

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Resa Moore,

Appellant,

v.

Case No. 10-ABL-03-0054

Franklin County,
Board of Alcohol Drug Addiction and Mental Health,

Appellee.

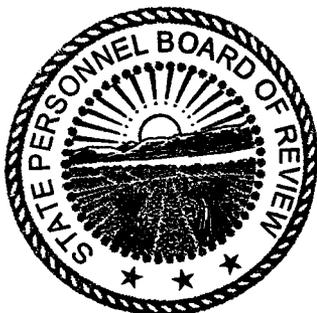
ORDER

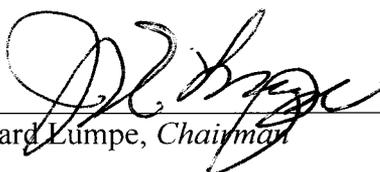
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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

Wherefore, it is hereby **ORDERED** that the abolishment of Appellant and her subsequent layoff, be **AFFIRMED**, pursuant to O.A.C. §§ 124-7-01 and 123:1-41-O(B).

Lumpe - Aye
Sfalcin - Aye
Tillery - Aye





J. Richard Lumpe, *Chairman*

CERTIFICATION

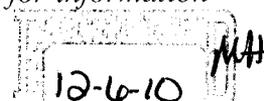
The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitute ~~(the original)~~ a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, December 6, 2010.



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**

Resa Moore,

Case No. 10-ABL-03-0054

Appellant,

v.

October 20, 2010

Franklin County,
Board of Alcohol, Drug Addiction, and
Mental Health,

Appellee.

BETH A. JEWELL
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on due to Appellant's timely appeal of her March 11, 2010, layoff from employment with Appellee. A record hearing was held on August 5, 2010. Appellant was present at the record hearing and was represented by Daniel H. Klos, attorney at law. Appellee was present at record hearing through its designee, Dr. Kathryn Burns, Systems Chief Clinical Officer; and was represented by Denise L. DePalma and Scott J. Gaugler, assistant prosecuting attorneys.

JOINT STIPULATIONS

The parties stipulated to the following: On February 25, 2010, Appellee notified Appellant of her layoff due to a combination of a lack of work and economic reasons, with an effective date of March 11, 2010. The notice satisfied the requirements set forth in Ohio Adm. Code Rule (O.A.C.) 123:1-41-10. Appellee correctly computed Appellant's retention points. Appellant did not exercise any displacement rights. Appellant timely filed a notice of appeal of her job abolishment.

STATEMENT OF THE CASE

Appellee called two witnesses in its case in chief: David Royer, Chief Executive Officer; and designee, Dr. Burns. Appellant testified in her case in chief, and called two additional witnesses, Bernadine Hunter, who served as Appellee's Vice President for Human Resources from November 1991 through April 2009; and Matilda Woods, Appellee's Director of Human Resources. References to witness

testimony are indicated parenthetically below. References to Appellant's Exhibits in the record are indicated parenthetically by "Exh.," followed by the exhibit letter(s). References to Appellee's Exhibits in the record are indicated parenthetically below by "Exh.," followed by the exhibit number(s). The testimony and exhibits form the basis for the Findings of Fact set forth below.

FINDINGS OF FACT

Appellee funds, evaluates, and plans for mental health and alcohol/drug addiction treatment services in Franklin County and purchases care from community experts to provide these services. On September 6, 2006, Appellee hired Appellant to fill the position of Facilities Evaluator. The primary responsibility of the Facilities Evaluator was to conduct on-site inspections to ensure that the apartments housing the consumers of the treatment services purchased by Appellee met minimal fire and life safety requirements. (Exh. 5)

At the time Appellee abolished the Facilities Evaluator position on March 11, 2010, Appellee had experienced a \$6,080,611 reduction in its funding. After evaluating the positions reporting to her, Dr. Burns determined that performing inspections took Appellant approximately 80 half-days per year. Dr. Burns also found that the inspections performed by the Facilities Evaluator were also performed by other agencies. Consequently, through the Facilities Evaluator, Appellee was duplicating work already being performed.

Appellee receives federal, state, and local funding in the form of block grants, a local tax levy, state general revenue fund dollars, and Title 19 Medicaid funds. Appellee uses the funds to contract for its clients' behavioral health care needs. Appellee is committed to devoting at least 95 percent of its funding to client programming, and to using no more than 5 percent of its budget on overhead costs. To that end, as funding challenges have been presented, Appellee has decreased its staff from 64 employees in 2000 to 49 employees today. Over the past three years, \$14 million in funding has been cut from Appellee's budget. In responding to these funding cuts, CEO Royer first tried to avoid layoffs by not filling positions vacated by attrition and retirements; downgrading existing positions to save salary costs, consolidating positions, and reorganizing the reporting structures. For example, vacant Housing Specialist, Court Coordinator, and Network Services Manager positions have not been filled. The Human Resources position was downgraded from a Vice President to a Director-level position. (Exhibit 1 contains organizational charts that illustrate the changes.) CEO Royer also eliminated travel expenses and reduced capital expenditures. For fiscal year 2010, Appellee faced a

\$6 million funding cut. (Exh. 2) At this point, CEO Royer realized that layoffs were necessary. Four positions were eliminated in 2010: two Member Services Claims Examiner 2s, one QI Specialist, and the Facilities Evaluator position held by Appellant. (Exh. 4)

In fall 2009, CEO Royer asked the director-level staff to assist him by evaluating positions that could be cut. He asked Dr. Burns to analyze whether each position in her division was justified by workload. Dr. Burns undertook this evaluation and recommended that the Facilities Evaluator position be abolished. (Exh. 3) Abolishing the Facilities Evaluator position saves Appellee \$59,075 in annual salary and benefits. (Exh. 4)

Dr. Burns based her recommendation on several factors. At least 90 percent of Appellant's job duties involved conducting fire and life safety inspections of the residential facilities Appellee leases on behalf of its clients. After meeting with Appellant, Dr. Burns determined that completion of this work took approximately 80 half-days each year. (Exh. 6) Dr. Burns also found that the Community Housing Network ("CHN") and the Columbus Metropolitan Housing Authority ("CMHA") conduct the same fire and life safety inspections that Appellee's Facilities Evaluator did. Dr. Burns also checked with the county ADAM-H Boards in Cuyahoga, Hamilton, and Summit counties and found that these counties were no longer employing facilities evaluators. In light of Appellee's budget situation, the less-than-full-time workload of the Facilities Evaluator position, and the redundant nature of the work, in that two other local agencies conducted the same inspections, Dr. Burns recommended abolishment of the Facilities Evaluator position.

Dr. Burns and CEO Royer reviewed Appellee's obligations regarding facilities inspections under Ohio Revised Code § 340.03(A)(14), and concluded that the statute requires only that Appellee assure that inspections are done, not that Appellee perform the inspections. Appellee's Housing Director is now assigned to ensure that the CHN and CMHA are conducting the inspections.

Ten percent of Appellant's job duties involved Appellee's own building fire safety. These duties are now coordinated by Human Resources Director Woods, who chairs Appellee's Life Safety Committee.

Ohio Department of Job and Family Services Administrative Code Rule 5101:3-27-06, the "2006 Rule," required Appellee to conduct Compliance Audits of its Medicaid service contracts. Will Reeves, a 20-year employee, held the position of Compliance Auditor and performed the bulk of this work. From 2006-2008,

Appellant assisted with Medicaid Compliance Audits; this work comprised 10 percent of her job duties through 2008. In 2006, Appellant worked approximately 8 days on Medicaid Compliance Audits; in 2008, 23 days. In October 2008, Medicaid audit work ceased following the rescission of the 2006 Rule. After the change in the rule, Mr. Reeves' position title was changed to Utilization Review/Utilization Management ("UR/UM") Analyst. Mr. Reeves was assigned to audit non-Medicaid contracts; the auditing duties remained the same. The change in Mr. Reeves' position title occurred during the 2009 fiscal year, before the \$6 million budget cut for FY 2010 was announced. The need for the UR/UM Analyst work was predicated upon the shrinking amount of budgetary dollars available for Appellee to spend as the need for non-Medicaid behavioral health services continued to grow. Appellee needed to ensure that it was maximizing the value of the contracted services so that it could maintain access to needed services in an environment of budget cuts. UR/UM audits would assist Appellee in this task.

CONCLUSIONS OF LAW

Abolishment means the permanent deletion of a position from the organization or structure of an appointing authority predicated upon a lack of continued need for the position due to reorganization for efficient operation, economy, or lack of work. R.C. 124.321(D). This definition presents three tests that must be met in order to abolish a position. First, there must be a permanent deletion of a position from the organization. Second, that deletion must be made due to a lack of continued need for the position, expected to last over one year. Third, the lack of continued need must be justified by either reorganization for efficient operation, reasons of economy, or lack of work. O.A.C. 124-7-01(A)(1). In order to successfully defend a contested abolishment, not only must an appointing authority demonstrate adequate justification for the abolishment of a position, but also it must also show compliance with the procedural requirements set forth in the administrative code.

In addition, an appointing authority must successfully rebut a valid prima facie showing of "bad faith," should one be demonstrated. A prima facie case of bad faith may be established by demonstrating an attempt to subvert the civil service system to allow the selection of handpicked employees to fill jobs that would have been available to workers based on seniority and retention points. See Blinn v. Bureau of Employment Services (1985), 29 Ohio App.3d 77.

The parties stipulated that Appellee complied with the procedural aspects of the abolishment of Appellant's position. Appellant's contention at record hearing

was that Appellee's justification for the abolishment of Appellant's position is not supported by the facts and that the abolishment was undertaken to subvert the civil service laws and to retain a less-qualified employee.

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

Appellant argues that she should have been given the opportunity to do other work, as Mr. Reeves was after the 2006 Rule was rescinded. However, this argument does not demonstrate bad faith or otherwise rebut Appellee's reasons for abolishing the Facilities Evaluator position. First, both the change in Mr. Reeves' position title and the change in the type of contracts he was auditing occurred in fiscal year 2009, before Appellee needed to identify positions for possible abolishment. Appellant also argues that she should have been considered for the UR/UM Analyst position. The UR/UM Analyst position was not posted because it involved a change in job title only, not duties: Mr. Reeves' work continued to consist of conducting audits of service contracts; the only change was in the type of contracts being audited. While not disputing Appellant's performance or qualifications, Mr. Reeves' position was not one into which Appellant could have bumped under any circumstances. Appellant never held a full-time auditing position with Appellee, and Mr. Reeves had significantly greater years of service with Appellee.

The situation that existed when Appellant's position was abolished was different from the situation that existed when the 2006 Rule was rescinded. In fiscal year 2010, Appellee needed to cut positions to balance its budget; the primary job duties performed by the Facilities Evaluator were found to be duplicative of other agencies' work; these duties were determined to be less than full time. The duplicative nature of the duties and the cost savings identified by Appellee are legitimate business reasons that support Appellee's decision to abolish the Facilities Evaluator position for lack of work and economic reasons. Appellee was not in a situation in which it could find other work for Appellant to do; instead, Appellee was facing a budget shortfall and needed to economize by cutting staff.

Appellant also claimed that she was not treated respectfully by Appellee's managers. Appellant testified that she did not feel welcomed when Appellee reorganized and Appellant's position came under Dr. Burns' division. Appellant also suggests that Appellee's treatment of her when she applied for the Housing Director position that was filled by internal applicant Ron Kadylak in 2009 is indicative of a bad faith motive on Appellee's part.

The evidence in the record regarding Appellee's managers' personal treatment of Appellant does not lead to a finding of bad faith. Dr. Burns testified that she welcomed Appellant to her department, and that she asked Appellant if she would feel comfortable reporting to Mr. Kadylak. The Housing Director position was filled in fiscal year 2009, and its minimum qualifications included a master's degree, which Appellant did not have. Appellant pointed out that she was given only one interview, while the other applicants received two. Appellee explained that the applicants who met minimum qualifications were scheduled for two interviews, one with Human Resources and one with Dr. Burns. Because Appellant was an internal applicant, Human Resources interviewed Appellant as a "professional courtesy"; however, this was not explained to Appellant before her interview. Another internal applicant, Phil Hedden, who possessed only a bachelor's degree, was interviewed by Dr. Burns; Dr. Burns testified that the Human Resources department was responsible for screening for minimum qualifications and erroneously scheduled Mr. Hedden for two interviews.

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


BETH A. JEWELL
Administrative Law Judge

BAJ: