

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

SHELIA D. SHAFFER,

*Appellant,*

v.

Case Nos. 10-LAY-04-0111  
10-INV-04-0112

UNIVERSITY OF TOLEDO,

*Appellee.*

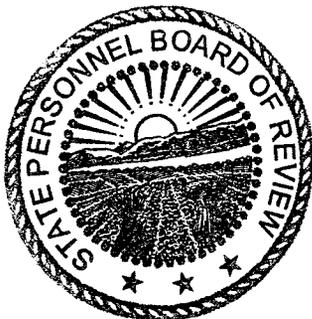
**ORDER**

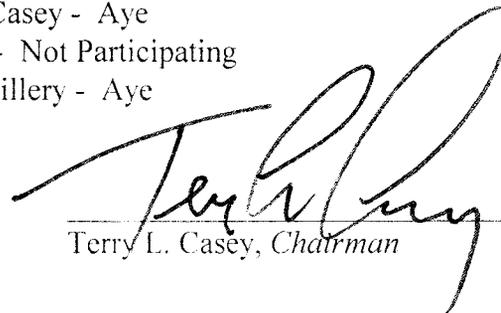
These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the entirety of the records, including 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 is **AFFIRMED** and the Appellant's investigation request is **TERMINATED**. Appellee has demonstrated by a preponderance of evidence that the abolishment of 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.

Casey - Aye  
Lumpe - Not Participating  
Tillery - Aye



  
Terry L. Casey, *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 constitutes (~~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 21, 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**

Shelia D. Shaffer,

*Appellant*

v.

University Of Toledo,

*Appellee*

Case No. 10-LAY-04-0111

Case No. 10-INV-04-0112

October 18, 2011

Christopher R. Young

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on for three days of record hearing on September 13, 2010, December 1, 2011 and February 16, 2011, and concluded with the simultaneous filing of post hearing briefs on April 15, 2011. The Appellant, Shelia D. Shaffer, appeared at the record hearing, and was represented by Dennis D. Grant, Attorney at Law. The Appellee, the University of Toledo (UT) was present through its designee, Mr. Joseph Klep, the Labor/Employment Compliance Advisor, and was represented by Mr. Joseph N. Rosenthal and Ms. Nicole S. Moss, Associate Assistant Attorneys General.

On April 16, 2010, the Appellant, Shelia D. Shaffer, received a notice of job abolishment of her position as a Business Services Officer 3 (BSO 3) from the Appellee due to a lack of work. This action was to be effective April 30, 2010. Thereafter, the Appellant timely filed her appeal on April 26, 2010, as well as timely filing of this appeal being stipulated too by the parties. Further, at the pre-hearing, held on June 18, 2010 at 1:30 p.m., the jurisdiction of this Board to proceed with this matter was established. Moreover, at the pre-hearing it was agreed that the investigation request/appeal would be consolidated into the layoff appeal and both heard and considered under the layoff appeal as they involve the same issues.

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;
- 9) The Appellee informed 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**

The Appellee began by calling Ms. Joy Marie Gramling as the first witness. Ms. Gramling explained that she is currently employed by University of Toledo (UT) as the Director of Auxiliary Services, a position she has held since June 2010. Ms. Gramling stated that she is a 21-year veteran of the former Medical College of Ohio, which later merged with UT in approximately June 2006. Further, Ms. Gramling

testified she has held various positions over the prior 21 years, as she started as a data processor in pathology and then later became a receptionist, followed by being a Secretary 1, a Secretary 2, a data analyst, a data coordinator, an analyst in the purchasing department, a contract manager in the purchasing department, and then Interim Director of Auxiliary Services. At time of the merger between the Medical College of Ohio and UT, Ms. Gramling was a contract manager.

As Director of Auxiliary Services, Ms. Gramling reports to Dave Dabney, VP of the Finance Division. The witness testified that her duties and responsibilities included, but were not limited to, acting as a contract manager for corporate contracts, negotiating contracts, and ensuring that vendors and the university each live up to the contracts.

Ms. Gramling stated that she is familiar with the Appellant, Shelia Shaffer. Prior to the Appellant's abolishment, Ms. Gramling explained that she was Ms. Shaffer's supervisor. In the fall of 2008, Ms. Gramling became acquainted with Appellant, as Ms. Shaffer would manually roll up all copy codes, calculate the grand total of charges, and send files over to Accounting, which was part of purchasing at that time. With the merger between the Medical College of Ohio and UT, these duties were transferred to the print shop for a while, but then came back to Auxiliary Services. In the fall of 2009, discussions began with vendors on how to become more efficient, and in January 2010, a new process was implemented. The new process is no longer done manually; as the vendor automatically uploads the data.

Ms. Gramling became the Interim Director of Auxiliary Services sometime between February 3 and February 16, 2010. The witness stated that she had twelve (12) direct reports, including the Appellant. Ms. Gramling met with her employees about one-and-a-half months after assuming her new role, which was approximately at the end of March and lasted through mid-April. Further, Ms. Gramling explained that she met with the Appellant on April 6, 2010 at 2:30 pm. They discussed Ms. Shaffer's duties, as Ms. Shaffer saw them, opportunities for improvements, and general thoughts on the department. The Appellant informed Ms. Gramling that she was a little worried because the majority of her activities with copiers had been taken over by vendors. The Appellant said she was no longer doing the cross-indexing job function because that duty had gone away.

Ms. Gramling was then shown Appellee's Exhibit B, which contains two position descriptions. Ms. Gramling said that the second position description was the one that she put together and reflects the Appellant's job duties as a Business Officer 3 (BO3) before the vendors took over. Ms. Gramling said that as of April 15, 2010, after the vendors took over, the Appellant's copier interface with Ricoh and Ikon consisted of walking a bag of money down the hall, which was nowhere near the stated 75% of her time in the position description. Most of the Appellant's time after the vendors took over was taken up with items #2-4 from the second position description in Appellant's Exhibit B, plus cleaning up and organizing the storage room.

Ms. Gramling said she was aware that the Appellant's position was abolished because Ms. Gramling identified the BO3 position for abolishment on or around April 8, 2010. Two days prior to Ms. Gramling's recommendation, her boss called her to a meeting and told her that as a division they had to reduce the budget by \$2.2MM and would have to put positions on the table for abolishment. Ms. Gramling said that the BO3 position was one that was not working to capacity because the work had shifted to the vendors. Based on her knowledge of the department, this was the only position that she was able to offer up because the vendors were already doing 75% of the Appellant's job duties, short of depositing the money. Several budgets comprise Auxiliary Services, and all of the budgets roll up into finance. UT had to cut \$2.2MM out of the finance budget. However, the witness testified that Ms. Shaffer's position was not abolished due to a lack of funds. The position was abolished because the duties she was performing were no longer needed; as they were being performed by the vendors.

The Appellant then cross-examined Ms. Gramling. Ms. Gramling said it took 1-2 weeks per month to perform the cross-indexing job function, but the Appellant was no longer performing this job function by the time Ms. Gramling assumed the position of Interim Director of Auxiliary Services. Ms. Gramling said she had one conversation with the Appellant on April 6, 2010 about her job duties and workload, and a study of the Appellant's workload was never performed.

The witness then described the role of the vendors. Ricoh is the vendor for multi-function services for the main campus, and Ikon is the vendor for the hospital campus. Ms. Shaffer's office resided on the main campus, but handled both vendors. "Copier Interface" means the day-to-day interactions with all the copier needs. Originally, vendors would call the Appellant, but last year a website was

created where vendors would e-mail their needs. Previously, cross-indexing was done manually, but now it's done electronically. However, the job description does not talk about cross-indexing; it talks about copier interface. Ms. Gramling said this is because there is more than just cross-indexing to copier interface. Of the stated 75% of time spent on copier interface in the job description in Appellee's Exhibit 2B, 50% or more of Appellant's time was spent cross-indexing. Ms. Gramling said she based this information off of what the Appellant told her and off of what Mr. David Wahr told her.

Further, Ms. Gramling said that after becoming the Interim Director of Auxiliary Services, she also personally observed the Appellant perform her duties several times per week, and the Appellant was primarily helping students at the front desk.

The BO3 position description in Appellee's Exhibit B has a spot where the employee and supervisor must sign the document after reviewing the description. The position description is not signed, and it is not clear if the Appellant ever saw the description, as well.

The Appellee then called Mr. Joseph Klep as the second witness. Mr. Klep explained that he is currently employed as a Labor Employment Compliance Advisor at UT. His title changed about a month and a half ago, but it was just a title change. His former title was Manager Labor & Employee Relations, which he held since 2001. Further, Mr. Klep testified that he has been with UT for about 25 years and that his current duties included, but were not limited to, interfacing with UT and other state agencies, consulting with various supervisors on bargaining issues, representing UT in arbitrations on collective bargaining issues, and working with any job abolishment at issue.

Mr. Klep described displacement protocol. He said there are other Business Officer 1s and 2s at UT, but he was not aware of any such positions that were open in April 2010. He also was not aware of any other BO3s. Mr. Klep said the Appellant could not displace into a BO1 or BO2 position, as these positions were in and covered under a collective bargaining agreement.

The Appellant then cross-examined Mr. Klep. When asked if there is there a difference between a Business Services Officer and a Business Officer, Mr. Klep

said; they are the same. Mr. Klep thought that as of April 2010, the Appellant occupied the only BO3 position in the entire university, occupied or unoccupied.

Mr. Klep then stated that the Appellant's 2004 abolishment was due to reason of the economy, and he discussed the process of reinstating the Appellant in 2007 after SPBR's ruling.

Mr. Klep stated that he never conducted a job audit on the Appellant. He said UT has no policy that a position description must be given to a reinstated employee. However, the position description would be put in the employee's file, so Ms. Shaffer would have had access to it at some point. Further, the witness testified that he was not aware of any workload studies regarding Ms. Shaffer's position, nor did he have any personal knowledge of her duties as he just took Ms. Gramling's word on it.

Next, the Appellee's counsel then questioned the witness, Mr. William Logie. The witness testified that since mid-2008, he has served as the Vice President of Human Resources and Campus Safety. In his current position, the witness stated that he oversees Human Resources, the Campus Police, Safety and Health, the Office of Quality and Continuous Learning, and the Early Learning Center. Mr. Logie explained that he has about a dozen direct reports and is overall responsible for 200-250 people. However, when questioned, the witness stated that payroll is not under his authority. Additionally, Mr. Logie stated that he is familiar with Mr. Joe Klep as he works in his office and is responsible for compliance, but does not directly report to him.

Further, the witness explained when questioned that in the spring of 2010, UT undertook several abolishments and layoffs. Mr. Logie's role in the process was to deliver the message to his staff, and noted that UT conducted over 100 abolishments in the last year, and over 50 in last six (6) months. Specifically, when questioned, Mr. Logie identified Appellant's Exhibit 21 and stated that Ms. Shaffer's position of a Business Services Officer 3 was abolished due to a lack of work, effective May 15, 2010, as he is the appointing authority who signed off on the same. The witness then identified Appellee's Exhibit E as the notice of the abolishment that was provided to the Appellant and stated that he did not have any direct knowledge why the effective date on this document was listed as April 30, 2010, as opposed to May 15, 2010, as previously identified in Appellant's Exhibit 21.

Additionally, the witness testified that he has never formally met Ms. Shaffer, as well.

The Appellant's counsel then questioned Mr. Logie. The witness stated that he testified at first that the Appellant's position was abolished for reasons of economy and lack of funding, although he did clarify that statement after fully reading the statement of rationale, wherein he noted that the reason was for lack of work. Mr. Logie was not aware of the Appellant's prior abolishment in 2004 and her subsequent reinstatement by the State Personnel Board of Review (SPBR), and he did not know how long the Appellant had worked for UT, as well.

Mr. Logie stated his understanding of copier interface and said he did not make the judgment that abolishment of the Appellant's position would increase productivity or reduce duplicative duties. Mr. Logie stated that the only position description he had ever seen that allocates the Appellant's time among the various tasks was the one dated April 15, 2010. Mr. Logie then said that it is not always customary for a committee to review a position description after it is revised. However, Mr. Logie said that the employee should have input on the job description, and the job description is between the employee and employer.

Upon further questioning, Mr. Logie testified that he was not aware of any other employee besides Ms. Shaffer who was a BSO3. Additionally, Mr. Logie stated that Ms. Shaffer could not bump into a BSO1 or BSO2 position because those positions belong to bargaining units. Moreover, Mr. Logie explained that he was not aware of any positions to which Ms. Shaffer could bump into.

The Appellant, Shelia Shaffer, took the stand at the start of the second day of questioning. Ms. Shaffer is currently unemployed, but UT was her last employer. She said she worked for UT for 29 years, and she needs 30 years of service to retire from UT. Ms. Shafer stated that March 16, 2011 would give her 30 years, and UT did not offer her any accommodation because of her closeness to retirement. However, it should be noted that Ms. Shaffer had taken funds out of her PERS account due to her previous job abolishment in 2004, and had not replenished her account, so her above statement was incorrect.

UT abolished Ms. Shaffer's position three (3) times while at UT. The first time was in April 1993, when she worked in the Office of Affirmative Action as an

Equal Employment Officer 2, and her position was abolished due to reorganization. At that same time Ms. Shaffer was also the president of the Association of Black Faculty and Staff at UT, although the association has not attained formal recognition by UT. A subsequent court date was scheduled to contest the abolishment, along with her filing a racial discrimination charge with the Ohio Civil Rights Commission, but the termination was rescinded before the court date. Ms. Shaffer subsequently returned to UT as a Business Services Officer 3 (BSO3) in the Department of Purchasing.

Ms. Shaffer gave a speech on civil rights and affirmative action in April of 1995 on the date commemorating MLK's assassination at the Unitarian Church in Toledo, OH. In the testimony, Ms. Shaffer later said that she typed the speech at home and not at work. However, sometime later she found a copy of the speech in her personnel file (Appellant's Exhibit 7). Her supervisor at that time, Mr. Al Comley, issued a memo to her criticizing her job performance in May 1995, which was soon after her speech. Ms. Shaffer then identified Appellant's Exhibit 8 as Ms. Shaffer's response to Mr. Comley.

In 2003, a second abolishment was initiated against Ms. Shaffer. The abolishment took place in August 2004. Again, the witness explained she was president of the Association of Black Faculty and Staff at about the time of the second abolishment. This was her second time to be elected, and terms are for one year. UT's stated reason for this second abolishment was due to lack of funds, which the university expected to be permanent, and due to reasons of economy. Ms. Shaffer appealed to SPBR, and the Board reinstated her in November 2007. Upon her reinstatement, Ms. Shaffer disputed her accrued vacation time, her retirement amounts, her OPERS distribution, the amount of money for her back pay, and the reimbursement of her legal fees. Further, Ms. Shaffer testified that she also incurred medical expenses during the time she was away from work, and UT did not reimburse her. Some of the outstanding medical bills were taken directly from her taxes.

Prior to the second abolishment, Ms. Shaffer was at 23 years of service. However, she cashed out her hours and was paid for them. She received unemployment for six (6) months, and then withdrew from her OPERS retirement. She incurred approximately \$12,000 in penalties for early withdrawals. Ms. Shaffer returned to work January 2, 2008, but her OPERS, medical, and other expenses were not reimbursed until January 2009.

When Ms. Shaffer returned to work after her second abolishment, her duties and supervisor were different. After her return, the witness testified that she sat at work for months not doing anything. Ms. Shaffer said this was because Ms. Jennifer Pastorek told her that other employees felt threatened by her. In April 2008, Ms. Shaffer moved to Auxiliary Services in Rocket Hall where she worked under Mr. Wahr. Ms. Shaffer then identified Appellant's Exhibit 50 as a document that she prepared describing her job duties in Auxiliary Services where she said that UT purchased a three-year contract implementing multifunctional devices (MFD's) which in turn would eliminate 3500 to 5000 desktop printers. The witness described that her role in implementing the above contract was she was going to be the one in charge in the deploying the MFD's, training staff on the devices and setting up the code system for billing purposes and for the cross-indexing. The witness described the cross-indexing function portion of her job only taking approximately 3 days out of the month. Additionally, the witness testified that she also had a role in issuance of parking passes and student IDs, and wrote policies regarding these activities, all while consulting with the director on any improvements in customer service. The witness also described some of her duties during that period of time as working with the student workers, checking on their attendance and making sure that they were following the good business ethics, along with stating that this took approximately 2 to 3 days a month, as well.

Next, the witness testified that she did meet Ms. Grambling, the interim director of the auxiliary services shortly after she came on board, but could not specifically recall which date. The witness explained that she discussed with her a cash reimbursement policy that she had put together and that she only talked to her about her cross-indexing duties, but not fully encompassing all of her duties at that meeting. However, the witness also testified that Ms. Grambling did ask her to write down her job duties, but could not recall if she ever had, as her position was abolished shortly thereafter.

Ms. Shaffer then identified Appellant's Exhibit 17 as her 14 day notice that her position as a Business Services Officer 3 would be abolished effective April 30, 2010, for lack of funds. The witness also identified Appellant's Exhibit 21, appendix A and noted that it was a position description for a Business Officer 3, not a Business Services Officer 3, and explained that she had never seen this position description before her job abolishment notice, nor did she ever sign this document. With respect to the position description's duties listed therein, the witness testified

that the 75% of her time was in description as all copier interface with Ricoh and Ikon was inaccurate, as she only performed cross-indexing. Moreover, the witness noted that the document in question was revised only April 15, 2010, one day before implementing the job abolishment at issue.

The Appellant's third abolishment was effective April 30, 2010, which was also the last day she was paid, but noted that in Appellant's Exhibit 21 the effective date of the abolishment was for May 15, 2010. Ms. Shaffer said Joy Gramling told her that her position was being abolished for reasons of economy, along with stating that she was performing the duties listed on in Appellant's Exhibit 21's position description, but different percentages of time, only noting approximate 10% of her time was spent cross-indexing, not 75% as noted in the abolishment rationale.

On June 26, 2010, only a couple of months after the job abolishment, an Operations Manager for Auxiliary Services position at UT was posted (Appellant's Exhibit 46). Ms. Shaffer claims the position described the duties she performed when she was not cross-indexing. The job was posted at \$50,000, and the Appellant was making \$53,000 prior to her abolishment. Appellant said she met all qualifications except for having a Bachelor's degree, but she applied for the position anyway. After applying, she received a card that asked her to voluntarily declare her race and sex. In October 2010, UT notified Ms. Shaffer that she did not get the job.

Ms. Shaffer was then shown Exhibit 21, Appendix A, which lists a position description of "Business Officer 3." Ms. Shaffer said she was a Business Services Officer 3, not a Business Officer 3. She also said that the BO3 description does not accurately reflect the percent of time she spent performing her work duties, but the descriptions of the duties are accurate reflections of the things she did. Further, the witness stated that it was her understanding that Ms. Grambling was a looking at the budget to see where she could cut positions. Moreover, when questioned, the witness testified that it was also her understanding that UT never did a position audit of her position and that there were no work level studies ever performed by the University, as well.

The third day of the trial began with the Appellee cross examining Ms. Shelia Shaffer. Ms. Shaffer discussed her 2004 abolishment. UT's stated reason for the 2004 abolishment was for lack of funds and reasons of economy. UT told Ms. Shaffer that she had the right to displace into a lower classification. UT actually

took the matter to arbitration, taking the position that Ms. Shaffer could displace into a BSO1 or BSO2 position. The arbitrator, however, ruled against UT, and Ms. Shaffer was laid off in 2004 due to insufficient funds that UT expected to be permanent. After she left, she withdrew all of her OPERS money. When she returned to employment with UT in 1994, she did not arrange with UT to purchase any of her time back.

Next, Ms. Shaffer discussed who she thought was involved in her three (3) abolishments. Ms. Shaffer then discussed her job duties in her latest position with Auxiliary Services. She said she wrote policy on cash payouts when individuals lost money in pay copy machines. Ms. Shaffer thought she wrote about five (5) policies. On a daily basis, Ms. Shaffer checked with students on both the medical and main campuses, and on the information booth on main campus. She was checking for attendance and that the students had the proper supplies. Ms. Shaffer also did some housekeeping to clean out the areas where the students worked. In sum, Ms. Shaffer said she supervised the student workers. By January 2010, UT had replaced approximately 3,000 copy machines with about 250 multi-function devices. In February 2010, Ms. Shafer was informed that she would no longer perform cross-indexing for the main campus. Ms. Shaffer said she continued to perform all of her remaining duties. Ms. Shaffer said that although it was not that complicated to use the new multi-function devices, Ms. Shaffer continued to speak to users of the devices and teach him how to use the new devices.

Ms. Shaffer then discussed her role as president of the Association of Black Faculty and Staff at the UT. The witness said she was first elected to the position of president in 1991, again in 1993 after returning from her first abolishment and again in 2004. This testimony conflicted with her prior statement that she served two one-year terms as president. Ms. Shaffer said that her supervisor, Al Comley never attended the Association's meetings. Additionally, Ms. Shaffer was a member of the chamber of commerce of the city of Toledo, specifically the minority advisory board in 1997, as well.

Next, the Appellant's counsel questioned Ms. Shaffer. When asked about the letter she wrote to Al Comley in 1996 (Appellant's Exhibit 8), Ms. Shaffer said that although he did not make disparaging remarks about minorities on a regular basis, he did on occasion. She said that Mr. Comley was critical of doing set-asides for minority businesses. Ms. Shaffer claims that Mr. Comley told her that her job would be one of the first to go if he ever had the opportunity to cut the budget. Ms.

Shaffer's perception was that this was because of their prior conversations and her stance on affirmative action.

After Ms. Gramling became Ms. Shaffer's supervisor, the witness stated that the two of them met, and that she wrote down a list of her job duties (Appellant's Exhibit 50). Ms. Shaffer said she continued to perform all of the job duties on the list except for cross-indexing, which ceased on the medical campus January 2010 and on the main campus in February 2010. When asked how long it would take to perform cross-indexing, the Appellant stated that it would take three (3) days at the most for both campuses.

Upon re-cross examination by the Appellee, Ms. Shaffer stated that Tracy McLain, from Ricoh Business Services, worked with Ms. Shaffer in conducting the trainings to teach people how to use the multi-function devices. The trainings were at least one-half hour in length and were initially performed twice per month. However, by January 2010, two (2) trainings per month were no longer needed.

The Appellant's next witness was Mr. Earl Murry. Mr. Murry graduated from The Ohio State University with a Bachelor's, Master's, and PhD in Education, School Administration, and Psychology. He also graduated from University of Toledo law school, and he attended Harvard Business School on collective bargaining. From 1984-1985, Mr. Murry was the Executive Director of Columbus Civil Service Commission. Then, he moved to Dayton and worked with the Dayton public school system. In 1987, Mr. Murry joined UT as a professor and Interim Director of Affirmative Action and assistant to the president of UT. He has since served as the assistant for two (2) or three (3) presidents, as Vice Provost, and as a professor at UT. In the 1988-1991 academic years, Mr. Murry worked for the affirmative action office. He was offered the position of Director, but declined the offer. When he was at affirmative action office, Mr. Murry supervised four or five employees, and Ms. Shaffer was one of them.

During Ms. Shaffer's 2004 abolishment appeal, Mr. Murry represented Ms. Shaffer before the SPBR. Ms. Shaffer subsequently obtained attorney Rick Mitchell. Mr. Murry claimed that although UT admitted to owing Ms. Shaffer \$202,323.03, excluding other offsetting costs (Appellant's Exhibit 13), UT actually owed Ms. Shaffer in the area of \$240,000 or \$250,000.

Mr. Murry believed that if the proper steps for an abolishment are not followed, then an abolishment should not count. Mr. Murry then stated that there are several individuals who write job descriptions, but do not have Bachelor's degrees, and Joe Klep is an example of one such individual. Additionally, Mr. Murry said it was UT's practice that supervisors and employees sign job descriptions when they are revised. Furthermore, Mr. Murry stated that he is not aware of any minority who was allowed to accumulate more vacation than permitted by the governing policy, but he is aware of Caucasians who were allowed to do so. He listed examples of such Caucasians: Robert Wentz (Chairman of the Department of Counseling Education), Tom Repp (VP of Administrative Services), Barbara Matchem (general counsel), Ms. Matchem's replacement, and Sharon Kubiak (Assistant to the VP of Administrative Services/Affairs). However, upon cross-examination, it was determined that at least some of the aforementioned individuals were not classified employees like the Appellant.

The Appellee then on rebuttal recalled Ms. Joy Gramling back onto the witness stand. Ms. Gramling went through Appellant's Exhibit 50, which is the list of the Appellant's job duties created by the Appellant. Ms. Gramling said there were two (2) copier programs, and the copier meetings took one (1) hour per month. Ms. Gramling cannot find any evidence or documentation that Ms. Shaffer had any activity with outside vendors outside of copier program. Ms. Gramling did not believe the Appellant would have spoken with end-users because such activity would no longer take place by April 2010. By April 2010, UT was four (4) years into the vendor contract with Ricoh and Ikon, and the training given by Ms. Shaffer should have been little-to-none by this point in time. The vendors analyzed device usage for redeployment; Ms. Shaffer no longer performed this function. The front desk is where student staff answered questions, issued parking permits, and issued ID's, and that Ms. Shaffer would only fill in for students at the front desk during peak hours, but those activities have since been consolidated with another department. Further, Ms. Gramling testified that Ms. Shaffer cannot write UT policy because she is not in the policy department, but only procedure. Ms. Gramling stated that when Ms. Shaffer said she was writing policy, it was more likely her writing procedure. For example, Ms. Shaffer wrote a procedure for how to reimburse \$20 in petty cash for a man in the library. Ms. Shaffer no longer issued codes for cross-indexing because the vendor now performed that function. In sum, Ms. Gramling could not justify keeping Ms. Shaffer's position because the vendors were doing 75% of Ms. Shaffer's workload.

Ms. Gramling discussed the Operations Manager for Auxiliary Services posting (Exhibit 46), for which the Appellant applied and which the Appellant thought she was qualified. Ms. Gramling said this position reports directly to her and was a brand new position, which Mr. Michael Byrd filled. His duties and responsibilities were to oversee the direct management of employees, which included four (4) telephone coordinators, a clerical specialist, a clerk, the director of the gift shop, the indirect supervision of two (2) sales clerks in the gift shop, and the direct supervision of 10-12 student staff. Mr. Byrd is also responsible for analyzing and developing Cost Performance Indicators and metrics for day-to-day activities, as well as reducing inventory costs. In Ms. Gramling's opinion, none of Mr. Byrd's activities compare to those activities performed by Ms. Shaffer and described on page three (3) in Appellee's Exhibit B. Furthermore, the Operations Manager for Auxiliary Services posting required a Bachelor's degree and preferred an MBA. Mr. Byrd has a Bachelor's degree and an MBA, and he is a part-time professor in the College of Business, as well. In contrast, Ms. Shaffer does not possess a Bachelor's degree or an MBA.

The Appellant's counsel then cross-examined Ms. Gramling. Ms. Gramling thought that in Appellant's Exhibit 50 where the Appellant described her job duty of "mtgs w/ outside vendors," the Appellant was referring to her meetings with Rico and Ikon that lasted two (2) hours per month. Ms. Gramling doubted that the Appellant interacted with any outside vendors besides Rico and Ikon. Ms. Gramling stated that in January, before she became Interim Directed of Auxiliary Services, the Appellant would have spent some time speaking with end users, assessing department usage, and training end users. By April, however, the Appellant would no longer have performed these functions. Ms. Gramling said that by April, the Appellant was not spending any time working on the copiers.

The Appellee then asked Ms. Gramling if she was aware that Ms. Shaffer was the president of the Association of Black Faculty and Staff, and Ms. Gramling said she was not aware of that fact. Finally, the Appellant asked Ms. Gramling to identify the race of Mr. Byrd, and she said he was Caucasian.

#### **FINDINGS OF FACT**

1. I find that the Appellant, Shelia Shaffer was employed by the University of Toledo as a Business Services Officer 3, at the time she was notified of her position being abolished on or about April 15, 2010, which was to be effective April 30, 2010.

Further, the parties stipulated to the timely filing of Ms. Shaffer's appeal to this Board.

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

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. In the fall of 2008, Ms. Gramling became acquainted with Appellant, as Ms. Shaffer would manually roll up all copy codes, calculate the grand total of charges, and send files over to Accounting, which was part of purchasing at that time. With the merger between the Medical College of Ohio and UT, these duties were transferred to the print shop for a while, but then came back to Auxiliary Services. In the fall of 2009, discussions began with vendors on how to become more efficient, and in January 2010, a new process was implemented. The new process is no longer done manually; as the vendor was automatically uploading the data. Further, the evidence revealed that the Appellant informed Ms. Gramling that she was a little worried because the majority of her activities with copiers had been taken over by vendors. The Appellant said she was no longer doing the cross-indexing job function because that duty had gone away. Ms. Gramling also explained that as of April 15, 2010, after the vendors took over, the Appellant's copier interface with Ricoh and Ikon consisted of walking a bag of money down the hall, which was nowhere near the stated 75% of her time in the position description.

5. Additionally, Ms. Gramling said that the BO3 position was one that was not working to capacity because the work had shifted to the vendors. Based on her knowledge of the department, this was the only position that she was able to offer up because the vendors were already doing 75% of the Appellant's job duties, short of depositing the money. The evidence revealed that Ms. Shaffer's position was not abolished due to a lack of funds. The position was abolished because the duties she was performing were no longer needed; as they were being performed by the vendors.

6. The testimony also revealed that there was no difference between a Business Services Officer 3 (BSO3) and a Business Officer 3 (BO3), as Mr. Klep testified that they are the same. Moreover, the evidence revealed as of April 2010, the Appellant

occupied the only BO3 position in the entire university. Further, Mr. Klep stated that he never conducted a job audit on the Appellant's position. Moreover, Mr. Klep testified that he was not aware of any workload studies regarding Ms. Shaffer's position, nor did he have any personal knowledge of her duties. The evidence revealed that in the spring of 2010, UT undertook several abolishments and layoffs. Mr. Logie's role in the process was to deliver the message to his staff, and noted that UT conducted over 100 abolishments in the last year, and over 50 in last six (6) months. Specifically, when questioned, Mr. Logie identified Appellant's Exhibit 21 and stated that Ms. Shaffer's position of a Business Services Officer 3 was abolished due to a lack of work, effective May 15, 2010, as he is the appointing authority who signed off on the same. The witness then identified Appellee's Exhibit E as the notice of the abolishment that was provided to the Appellant and stated that he did not have any direct knowledge why the effective date on this document was listed as April 30, 2010, as opposed to May 15, 2010, as previously identified in Appellant's Exhibit 21.

7. Ms. Shaffer identified Appellant's Exhibit 50 as a document (undated) that she prepared describing her job duties in Auxiliary Services where she said that UT purchased a three-year contract implementing multifunctional devices (MFD's) which in turn would eliminate 3500 to 5000 desktop printers. The witness described that her role in implementing the above contract was she was going to be the one in charge in the deploying the MFD's, training staff on the devices and setting up the code system for billing purposes and for the cross-indexing. The witness described the cross-indexing function portion of her job only taking approximately 3 days out of the month. Additionally, the witness testified that she also had a role in issuance of parking passes and student IDs, and wrote policies regarding these activities, all while consulting with the director on any improvements in customer service. The witness also described some of her duties during that period of time as working with the student workers, checking on their attendance and making sure that they were following the good business ethics, along with stating that this took approximately 2 to 3 days a month, as well. Moreover, Ms. Shaffer also testified that Ms. Gramling did ask her to write down her job duties, but could not recall if she ever had, as her position was abolished shortly thereafter, but then introduced the above noted exhibit.

8. On rebuttal, Ms. Gramling went through Appellant's Exhibit 50, which is the list of the Appellant's job duties created by the Appellant. Ms. Gramling said

there were two (2) copier programs, and the copier meetings took one (1) hour per month. Ms. Gramling cannot find any evidence or documentation that Ms. Shaffer had any activity with outside vendors outside of copier program. Ms. Gramling did not believe the Appellant would have spoken with end-users because such activity would no longer take place by April 2010. By April 2010, UT was four (4) years into the vendor contract with Ricoh and Ikon, and the training given by Ms. Shaffer should have been little-to-none by this point in time. The vendors analyzed device usage for redeployment; Ms. Shaffer no longer performed this function. The front desk is where student staff answered questions, issued parking permits, and issued ID's, and that Ms. Shaffer would only fill in for students at the front desk during peak hours, but those activities have since been consolidated with another department. Further, Ms. Gramling testified that Ms. Shaffer cannot write UT policy because she is not in the policy department, but only procedure. For example, Ms. Shaffer wrote a procedure for how to reimburse \$20 in petty cash for a man in the library. Ms. Shaffer no longer issued codes for cross-indexing because the vendor now performed that function. In sum, Ms. Gramling could not justify keeping Ms. Shaffer's position because the vendors were doing 75% of Ms. Shaffer's prior workload.

9. The issue of bad faith was raised on the part of the Appellee in implementing the instant job abolishment which I find was not proven by a preponderance of the evidence.

### CONCLUSIONS OF LAW

In this layoff appeal, the Appellee must prove by a preponderance of the evidence that the Appellant, Shelia Shaffer'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 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, and thus 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 University of Toledo undertook an abolishment action on the position of a Business Services Officer 3/Business Officer 3 position at the University, for lack of work, in April 2010. The evidence revealed that in January 2010 copier machine service vendors Ricoh and IKON upgraded their billing software which enabled enhanced monthly utilization data. The new software allowed the cross-indexing of Vendor user codes directly to University budget indexes thereby eliminating the need for the labor intensive manual cross-indexing and had the added benefit of an online ordering process for creating or updating Vendor user codes or University indexes for billing purposes.

The Appellant, Ms. Shelia Shaffer occupied the only Business Services Officer 3/Business Officer 3 position at the University. 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 April 30, 2010. Further, through the testimonial evidence, as well as the documentary evidence, the review of the Business Services Officer 3/Business Officer 3 position indicated that Ms. Shaffer was prior to the implementation of the Vendor software upgrade was dealing anywhere from 50% to 75% of her time engaging in copier interface with the copier Vendors Ricoh and IKON, which was no longer needed after the software upgrade. The evidence revealed that the cross-indexing function of the reporting process was very laborious when done manually and subsequently the same functions are being performed by the software itself.

Consequently, this Board finds and concludes that the University of Toledo acted in good faith when it instituted the instant job abolishment of the Appellant.

As a result, the Appellant's position as a Business Services Officer 3/Business Officer 3 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 raise and/or contest her right to displace other Business Officer 2s and 1s at the University, but the testimony

revealed that those positions were covered by a collective bargaining unit/contract. Further, testimony also revealed that she occupied the only Business Services Officer 3/Business Officer 3 position at the University. As such, the undersigned concludes that Ms. Shaffer could not displace any other position at the University, as there were no other lower classifications in the same classification series.

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

Appellee presented the reasons for this job abolishment was for lack of work as its justification for the abolishment of the Appellant's position. As such, the appointing authority, the University of Toledo, 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 lack of work . . . . (O.A.C. 124-7-01(A) (1).

Pursuant to Ohio Administrative Code Section 123:1-47-01(A) (45) defines "lack of work" as follows:

Means an appointing authority has a current or projected decrease in workload or work requirements which requires or will require a reduction in current or projected staffing levels in its organization or structure.

Furthermore, it should be noted that pursuant to Ohio Administrative Code Section 124-7-01(B) states that:

Certification of a lack of funds or lack of work is not required for job abolishments.

The testimony presented clearly demonstrated, as a way of achieving the instant job abolishment, the appointing authority, the University of Toledo, for reasons of lack of work proved its case that Ms. Shaffer was no longer performing a great deal of her duties when the University implemented its job abolishment. The

testimony revealed that in the fall of 2008, Ms. Gramling became acquainted with Appellant, as Ms. Shaffer would manually roll up all copy codes, calculate the grand total of charges, and send files over to Accounting, which was part of purchasing at that time. With the merger between the Medical College of Ohio and UT, these duties were transferred to the print shop for a while, but then came back to Auxiliary Services. In the fall of 2009, discussions began with vendors on how to become more efficient, and in January 2010, a new process was implemented. The new process is no longer done manually; as the vendor was automatically uploading the data. Further, the evidence revealed that the Appellant informed Ms. Gramling that she was a little worried because the majority of her activities with copiers had been taken over by vendors. The Appellant said she was no longer doing the cross-indexing job function because that duty had gone away. Ms. Gramling also explained that as of April 15, 2010, after the vendors took over, the Appellant's copier interface with Ricoh and Ikon consisted of walking a bag of money down the hall, which was nowhere near the stated 75% of her time in the position description.

Additionally, Ms. Gramling said that the BO3 position was one that was not working to capacity because the work had shifted to the vendors. Based on her knowledge of the department, this was the only position that she was able to offer up because the vendors were already doing 75% of the Appellant's job duties, short of depositing the money. The position was abolished because the duties she was performing were no longer needed; as they were being performed by the vendors.

The testimony also revealed that there was no difference real between a Business Services Officer 3 (BSO3) and a Business Officer 3 (BO3), as Mr. Klep testified that they are the same. Moreover, the evidence revealed as of April 2010, the Appellant occupied the only BO3 position in the entire university. Further, Mr. Klep stated that he never conducted a job audit on the Appellant's position nor was he aware of any workload studies regarding Ms. Shaffer's position, nor did he have any personal knowledge of her duties. On the other hand, the testimony revealed that the Appellant, Ms. Shaffer, had never requested a job audit prior to the implementation of the job abolishment, nor did she ever file a reduction in her duties appeal, as well.

Specifically, Mr. Logie identified and testified that Ms. Shaffer's position of a Business Services Officer 3 was abolished due to a lack of work, effective May 15, 2010, as he is the appointing authority who signed off on the same as was revealed by Appellant's Exhibit 21. The witness also identified Appellee's Exhibit E as the notice of the abolishment that was provided to the Appellant and stated that he did

not have any direct knowledge why the effective date on this document was listed as April 30, 2010, as opposed to May 15, 2010, as previously identified in Appellant's Exhibit 21.

Ms. Shaffer identified Appellant's Exhibit 50 as a document (undated) that she prepared describing her job duties in Auxiliary Services where she said that UT purchased a three-year contract implementing multifunctional devices (MFD's) which in turn would eliminate 3500 to 5000 desktop printers. The witness described that her role in implementing the above contract was she was going to be the one in charge in the deploying the MFD's, training staff on the devices and setting up the code system for billing purposes and for the cross-indexing. The witness described the cross-indexing function portion of her job only taking approximately 3 days out of the month. Additionally, the witness testified that she also had a role in issuance of parking passes and student IDs, and wrote policies regarding these activities, all while consulting with the director on any improvements in customer service. The witness also described some of her duties during that period of time as working with the student workers, checking on their attendance and making sure that they were following the good business ethics, along with stating that this took approximately 2 to 3 days a month, as well. Moreover, Ms. Shaffer also testified that Ms. Grambling did ask her to write down her job duties, but could not recall if she ever had, as her position was abolished shortly thereafter, but then introduced the above noted exhibit. Thus, one can conclude that the Appellant at best, via her own testimony, explained that prior to the abolishment only had work that occupied her time at 5 to 6 days a month.

Further, on rebuttal, Ms. Gramling went through Appellant's Exhibit 50, which is the list of the Appellant's job duties created by the Appellant. Ms. Gramling said there were two (2) copier programs, and the copier meetings took one (1) hour per month. Ms. Gramling cannot find any evidence or documentation that Ms. Shaffer had any activity with outside vendors outside of copier program. Ms. Gramling did not believe the Appellant would have spoken with end-users because such activity would no longer take place by April 2010. By April 2010, UT was four (4) years into the vendor contract with Ricoh and Ikon, and the training given by Ms. Shaffer should have been little-to-none by this point in time. The vendors analyzed device usage for redeployment; Ms. Shaffer no longer performed this function. The front desk is where student staff answered questions, issued parking permits, and issued ID's, and that Ms. Shaffer would only fill in for students at the front desk during peak hours, but those activities have since been consolidated with another department.

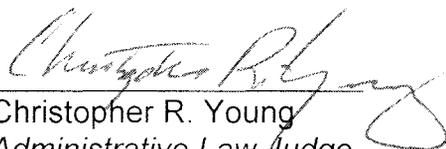
Further, Ms. Gramling testified that Ms. Shaffer cannot write UT policy because she is not in the policy department, but only procedure. For example, Ms. Shaffer wrote a procedure for how to reimburse \$20 in petty cash for a man in the library. Ms. Shaffer no longer issued codes for cross-indexing because the vendor now performed that function.

As such, Ms. Gramling testified that she could not justify keeping Ms. Shaffer's position because the vendors were doing 75% of Ms. Shaffer's prior workload, and that those duties were never going to be there again.

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 lack of work was a valid justification for the abolishment of the Appellant's position.

### 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** and the Appellant's investigation request be **TERMINATED**.

  
Christopher R. Young  
Administrative Law Judge

CRY: