

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

Donna Greenfield,

Appellant,

v.

Case No. 2011-ABL-12-0412

Lucas County Board of Commissioners,

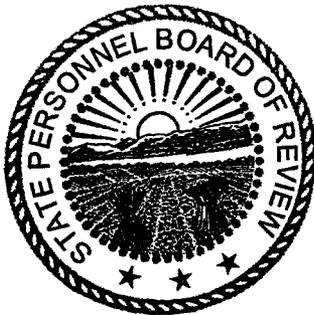
Appellee.

ORDER

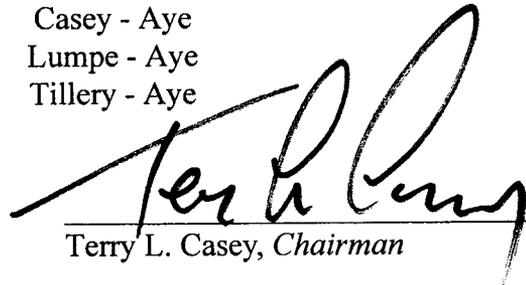
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 is **AFFIRMED**.



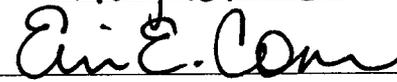
Casey - Aye
Lumpe - Aye
Tillery - Aye


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, August 23, 2013.


Clerk

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

8/23/13 ea

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

Donna Greenfield,

Case No. 11-ABL-12-0412

Appellant

v.

April 10, 2013

Lucas County Board of Commissioners,

Jeannette E. Gunn

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon a complete review of the record and the information contained therein. Upon agreement of the parties that the issues to be resolved by this Board were questions of law rather than questions of fact, the parties agreed to forego a record hearing and proceed on written briefs. The parties filed a Joint Motion for Admission of Stipulation to Joint Exhibits and Facts with the Board on September 6, 2012. Appellee subsequently filed its Brief in Support of Affirmance on September 28, 2012, and Appellant filed its Brief in Support of Disaffirmance on October 19, 2012. Appellee filed a Reply Brief on October 31, 2012 and Appellant filed a Sur-Reply on November 9, 2012. Appellee filed a final Response to Appellant's Sur-Reply on November 19, 2012.

Appellee is represented in this matter by James C. Walter, Lucas County Assistant Prosecuting Attorney. Appellant is represented by Merl H. Wayman, Attorney at Law.

STATEMENT OF CASE AND FINDINGS OF FACT

Appellant occupied a position classified as Hearing Officer prior to her position abolishment and subsequent layoff from employment. Appellee abolished Appellant's position, effective January 1, 2012, along with seven others within the Lucas County Child Support Enforcement Agency (LCCSEA). All of the hearing officer positions within LCCSEA were abolished and the Hearing Unit was removed from the table of organization. Also effective January 1, 2012, LCCSEA merged

with the Lucas County Department of Job & Family Services (LCDJFS), becoming a division of the LCDJFS.

In a rationale provided by LCDJFS Director Deb Ortiz-Flores to Lucas County Administrator Peter Ujvagi in support of the proposed abolishments, the sole reason stated for the abolishment of positions was "reasons of economy," due to a projected deficit of \$754,870 for fiscal year 2012. The projected deficit resulted from a change in the way federal incentive funds could be used to match federal child support matching funds.

Appellee determined that the abolishment of Appellant's position and the others affected would result in an estimated net savings of \$486,394 for fiscal year 2012, and \$739,924 for fiscal years 2013 and 2014. That savings arose from the elimination of salary, benefits, and associated costs for the eight positions. The areas of savings identified were annual salary, FICA tax (1.45%), Worker's Compensation employer contributions (1.09%), PERS retirement contributions (14%), and Health Insurance costs paid by the employer (Joint Exhibit 1). Appellee's analysis also considered the cost of end-of-employment cash-outs of leave balances and unemployment compensation benefits for the workers affected that would be incurred if an abolishment of positions were to be implemented.

The Board of County Commissioners approved the proposal to abolish positions by resolution on November 29, 2011. A Notice of Job Abolishment was provided to Appellant on December 2, 2011. Both the resolution and the notice cite "reasons of economy" as the sole justification for the abolishment of positions. The notice provided to Appellant included an explanation of the method used to calculate retention points and advised her of her retention point balance; advised her of her right to appeal; and notified her of her displacement, recall and reinstatement rights. Appellee advised Appellant regarding her existing vacation and sick leave balances and provided her with a copy of O.A.C. 123:1-41.

Following the abolishment of positions, the duties previously performed by Appellant were redistributed to existing agency personnel.

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. See, R.C. 124.321 (D), O.A.C. 124-1-02(B), O.A.C. 124-7-01(A)(1). This definition presents three tests that must be met in order to abolish a position. First, there must be a permanent (expected to last over one year) deletion of a position from the organization. Second, that deletion must be made due to a lack of continued need for the position. Third, the lack of continued need must be justified by either reorganization for efficient operation, reasons of economy, or lack of work. In order to successfully defend a contested abolishment, not only must an appointing authority demonstrate adequate justification for the abolishment of a position, it must also show compliance with the procedural requirements set forth in the Administrative Code. O.A.C. 124-7-01(A)(3).

In addition to bearing the burden of proving the sufficiency of the reason(s) upon which an abolishment is based, *Penrod v. Ohio Dept. of Adm. Servs.*, 113 Ohio St.3d 239, 2007-Ohio-1688, citing *State ex rel. Bispeck v. Trumbull Cty. Bd. of Comms.*, 37 Ohio St.3d 26, 28 (1988), and procedural compliance, an appointing authority must successfully rebut a valid *prima facie* showing of "bad faith," should one be demonstrated. Bad faith does not depend upon a finding that an employer acted with a political or personal animus, or failed to comply with procedural requirements, but may also be evidenced by 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.

As noted by Appellee, a county appointing authority is no longer obligated to file a statement of rationale with the Department of Administrative Services prior to proceeding with a job abolishment. In this instance, however, Appellee voluntarily filed a rationale with the Lucas County Personnel Department regarding its proposed abolishment of positions. That rationale, the Board resolution abolishing the positions, and the Notice of Abolishment provided to Appellant, all state clearly that the abolishment of positions was based upon "reasons of economy."

R.C. 124.321(D), which governs the abolishment of a civil service position, provides, in pertinent part, as follows:

(2)(a) Reasons of economy permitting an appointing authority to abolish a position and to lay off the holder of that position under this division shall be determined at the time the appointing authority proposes to abolish the position. The reasons of economy shall be

based on the appointing authority's estimated amount of savings with respect to salary, benefits, and other matters associated with the abolishment of the position, except that the reasons of economy associated with the position's abolishment instead may be based on the appointing authority's estimated amount of savings with respect to salary and benefits only, if:

- (i) Either the appointing authority's operating appropriation has been reduced by an executive or legislative action, or the appointing authority has a current or projected deficiency in funding to maintain current or projected levels of staffing and operations; ...

Generally speaking, "reasons of economy" are to be based upon an appointing authority's estimated amount of savings with respect to salary, benefits, and other matters associated with the abolishment of the position. In the instant matter, Appellee's abolishment of positions was based solely upon its estimated savings arising from the elimination of salary, FICA tax, Worker's Compensation employer contributions, PERS retirement contributions, and Health Insurance costs paid by the employer for Appellant's position and the seven others affected. I find that these areas of savings constitute the affected employees' salary and benefits (both direct and indirect). Appellee presented additional evidence to establish that it had a projected funding deficit arising from a reduction in Federal funding. Under such circumstances, R.C. 124.321(D)(2)(a)(i) creates an exemption applicable to county positions whereby "reasons of economy" may be based upon an estimated savings of salary and benefits only. Accordingly, I find that Appellee has presented sufficient evidence to demonstrate that the abolishment of Appellant's position was made for reasons of economy. I further find that the Notice of Abolishment provided to Appellant by Appellee substantially complied with the procedural requirements of O.A.C. 123:1-41.

Appellant contends, however, that Appellee abolished Appellant's position, along with the others affected, not only for reasons of economy but also for the purpose of reorganization of the Hearing Unit. She argues that Appellee did not conduct an analysis of any improved efficiencies to be gained by the abolishment of positions and submitted no documentation of improved efficiency. Appellant further asserts that Appellee's reassignment of duties has created a conflict of interest within the agency which does not improve efficiency and that the individuals to whom Appellee has assigned hearing duties are unqualified.

R.C. 124.321(D)(1) states that an appointing authority may abolish positions for "any one or any combination" of the three reasons set forth therein. Appellee based the instant abolishment of positions on one reason only – reasons of economy. Accordingly, as Appellee did not cite reorganization for improved efficiency as a basis for the abolishments, it has no responsibility to provide evidence regarding it.

As noted by Appellee in its October 31, 2012, Reply, this Board has no jurisdiction to consider whether the manner in which Appellee reassigned duties created a potential conflict of interest or whether the individuals to whom the duties were reassigned possess the necessary qualifications to carry out those duties. Appellant's assertions were made in support of its argument that the abolishments did not result in greater agency efficiency. No allegations of bad faith or intent to subvert the civil service system were made by Appellant. Accordingly, I find that this Board has no statutory authority to review whether or not the reassignment of duties made subsequent to the abolishment of Appellant's and other positions created a conflict of interest or whether the staff to whom they were reassigned were qualified to perform them.

Therefore, based upon the above analysis, and upon a finding that Appellee has demonstrated by a preponderance of the evidence that the abolishment of Appellant's position was made for "reasons of economy" and in compliance with the applicable procedural requirements, I respectfully **RECOMMEND** that the **ABOLISHMENT** be **AFFIRMED**.


Jeannette E. Gunn
Administrative Law Judge

JEG: