

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

George Nowels,

Appellant.

Case Nos. 09-ABL-11-0471
09-LAY-11-0472

v.

Department of Health,

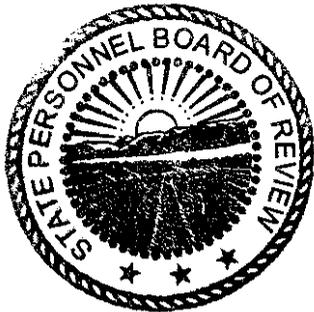
Appellee

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 Appellant's Abolishment and Layoff from his position, be **AFFIRMED**, pursuant to O.R.C. §§ 124.03 and 124.328.



Lumpe - 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, January 7, 2011.



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**

GEORGE NOWELS,

Appellant

v.

DEPARTMENT OF HEALTH,

Appellee

Case Nos. 09-ABL-11-0471
09-LAY-11-0472

November 24, 2010

JAMES R. SPRAGUE
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These causes came to be heard on September 14, 2010 and September 15, 2010. Present to the hearing was Appellant, who was represented by Samuel N. Lillard, Attorney at Law. Appellee, Ohio Department of Health (ODH), was present through its designee, Chris Keppler, Labor Relations Officer, and was represented by Mahjabeen F. Qadir, Assistant Attorney General. By agreement of the parties, post hearing briefs were filed on or before November 18, 2010 and the instant records were thereafter closed.

These causes come on due to Appellant's November 5, 2009 timely filing of appeals from the abolishment of Appellant's position of Management Analyst Supervisor (MAS) 1 (Syphilis Elimination Coordinator) (SEC) and his subsequent layoff therefrom. Appellant received notice of these actions *via* hand delivery on November 5, 2010. The effective date for these actions was November 21, 2010.

Jurisdiction over the subject matter of these appeals was established pursuant to R.C. 124.03 and R.C. 124.328.

CONDOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

At hearing, six witnesses testified. **George Nowels, Appellant**, served as the SEC for Appellee. **Jen Keagy** serves as ODH's Supervisor of Health Planning. **Joe Andrews** serves as a Human Resources Administrator (HRA) 2 with ODH. **Chris Keppler** serves as a LRO with ODH and also served as its designee for the

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two instant appeals. **Roger Suppes** serves as a Division Chief for ODH. **Nancy McClure** served as an ODH Acting Program Manager from 2006 through 2008 and, until her June 2009 retirement, also served as an ODH Program Manager.

A distillation of the testimony presented indicates the following.

Background

Appellant's position was abolished and Appellant was laid off from his position with ODH, effective November 21, 2009. Appellee's stated rationale for these actions was "for reasons of economy". Prior to Appellant's layoff, Appellant had served as ODH's SEC, coordinating syphilis prevention on a statewide basis with other public health staffers and other interested persons throughout the State. In this capacity, Appellant frequently drove to and stayed overnight in locations away from Lucas County, including those in Columbus, Cleveland, and Cincinnati.

Appellant's residence was located in Toledo. In 2002, ODH had designated Lucas County as the Headquarters County for Appellant's position. In this position, Appellant traveled a great deal to various parts of the State to effectuate this coordinating effort.

On or about June 5, 2009, Appellant was apprised that his position was being contemplated for transfer to Columbus (Franklin County). Appellant thereafter filed an appeal with this Board and that matter was ultimately dismissed for lack of evidence that any transfer ever actually transpired.

Appellant points to the actions that led up to this contemplated transfer and the actions Appellee took thereafter as evidence that Appellee operated in "bad faith" to attempt to eliminate his employment with ODH in any manner that it could effectuate. He asserts this effort ultimately succeeded with the elimination of his position on November 21, 2009.

On November 5, 2009, Appellant received his notice of abolishment and layoff *via* hand delivery. Appellant thereafter timely filed his appeals with this Board from those actions.

New Direction: More money for local health departments

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ODH's asserted reasoning for abolishing Appellant's position and thereafter laying him off was that the position was no longer needed and was being written out of the budget for the following year. Appellant's position was covered in whole by a federal grant. This included his pay and other direct and indirect costs. It also included the cost of his travel statewide which approximated \$12,000 for the previous year.

ODH had changed its approach to syphilis prevention/elimination, outreach, and education. This new approach called for a more local response and staffing of outbreaks and prevention and called for ODH to work more in concert with local authorities (e.g. general, county, and city boards of health).

The genesis of this change was the belief that the more local the response, the more effectively scarce funding dollars could be expended. Thus, ODH would now assist the local authorities who were more knowledgeable of local needs and who were geographically close to the problem. This change in direction also reduced - but did not eliminate - the need for and expense associated with extensive ODH statewide travel for this purpose.

When ODH submitted its proposed federal budget request for CY 2010, it did not request the approximately \$130,000 dollars to cover Appellant's position. Conversely, ODH indirectly requested an approximately equivalent amount for aid to local health departments. As a result, Appellant served on a prorated basis for FY 2010 and was laid off effective November 21, 2009.

There is a dispute in the record as to the amount of travel money saved by the elimination of Appellant's position but offset by travel that was still needed. Yet, the net amount of direct travel savings appears to amount to at least several thousand dollars.

Appellee's posture

Appellee argues, credibly, that it was able to reallocate and was thus able to provide about \$126,000 more to local health departments in CY 2010; as a result of eliminating Appellant's position and by then indirectly using equivalent funds for local support.

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This was accomplished, Appellee further argues, by successfully reallocating Appellant's duties to six other positions that were already fully funded, namely to Ms. Keagy's position and to the positions of five Human Service Program Consultants (HSPC). Along with that reallocation of duties, money previously allocated to Appellant's position was equally divided among up the five HSPCs, freeing up money to provide more direct aid to the local health departments.

Appellee additionally argues that this reallocation of duties did not result in any significant additional travel expense for any of these six fully funded positions.

Appellant's posture

Appellant argues, conversely, that Appellee could have requested funds to cover all of Appellant's expenses (*i.e.* pay, benefits, other direct and indirect costs, and travel) but simply chose not to request that money. Further, Appellee argues, travel expenses are still being incurred under the new outreach delivery system.

As well, Appellant argues that he was delivering services as effectively as is the new system. This is because, he asserts, he, too, was knowledgeable about both the historical context and the specifics of outbreaks in various geographical areas and of the staff and resources available in those areas to combat such outbreaks.

Finally, albeit more impliedly, Appellant appears to argue that Appellee targeted his position for elimination out of "bad faith".

Findings

Based on the testimony presented, evidence admitted, and post hearing briefs submitted by the parties, I make the following Findings:

I find, and it is not contested, that Appellee complied with all pertinent procedural prerequisites for the abolishment of an encumbered classified state position and for the laying off of the incumbent therein, in accordance with R.C. 124.321 *et seq.* and O.A.C. 123: 1-41-10 *et seq.*

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Next, I find that, by abolishing Appellant's position and laying Appellant off, Appellee saved, and thus was able to reallocate, approximately \$126,000 dollars that it otherwise would have been required to spend on Appellant's position.

As well, although the evidence is less compelling, I find that Appellant saved at least several thousand dollars in direct travel expenses by effectuating this abolishment.

Clearly, then, from a *factual* standpoint, Appellee has justified its rationale of eliminating Appellant's position for reasons of economy.

CONCLUSIONS OF LAW

This Board is presented with the question of whether Appellee has demonstrated by a preponderance of the evidence that its rationale of abolishment (*i.e.* "for reasons of economy") is substantiated as a *matter of law* by Appellee's estimated amount of savings with respect to salary, benefits, and other matters associated with the abolishment of the position. Based on the findings set forth, above, and for the reasons set forth, below, this Board should find that Appellee has met that burden.

We have found, above, that Appellee has met its burden to show its substantial compliance with all pertinent Revised Code and Ohio Administrative Code procedural prerequisites.

Further, as will be shown, below, Appellee has met its burden to show its substantive compliance as a matter of law in the two instant cases.

Finally, to the extent Appellant raised the issue of "bad faith", Appellant failed to establish his burden regarding that claim. Appellant did not demonstrate by a preponderance of the evidence either that Appellee bore a personal animus toward Appellant or that Appellee effectuated the instant abolishment and layoff in order to subvert the State's civil service laws.

Accordingly, this Board should affirm Appellee's abolishment of Appellant's position and the layoff that resulted therefrom.

Discussion

R.C. 124.321 (D)(1) establishes the reasons for which an appointing authority may abolish positions. Those reasons include “ ... for reasons of economy ...”.

R.C. 124.321 (D)(2)(a) permits an appointing authority that is otherwise in compliance with all pertinent requirements and that is contemplating an abolishment for reasons of economy to effectuate that abolishment “ ... based on the appointing authority’s estimated amount of savings with respect to salary, benefits, **and other matters** associated with the position’s abolishment ...”. (emphasis added)

In the instant cases, Appellee estimated its savings and specifically contemplated the amounts it would save regarding salary, benefits, and travel expenses if it abolished Appellant’s position. Indeed, one of the driving forces of the abolishment was that Appellee had altered its prevailing philosophy and sought to augment ODH direct aid to Ohio’s local health departments.

By abolishing Appellant’s position and reducing the travel associated therewith, Appellee estimated its savings based on Appellant’s salary, his benefits, and his travel expenses (*i.e.* “other matters” – See R.C. 124.321 (D)(2)(a)). Thus, Appellee’s estimated savings and the three categories constituting same meet the criteria set forth in R.C. 124.321 (D)(2)(a).

Further, it appears that Appellee did, in fact, capture and redirect these same funds in regard to Appellant’s salary and direct/indirect benefits and was able to capture and redirect at least a portion of travel expenses it estimated it would save by abolishing Appellant’s position.

Appellee’s recapturing and redirecting of these funds appears to have furthered its goal of providing more effective support for *and a concomitant increase in funding to* local health departments to address pertinent outbreaks and prevention.

Thus, Appellee has demonstrated its compliance with the requirements and parameters established to abolish a position for reasons of economy set forth in R.C. 124.321 (D)(2)(a). Accordingly, we need proceed no further with an inquiry

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regarding the requirements and parameters for abolishing a position set forth in R.C. 124.321 (D)(2)(a)(i) *et seq.*

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** the **ABOLISHMENT** of Appellant's position and **AFFIRM** the resulting **LAYOFF** of Appellant from that position, pursuant to R.C. 124.03 and R.C. 124.328.



JAMES R. SPRAGUE
Administrative Law Judge

JRS: