of signing warrants and arresting any Volunteers of America walk offs, after she was notified of the same. Additionally, it was revealed that among Ms. Mergy's many duties she was a spokesperson for the sexual offenders unit and that she would run the unit in the absence of Larry Guthier and Adam Breeze. Thus, the undersigned finds that the Appellant's did not prove by a preponderance of the evidence that the agency acted in bad faith in reclassifying Margartia Mergy from a Court Data Entry 2 to a Court Data Entry 3 one week prior to the submission of the retention point list, as the agency can pursuant to the Hamilton County Personal Department Administrative Regulations can move employees into and out of affected classifications prior to the submission of any retention point list, and ultimately eliminating both of the Appellants' positions within the agency.

CONCLUSIONS OF LAW

In theses layoff appeals, the Appellee must prove by a preponderance of the evidence that Appellant Temple's and Appellant Secoy'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.

Pursuant to the Hamilton County Personnel Department Administrative Regulations Chapter 41 covers the procedures for effectuating layoffs within Hamilton County. Regulation 41-01(A) states that employees in the classified civil service of county offices may be laid off whenever a reduction in force is necessary due to a lack of funds, lack of work, or the abolishment of positions. Regulation 41-01 (C) states if an appointing authority abolishes positions in the civil service, the abolishment of positions and any resulting displacement of employees shall be

made in accordance with sections 124.321 to 124.327 of the Ohio Revised Code and the regulations of this chapter.

The reasons for the abolishment of the Appellants' position were for reasons of economy and lack of funds. At the start record hearing the parties entered into a stipulation that the Hamilton County Sheriff's Office rationale that was provided to the Appellants was not going to be contested by the Appellants and that the rationale was fine. As such, the undersigned will not go into any analysis regarding the basis for the rationale for reasons of economy and lack of funds. However, what was contested by the Appellants was the displacement rights that they were afforded.

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

(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.

If, after exercising displacement rights, an employee is subject to further layoff action, the employee's displacement rights shall be in accordance with the classification from which the employee was first laid off.

The director of administrative services shall verify the calculation of the retention points of all employees in an affected classification in accordance with section 124.325 of the Revised Code.

(B) Following the order of layoff, an employee laid off in the classified civil service shall displace another employee within the same appointing authority or independent institution and layoff jurisdiction in the following manner:

(1) Each laid-off employee possessing more retention points shall displace the employee with the fewest retention points in the next lower classification or successively lower classification in the same classification series.

(2) Any employee displaced by an employee possessing more retention points shall displace the employee with the fewest retention points in the next lower classification or successively lower classification in the same classification series. This process shall continue, if necessary, until the employee with the fewest retention points in the lowest classification of the classification series of the same appointing authority or independent institution has been reached and, if necessary, laid off.

(C) Employees shall notify the appointing authority of their intention to exercise their displacement rights, within five days after receiving notice of layoff. This division does not apply if the director of administrative services has established a paper lay-off process pursuant to division (E) of section 124.321 of the Revised Code that includes a different notification requirement for employees exercising their displacement rights under that process.

(D) No employee shall displace an employee for whose position or classification there are certain position-specific minimum qualifications, as established by the appointing authority and reviewed for validity by the department of administrative services, or as established by bona fide occupational qualification, unless the employee desiring to displace another employee possesses the requisite position-specific minimum qualifications for the position or classification.

(E) If an employee exercising displacement rights must displace an employee in another county within the same layoff district, the displacement shall not be construed to be a transfer.

(F) The director of administrative services shall adopt rules under Chapter 119. of the Revised Code for the implementation of this section.

* * * * *

Additionally, during to the pre-hearing, the undersigned found that the Appellee complied with the relevant procedural and notice requirements of the Ohio Revised Code and Ohio Administrative Code in implementing their respective layoffs.

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 Appellants' 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;

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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. Therefore, this Board concludes that the Appellee has substantially complied with all of the applicable statutes and rules. (See, Ohio Administrative Code Section 123:1-41-10(B) and Ohio Administrative Code Section 124.321 through 124.328).

PERMENET DELETION OF APPELLANT'S POSITION

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A critical guideline in the abolishment of a civil service position is that it must be done in good faith. *Weston v. Ferguson* (1983) 8 Ohio St. 3d 52. In the instant appeal before this Board, the Appellee has presented testimony affirming that the appointing authority, the Hamilton County Sheriff's office, by reasons of economy and lack of funds, sought to decrease its costs of its operations by eliminating approximately four (4) positions, including both of the Appellants' positions as Court Data Entry 2s, within its 12.4 million dollar budget cut from the Sheriff's office budget compared to the 2008 budget, within the corrections divisions budget, including an additional elimination of 53 employee positions within different divisions within the Sheriff's office. As previously stated, the above noted rationale for the abolishment and resultant layoff of the positions was not contested by either of the Appellant's.

APPELLANT'S TEMPLE'S BAD-FAITH ARGUMENT REJECTED

Appellant Temple raised the notion of bad faith in her testimony and in her argument with regard to the abolishment and resultant layoff of her position. Appellant Temple's primary argument at record hearing was that the reclassification of Ms. Mergy's position one week prior to the Appellee submitting the retention point list was done in bad faith, which would have allowed her to stay on, and that Ms. Mergy, along with Ms. Secoy, should have been laid off. The Appellant, in her argument, stated that the appointing authority was simply trying to subvert the civil service system by simply reclassifying someone, Ms. Mergy, one week prior to the implementation of the layoff in her same classification as a court data entry 2, with less retention points.

The Appellee explained that pursuant to the Hamilton County Personal Department Administrative Regulation 41-08 which states once an appointing authority has submitted the list of retention points and employees to the County personnel department, the appointing authority may not move employees into or out of affected classifications by means of promotions, intra-office transfers, voluntary demotions, lateral or classification changes, or reassignments, except that transfers out of an agency or implementation of the findings of the position audit completed prior to the date of the submission of the list for verification of retention points shall be implemented. In the case at hand, the evidence revealed that the retention point list was submitted to the County personnel department on January 29, 2009, while

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Margartia Mergy was reclassified from a Court Data Entry 2 to a Court Data Entry 3, on January 29, 2009, one week prior to the submission of the retention point list, a process which began on January 13, 2009.

Therefore, the date that no movement could take place into or out of affected classifications was January 29, 2009, per the above rule. Ms. Mergy encumbered the position of Court Data Entry 3 effective January 22, 2009, so there is no violation of the rule.

The evidence also revealed by a preponderance that the Appellee agency acting upon the Hamilton County Human Resources Department's advise, due to previous job abolished actions within the County, tried to ensure that the employees under the Hamilton County Sheriff's Office were in their proper classifications prior to the submission of the retention point list for the affected classifications and/or positions. Further, the evidence revealed that while Ms. Margartia Mergy was reclassified from a Court Data Entry 2 to a Court Data Entry 3, one week prior to the submission of the retention point list, a process which began on January 13, 2009, her duties clearly were different than both of the Appellants' duties as a Court Data Entry 2, as she received tips about sexual offenders, she would investigate those tips, she would issue warrants, and initiate any arrests. Moreover, it was explained that Ms. Mergy also had peace officer training, so she could arrest, along with having the power of signing warrants and arresting any Volunteers of America walk offs, after she was notified of the same. Additionally, it was revealed that among Ms. Mergy's many duties she was a spokesperson for the sexual offenders unit and that she would run the unit in the absence of Larry Guthier and Adam Breeze. Thus, the undersigned concludes that the Appellants did not prove by a preponderance of the evidence that the agency acted in bad faith in reclassifying Margartia Mergy from a Court Data Entry 2 to a Court Data Entry 3 one week prior to the submission of the retention point list. Therefore, Appellant Temple's argument is without merit. Although, the Appellee agency could have looked into reclassifying Ms. Mergy sometime earlier in the process, so as to avoid the appearance of impropriety, while acting within the bounds of the law, in the future.

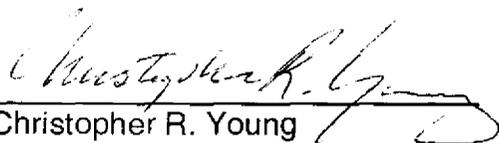
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APPELLANT'S SECOY'S BAD-FAITH ARGUMENT REJECTED

Ms. Secoy's primary argument at the record hearing was that she under chapter 41-11(E) regarding displacement rights of employees; classifications with parenthetical subtitles, should have been allowed to displace Data Entry Operator 1s, 2s and/or 3s, classification specification numbers 11311, 11312, and/or 11313, respectively, whom she had more retention points than. Upon reading the regulation noted above, employees in positions in a classification series that contains parenthetical subtitles may displace employees and positions with parenthetical subtitles. The evidence revealed that the classification series of Court Data Entry positions were a stand alone classification series as opposed to the classification series of the Data Entry Operator classification series, or a parenthetical subtitle of the classification itself. Thus, the undersigned concludes that the Appellant did not prove by a preponderance of the evidence that the agency acted in bad faith in this regard.

RECOMMENDATION

The Appellee has demonstrated by a preponderance of the evidence that the abolishment and resultant layoffs of the Appellants positions were made in compliance with the requirements regarding layoffs and displacement that 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.*, and that the Appellee substantially complied with all the procedural requirements set forth in Ohio Administrative Code Section 123:1-41-10(B). Additionally, the Appellants have not met their burden of proving by a preponderance of the evidence that bad faith was present in their displacement and layoff. Therefore, it is **RECOMMENDED** that the instant job abolishment and subsequent layoffs be **AFFIRMED**.


Christopher R. Young
Administrative Law Judge