

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

JUANITA WAHLERS,

Appellant,

v.

Case No. 11-ABL-05-0171

OTTAWA COUNTY, DEPARTMENT
OF JOB & FAMILY SERVICES,

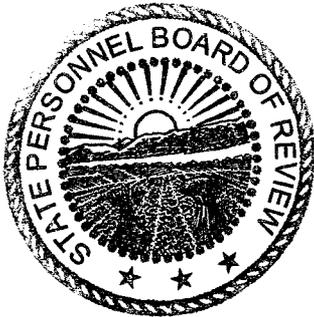
Appellee

ORDER

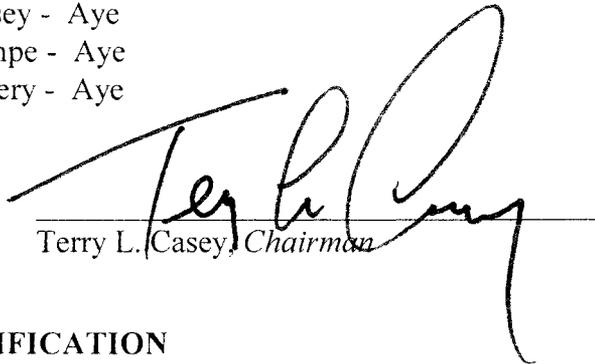
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, 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 abolishment of Appellant's position and her layoff is **AFFIRMED**.



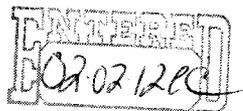
Casey - Aye
Lumpe - Aye
Tillery - Aye


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, February 02, 2012.




Erin E. Conn
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**

Juanita Wahlers,

Case No. 11-ABL-05-0171

Appellant,

v.

December 15, 2011

Ottawa County
Dept of Job & Family Services,

BETH A. JEWELL

Appellee.

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 May 13, 2011, layoff from employment with Appellee. A record hearing was held on September 21, 2011. Juanita Wahlers, Appellant, was present at the record hearing and represented herself. Appellee was present at record hearing through its designee, Stephanie M. Kowal, Director; and was represented by Frank Hatfield and Ed Kim, attorneys at law.

On April 29, 2011, Appellee notified Appellant via certified mail of her layoff due to the abolishment of her position as Unit Support Worker 2. Appellee informed Appellant that her position was being abolished due to a need to reorganize due to reduced funding and for more efficient operations. Appellant did not exercise any displacement rights.

STATEMENT OF THE CASE

Appellee called two witnesses in its case in chief: Director Kowal and Ottawa County Commissioner James Sass. Appellant testified in her case in chief and cross-examined Appellee's witnesses. 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

Director Kowal has been employed by Appellee since March 2000, when she was hired as Workforce Development Administrator. She was promoted to Assistant Director and subsequently, in 2007, to Director. As Assistant Director, Ms. Kowal continued her workforce development duties and took on additional duties involving funding and contract management. As Director, Ms. Kowal has overall responsibility for all agency services, financial and administrative operations, and the county's Family and Children First Council.

Appellee has three sources of funding: federal, state, and county. Since 2001, Appellee had experienced a downward trend in funding because of state and federal budget cuts. (Exh. 5) Appellee responded to this trend by not filling positions vacated through attrition when possible. Appellee has decreased its staffing levels from 59 employees to 38. (Exhs. 1, 6) To achieve additional cost savings, Appellee eliminated some services it previously provided, such as Adult Chore Services, a program that assisted senior citizens to remain in their own homes. When Appellee's Child Support Enforcement Agency attorney resigned, Appellee contracted for attorney services on a half-time basis. (Exhs. 6, 7)

Appellant first became employed by Appellee in 1990. Since 2000, Appellant held the position of USW 2. As a USW 2, Appellant worked in Appellee's Income Maintenance/Public Assistance division, which experienced a forty percent reduction in funding from state fiscal year 2006 to state fiscal year 2011, from \$3,259,125 to \$1,970,553. (Exh. 4) Appellant performed a variety of duties, including assisting Spanish-speaking applicants; interviewing and screening applicants; collecting eligibility data and verifications; copying documents for caseworkers; e-gateway reporting and tracking; preparing application packets; ordering office supplies and maintaining office equipment; scheduling applicants to meet with caseworkers; making contact with service providers, hospitals, doctors' offices and schools; and initiating referrals.

Still facing declining funding, Appellee determined to reorganize its service delivery model. Appellee decided to abolish the positions it had in the Unit Support Worker classification series and to transfer their responsibilities to direct case management workers. (Exh. 3, 4, 8) Appellee explained that as it continued to face declining funding, it determined that case management was a higher priority than support personnel. Unit Support Workers 2s (USW 2s) had worked in several of Appellee's departments. USW 2s' duties involved administering the Adult Chore Services program and supporting the activities of case workers and program

administrators. (Exhs. 8, 9, 14) To reorganize, Appellee determined to implement a case-banking service delivery model and to implement online and telephone applications and a digital imaging system.

Appellee met with staff on January 13, 2011, to inform them of the pending changes and the upcoming elimination of the USW positions. Because Appellant was on workers' compensation leave, Director Kowal met with her personally on January 19, 2011, to inform her of the changes and to tell her about and invite her to apply for an Eligibility Referral Specialist 2 (ERS 2) position that would be filled as part of the reorganization. On February 7, 2011, Appellee emailed staff, including Appellant, information about the ERS 2 position opening. (Exh. 17) Appellee also created a new Clerical Specialist 2 position for the new digital imaging system, and on March 14, 2011, Appellee notified Appellant of the opening and application deadlines by mail.¹ (Exh. 12)

On April 26, 2011, Director Kowal requested approval from the County Commissioners to abolish one USW 1 position and five USW 2 positions. All positions other than Appellant's were vacant due to attrition and had not been filled. Appellee had not employed a USW 1 since 2009; since 2006, all USW 2 positions other than Appellant's had been vacated. (Exh. 4) The County Commissioners voted unanimously to authorize the abolishments. The county recorder's office and office of extension services also have incurred layoffs recently.

On April 29, 2011, Appellee notified Appellant via certified mail of her layoff due to the abolishment of her position as Unit Support Worker 2. The notice satisfied the requirements set forth in Ohio Revised Code section 124.322 and Ohio Adm. Code Rule 123:1-41-10. Appellee computed and informed Appellant of her retention points. Appellant was unable to exercise any displacement rights. No other positions in the Unit Support Worker classification series were filled, and Appellant had served in that classification for more than three years, since July 2, 2000.

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,

¹ Appellant claims she never received the letter; however, Appellee mailed it to Appellant's correct address.

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, the position must be permanently deleted 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). 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. Appellee cites reorganization for efficiency and economic reasons as justification for the abolishment of Appellant's position. Appellee presented uncontroverted evidence of continuous funding cuts, including a forty percent cut in funding in the Income Maintenance/Public Assistance division, where Appellant worked. Appellee also presented uncontroverted evidence of its reorganization for increased efficiency.

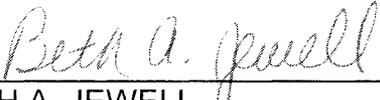
In order to successfully defend a contested abolishment, not only must an appointing authority demonstrate adequate justification for the abolishment of a position, but also it must also show compliance with the procedural requirements set forth in the administrative code. The record reflects that Appellee's notification to Appellant complied with the procedural aspects of the abolishment of Appellant's position. In addition, an appointing authority must successfully rebut a valid *prima facie* showing of "bad faith," should one be demonstrated. See Blinn v. Bureau of Employment Services (1985), 29 Ohio App.3d 77. Appellant contended at hearing that Appellee's justification for the abolishment of Appellant's position was not supported by the facts and that the abolishment was undertaken to subvert the civil service laws and retain other employees. However, the evidence in the record regarding Appellee's treatment of Appellant does not support a finding of bad faith.

To support her claim of bad faith, Appellant presented documents that addressed workplace conflicts in which Appellant had been involved between 2008 and 2010. These documents and Appellant's testimony demonstrate that management responded to reports of workplace conflict with equal treatment. Appellant was not singled out; no personal animus toward Appellant is evident in the record. For example, mandatory training was ordered for all employees, not just Appellant; and Appellant confirmed at hearing that this training did occur. In another situation, both employees involved in the conflict were sent to counseling. Appellant also presented a September 2010 document in which she was questioned about excessive use of sick leave and asked about family and medical leave (FMLA); however, this inquiry occurred because Appellant had a negative sick leave balance: a legitimate concern, not evidence of bad faith. Appellant also testified

about, and submitted evidence of, her positive performance evaluations and awards she received for her work; she testified that she loved her job and would do whatever was asked of her. By statute, however, a job abolishment must be undertaken without regard to job performance; and, Appellee has presented un rebutted evidence verifying the legitimate statutory reasons for its action.

Director Kowal testified that the new case handling and digital imaging systems implemented in the reorganization has resulted in increased efficiency even as the agency's caseload continues to increase. Appellant presented no credible personal knowledge to the contrary. Appellant did not demonstrate bad faith on Appellee's part during the reorganization process. Appellant cross-examined Director Kowal about the legitimacy of the March 2011 filling of the ERS 2 position. Director Kowal explained that the position was filled by an internal applicant who was serving a probationary period in a USW 2 position, but was not on probation as an agency employee because she had transferred internally from a position she held in Appellee's Child Support Enforcement division. As such, the successful applicant was an internal applicant eligible for consideration for the ERS 2 position. Appellant also questioned Director Kowal about two other Clerical Specialist 2 positions which were not posted when they were upgraded from Telephone Operator positions as a result of the reorganization and implementation of the digital imaging system. Director Kowal explained that these two positions were not posted because the incumbent Telephone Operators retained over fifty percent of their duties following the upgrade. Furthermore, it must be noted that Appellant never applied for either the ERS 2 or the Clerical Specialist 2 opportunities that were posted in early 2011.

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 resulting layoff were justified for reasons of economy and reorganization for efficiency and were carried out in compliance with the requirements of O.A.C. 124-7-01 and 123:1-41-10. Therefore, it is respectfully **RECOMMENDED** that the State Personnel Board of Review **AFFIRM** the abolishment of Appellant's position and her layoff.



BETH A. JEWELL
Administrative Law Judge

BAJ: