

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Victoria Phillips,

Appellant,

v.

Case No. 2012-ABL-12-0259

Greene County Board of Commissioners,

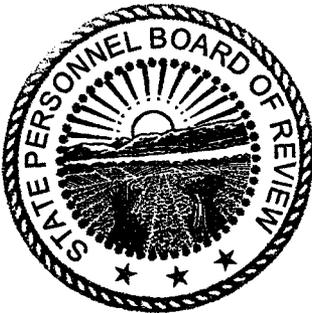
Appellee.

ORDER

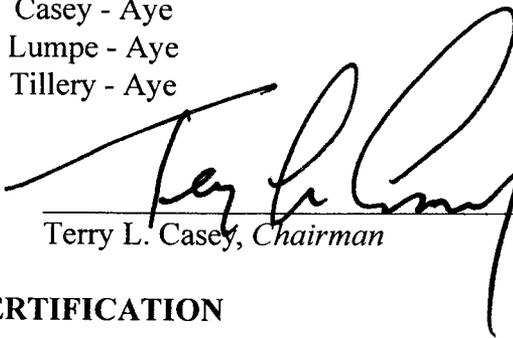
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 of the Executive Secretary's position at the Greene County Department of Job and Family Services is **AFFIRMED**. It is further **ORDERED** that since the Appellee did not follow the order of displacement in allowing the Appellant to displace into a previously held position of Secretary, that the Appellee's action in this regard is **DISAFFIRMED**. Wherefore, it is **ORDERED** that the instant job abolishment is **AFFIRMED** and that the subsequent layoff is **DISAFFIRMED**. As such, it is **ORDERED** that the Appellant be allowed to displace into a Secretary's position following the first pay period after the Appellant was actually laid-off on January 2, 2013.



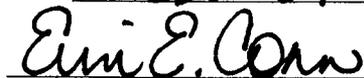
Casey - Aye
Lumpe - Aye
Tillery - Aye

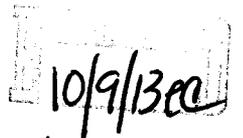

Terry L. Casey, *Chairman*

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, October 09, 2013.


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**

Victoria Phillips,

Case No. 12-ABL-12-0259

Appellant

v.

August 23, 2013

Greene Co., Board of Commissioners,

Christopher R. Young

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on May 29, 2013, at approximately 10:00 a.m., following a prehearing which was held on April 3, 2013, and concluded upon the simultaneous filing of post hearing briefs on June 27, 2013. The Appellant, Ms. Victoria Phillips, was present and represented by David M. Duwel, attorney at law. The Appellee, the Greene County Board of Commissioners, was present through its designee, Ms. Beth Rubin, the Director of the Greene County Department of Job and Family Services, and was represented by Marc A. Fishel, attorney at law.

On December 10, 2012, the Appellant, Ms. Victoria Phillips, received a notice of job abolishment from the Appellee. This action was to be effective January 2, 2013. Thereafter, the Appellant timely filed her appeal on December 12, 2012, as well as this being stipulated by the parties. Further, at the prehearing, the jurisdiction of this Board to proceed with this matter was established.

At the prehearing 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 abolishment;
- 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 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). Whereas, a finding was made that this hearing should proceed on to a full record hearing on the merits.

Further, prior to the start of the record hearing the parties stipulated that on December 6, 2012, the rationale and reasoning for the abolishment at issue was due to the reorganization for the efficient operation of the agency, a fact that would not be contested at the record hearing. Additionally, during the course of the hearing, both counsels stipulated that Ms. Victoria Phillips held a secretary position within the three-year period of time prior to the abolishment at issue, as well.

STATEMENT OF THE CASE

Appellee's first witness to testify was Ms. Beth Rubin, an employee of Greene County for 16 years who has served as the Director of the Greene County Department of Job and Family Services (DJFS) for the past six years. As Director, Ms. Rubin oversees the operations of all programs that are under the offices of the DJFS, such as; the counties public assistance programs, child support enforcement, workforce development and child protective services, whose duties include, but were not limited to, administrative functions as well as fiscal operational issues. As Director, Ms. Rubin, explained that she reported to the County Administrator and to the County Commissioners.

Ms. Rubin testified that she participated in the merger of the Greene County Children Services Board (CSB) and the DJFS. Ms. Rubin's responsibility in relation to the merger was to convene a transition team that worked on all the merger items that needed to be completed. That team would later report to the Ohio Department of Job and Family Services in order to ensure a successful merger between the organizations.

Ms. Rubin then testified to Appellee's Exhibit 1, identifying it as a notification dated August 14, 2012, that the Greene County Board of Commissioners sent to the Greene County CSB notifying them of the intent to combine the agencies effective November 19, 2012. Ms. Rubin also explained the document contained the official notification to the Ohio Department of Job and Family Services, dated August 14, 2012, of the intent to merge the agencies. Ms. Rubin explained that as a result of the agencies merging, certain positions were abolished.

Ms. Rubin then identified Appellee's Exhibit 2, explaining it was a resolution dated November 27, 2012, stating the Greene County Board of Commissioners had voted to abolish four positions following the merger of the agencies. Of the four positions abolished in the resolution two were currently filled, the position of Children Services Executive Secretary, the position that was occupied by the Appellant herein, and the position of Children Services Operations Director. The position of Children Services Executive Director was not filled at the time of the abolishment, but Ms. Susan Alberter was serving as Interim Director. After the merger the position of Children Services Executive Director no longer existed, and the Director of the entire agency (DJFS) became the Director of CSB. After

November 19, 2012, the CSB ceased to exist and the organization was dissolved. Ms. Rubin further explained that to her knowledge no other employee was classified as an Executive Secretary on the Children Services side of the organization other than Ms. Phillips.

Ms. Rubin then identified Appellee's Exhibit 3, identifying it as the notification letter dated December 6, 2012, from the Greene County Board of Commissioners sent to Ms. Phillips notifying her of her position being abolished. The letter set the effective date of the job abolishment as January 2, 2013. Ms. Rubin was unable to meet with Ms. Phillips on December 6, 2012, concerning the job abolishment, but had met with Ms. Phillips previously about the issue. On approximately November 27, 2012, Mr. Ken Johnson and Ms. Rubin met with Ms. Phillips after the Commission meeting to give her a heads up that the position in which she holds had been abolished and an official lay-off notice would be coming. Because Ms. Phillips was not in the office on December 6, 2012, Ms. Rubin was unable to hand-deliver the notification, so she contacted Ms. Phillips by phone to notify her as soon as possible, as she didn't want her to read about this in the paper first. Ms. Rubin then identified Appellee's Exhibit 4 as the acknowledgement of receipt of layoff letter that Ms. Phillips signed on December 10, 2012.

Ms. Rubin explained that Ms. Phillips was given some additional benefits due to delaying the effective date to January 2, 2013. These benefits included; a Paid holiday for Christmas Eve, a paid holiday for Christmas Day, a paid holiday for New Years Day, and the extension of her employment into the month of January, which extended Ms. Phillips health insurance through the month of January 2013.

Ms. Rubin then identified Appellee's Exhibit 6 as the former table of organization for the CSB.

Ms. Rubin explained Ms. Susan Alberter was simultaneously listed as the Interim Executive Director and the Program Director for the CSB because of the absence of the Executive Director. Ms. Alberter was normally the Program Director, who was basically the top level program expert for all programmatic functions of the CSB. After the merger of the agencies, Ms. Alberter retained her role as overseeing the programmatic functions of Children Services until her retirement. While Ms. Alberter was acting as the Interim Executive Director, Ms. Phillips did report to her, but Ms. Alberter retired in December of 2012. The position of Senior Manager (program administrator) has been filled by Amy Ambern at Children Services. No

one has been considered the Executive Director of Children Services since the merger, and since the position has been changed to Senior Manager no Executive Secretary has reported to the Senior Manager.

Ms. Rubin then identified Appellee's Exhibit 7 as the revised table of organization after the merger for the DJFS. Ms. Rubin explained Ms. Alberter retained the position of Senior Manager for Children Services.

Ms. Rubin then explained the Western Ohio Regional Training Center is a center that provides curriculum to train child welfare officers across the state of Ohio. The Western Ohio Center is located in Beaver Creek, Ohio; and its parent agency is the Greene County DJFS. The regional center trains approximately 13-18 case workers in the western portion of Ohio. The center trains welfare case workers both on site and at various locations. Ms. Rubin explained that she was aware that Ms. Phillips had previously held a position of secretary at the regional training center, but Ms. Rubin did not work at the time Ms. Phillips worked there. Further, when questioned, Ms. Rubin explained that only one clerical employee currently works at the agency, and that is Ms. Nancy Dakin and her position is labeled as secretary.

Upon further questioning by the undersigned Administrative Law Judge, Ms. Rubin explained that on page 3 of Appellee's Exhibit 6 that Ms. Sharon McKee, Ms. Tasha Ertel and Ms. Kristi Harkleroad were all secretaries, contradicting her previous testimony, but she was unsure what their retention points were. Moreover on page 5 of Appellee's Exhibit 6 Ms. Rubin also identified Ms. Kathy Miller and Ms. Mary Jo Miller as secretaries, as well. Further, the witness stated that none of the secretaries identified above are within a collective bargaining unit. Additionally, Ms. Rubin explained she has never seen any classification specifications for the secretaries identified, or for Appellant Ms. Phillips, as she has only seen position descriptions for the secretary positions and Appellants position.

On cross examination, Ms. Rubin further identified Appellee's Exhibit 2, explaining that four positions were affected by the merger of the CSB, but at the time of the merger no permanent Executive Director existed. The witness testified that Ms. Alberter was serving as the Interim Director on an as needed basis prior to the merger. Once the merger was completed Ms. Alberter returned to overseeing the programmatic functions of the CSB. Ms. Rubin explained that Ms. Phillips' position on November 20, 2012 was the same position she had before the merger.

The witness explained that because it was not possible to abolish the position before the merger, it created a difficult situation. The merger needed to occur before the abolishment could take place. Ms. Rubin stated that Ms. Phillips worked from November 20, 2012- January 2, 2013 performing secretarial work even though she had no Executive Director to assign work to her.

Next, Ms. Rubin affirmed, when questioned, that Mr. Calvin Brown was the Children Services Operations Director at the time of the merger, and was offered another opportunity by the Greene County Board of Commissioners. The witness testified that it was her understanding that Mr. Brown was going to be offered a vacant position in a department he had previously overseen, but he chose not to be offered the position.

Ms. Rubin then explained Ms. Julie White was the Children Services Human Resources Supervisor on December 19 2012, but Ms. Rubin was unsure of the exact date of Ms. White's transfer. The testimony revealed that Ms. White applied for a vacancy at the Greene County Personnel Department in the position of HR Generalist. The witness testified that Ms. White was chosen for the position and transferred to a separate department. Again, Ms. Rubin explained that Mr. Brown was the only individual of the four abolished positions who was offered a new position after the merger, and that Ms. White competitively applied for a new position on her own behalf. Furthermore, the witness testified that the Appellant, Ms. Phillips, was not offered a new position after the merger.

Ms. Rubin then explained that she did not have authority to decide if Ms. Phillips had displacement rights, but did speak to individuals about Ms. Phillips displacement rights. The actions which would be taken in regards to the job abolishment were discussed with Personnel Management and the Greene County Administrator. Ms. Rubin explained she assumed the Personnel Department was the proper authority to decide whether an individual had displacement rights. Ms. Rubin assumed Mr. Ken Johnson, who worked in the Personnel Department, had the authority to determine if Ms. Phillips had displacement rights.

Ms. Rubin next explained she has been the Director for the Greene County DJFS for the past six years, but has not had a secretary. The witness stated she has had an administrative support person, who was not in the union, but no secretary, and still has no secretary.

On November 27, 2012, Ms. Rubin and Mr. Ken Johnson met with Ms. Phillips to give her a verbal heads up about the job abolishment. Ms. Rubin explained that she did recall Ms. Phillips asking if another position existed in which she would be placed, or if she had displacement rights. Ms. Rubin explained that at the time, Ms. Phillips was told she did not have displacement rights. On December 6, 2012, the Commissioners voted to lay off Ms. Phillips. Ms. Rubin stated she needed to immediately notify Ms. Phillips of her lay off because she did not want a media source to divulge the information before she was able to notify Ms. Phillips.

Ms. Rubin then explained she had never calculated retention points, but she did know approximately how they were calculated based on time and service. Further, when questioned, the witness testified that since Ms. Nancy Dakin had an earlier hiring date than Ms. Phillips, Ms. Rubin explained she believed Nancy Dakin would have more retention points.

Appellee's next witness to testify was Mr. Ken Johnson, the Human Resources Director for the Greene County Board of Commissioners for the past five years. Prior to his time with Greene County, Mr. Johnson explained that he worked for the city of Xenia for 18 years as the Human Resource Director and in the City Manager's office as the City Manager and Assistant City Manager. As the Human Resources Director, Mr. Johnson testified that he deals with; recruitment, employment, collective bargaining agreements, labor relations, labor negotiations and disciplinary actions. Mr. Johnson testified that he also had dealt with employment layoffs in his previous experiences, prior to Ms. Phillips' situation.

Mr. Johnson explained he was involved in the CSB - DJFS merger and the subsequent abolishment of Ms. Phillips' position. The witness testified that the calculation of employee retention points was performed in his office. Further, the witness stated that he calculated the retention points of all staff likely to be affected by the merger and job abolishments.

Mr. Johnson then identified Appellee's Exhibit 12 as the retention point calculation of Ms. Nancy Dakin, a secretary, noting that she had 727 retention points, more than the Appellant herein.

Upon questioning Mr. Johnson explained Ms. Julie White held the position of Children Services Human Resources Supervisor, prior to the merger. The witness then explained that Ms. White after the merger applied for a HR Generalist vacancy

in Mr. Johnson's department, and was later offered the position. Upon questioning, the witness testified that Ms. White was not given any preferential treatment and competed with the rest of the field for the position.

Mr. Johnson then explained he emailed Ms. Phillips that the county had created a website that listed current job openings. The witness testified that he also told her that when the position of HR Technician would be posted and that she would be notified, and was in fact notified when the position became available. Mr. Johnson testified that Ms. Phillips did not apply for the position.

Upon questioning by the undersigned, Mr. Johnson was then questioned about Appellee's Exhibit 6 and the retention points of the secretary positions held by Ms. Sharon McKee, Ms. Tasha Ertel and Ms. Kristi Harkleroad. Mr. Johnson explained he did not calculate the retention points for these individuals because they are not listed in the Executive Secretary class series. However, Mr. Johnson did calculate the retention points for Ms. Nancy Dakin because when he looked at the code an option existed to revert to a previously held position. The witness explained that since Ms. Phillips held a previous secretary's position at the regional training center there was potential that she could revert to a different position. On page 4 of Appellee's Exhibit 6, Mr. Johnson explained he was unsure if the vacant secretary position had been abolished during the merger.

At this point, both counsels stipulated that Ms. Victoria Phillips held a secretaries position within the three-year period of time prior to the abolishment at issue.

On cross examination, Mr. Johnson explained that Ms. Phillips was not considered for other positions because she was not in the same classification series. The classification series for Greene County could be found in the policy adopted by the County Commissioners when they adopted a class plan. Mr. Johnson believed the established plan had been in place for some time since it was effective before his start time with the county. He stated the Executive Secretary position does not exist on the class plan today, and has never existed to his knowledge. The county does not have that specific secretary title within the class plan, but the classification series did exist for secretaries. Mr. Johnson stated he was aware of the other secretary series, but when he looked at the other series he needed to weigh the situation in relation to all employees. If he allowed an

individual not in the class series to bump an individual who was in the class series, the bumped individual would have a strong case for wrongful displacement.

Mr. Johnson then explained that Ms. Tasha Ertel was promoted into a position in the Parks and Trails Department, but Ms. Phillips was not given the opportunity based on two rationales. First, because the financial situation of the County, a three month delay must occur before deciding to fill a vacancy and only positions which are crucial to the organization may short circuit that period. The second rationale is that because the merger was a continuous process, discussion had continuously occurred in relation to whether the position needed to be abolished or merged, but no decision had been finalized.

Mr. Johnson then identified Appellants Exhibit V as the notification that Ms. Ertel was leaving her position with the CSB and accepting a secretarial position with the Parks and Trails Department.

Mr. Johnson then testified that he decided that Ms. Phillips did not have displacement rights and subsequently laid her off. Mr. Johnson further explained that if he had calculated the retention points for the other secretaries, Ms. Phillips likely would have more retention points than they do, since their hire dates were earlier in time.

On redirect examination, Mr. Johnson explained that neither the position of Secretary nor the position of Executive Secretary appears on the county classification plan previously testified to. Mr. Johnson explained that the final county classification plan only applied to those agencies which had accepted the plan, and the CSB had rejected the county plan previously. Mr. Johnson then explained that the former CSB positions are currently being worked into a new county classification plan.

Appellant's first witness to testify was Patricia Steiner. Ms. Steiner testified that she retired from the Greene County Children Services on January 3, 2011. After she retired, the witness stated she returned on three different occasions to the CSB. The last time she returned she held the HR Specialist position on August 2, 2012. After the merger of the agencies, she held that position until May 17, 2013. Ms. Steiner explained that she was an intermittent worker, employed only when the office needed her services. On May 17, 2013, the office hired a new person and her

services were no longer needed. As an HR specialist, Ms. Steiner performed interviews, kept information on personnel files, typed memos and routine letters.

Ms. Steiner explained that in December 2012 she was reporting to Ms. Julie White, who at that time was still in the CSB. Even after Ms. White left the agency, she explained Ms. White would still come back at times and Ms. Steiner would look to her for guidance, but she felt Ms. Rubin was her supervisor.

On cross examination, Ms. Steiner was questioned about signing a letter which opposed the merger of the agencies. Ms. Steiner then identified the letter as Appellant's Exhibit J. Ms. Steiner explained she did remember that letter and she signed it in September 2012. When Ms. Steiner signed the letter she was working as an intermittent HR specialist.

Appellant's next witness was Ms. Susan Alberter. Ms. Alberter explained she worked for Greene County from July 1984 to December 2012. Ms. Alberter's final position with the county was the Interim Executive Director's position and in her last month of employment her position was Program Director. Further, the witness stated that in her mind the director and manager positions were the same position. After the two agencies merged she was no longer the interim Executive Director and reverted to her previous position. In regards to the merger she was a member of a transition team, where she participated in the regularly scheduled meetings and provided feedback and documents as requested. Ms. Alberter stated she did not hear discussions about Ms. Phillips position being abolished or her displacement rights. Ms. Alberter said she did send an email to Mr. Ken Johnson about what she felt should happen to Ms. Phillips after the merger. Ms. Alberter identified Appellants Exhibit L as that email.

Ms. Alberter explained the email contained a recommendation to Mr. Ken Johnson that she thought an unfilled vacancy within the HR department was the proper place to put Ms. Phillips. The witness explained that since Ms. Phillips had previously held an HR position, she felt Ms. Phillips was a proper fit. Upon questioning, the witness testified that she received a response from Mr. Ken Johnson indicating that placing Ms. Phillips in that position was not an option. That position would be an HR technician position and would be under the county personnel department and not a position under the DJFS. However, the witness explained when she retired the position was still under the DJFS, and still on the table of organization.

Ms. Alberter served as the interim Director for about five months, from May 2012 until November 19, 2012. During that time Ms. Phillips reported to Ms. Alberter as the Executive Secretary. Ms. Phillips performed many duties related to information that had been requested by the transition team, pulling job descriptions together, gathering minutes, gathering public record requests, filing and fulfilling any requests Ms. Alberter had. Ms. Alberter testified Ms. Phillips was performing many secretarial duties and gathering information because of the merger.

Appellant's next witness was Ms. Victoria Phillips, the Appellant herein. The witness explained that although Mr. Johnson previously testified that he had notified Ms. Phillips of new job openings in Greene County, and she explained that Mr. Johnson only emailed her that the job posting website was being changed. Further, the witness explained that Mr. Johnson later emailed her that a new HR technician position was being posted, but not that Mr. Johnson offered her the position, as she was told she would need to apply for the position just like other interested applicants.

Ms. Phillips then explained she started working for the agency in 2001 as a receptionist/secretary, a position she held for a few months, but was later moved to a secretarial pool. The witness explained that after a few months the agency went through a structural change, and after the change, the secretaries were given a choice to decide where they would work based on seniority. When Ms. Phillips was given the chance she chose the position of receptionist. Ms. Phillips then identified Appellants Exhibit F as her resume. As can be seen by the resume Ms. Phillips' employment outlined her past history as a secretary, with the Western Ohio Regional Training Center, as well as Human Resources Secretary. Then the witness explained that on or about May of 2002 she applied for HR Secretary's position, a position she held until April 2007. After April 2007 up until January 18, 2011, Ms. Phillips held the position of a Foster Parent Training Secretary at the Western Ohio Regional Training Center. The evidence revealed that Ms. Phillips then took the position of an Executive Secretary, the position she held up until the time of the abolishment at issue. Ms. Phillips further testified that during her previous positions she never received any discipline and consistently received excellent performance reviews.

Ms. Phillips explained she went into the Executive Secretary position in January of 2011. Before Ms. Phillips became the Executive Secretary, Patricia

Steiner held the position. When Ms. Steiner retired, Ms. Phillips applied for the position and was offered the position. Ms. Phillips explained she was the Executive Secretary for the Executive Director, Alice Maddox. Ms. Maddox acted as the Interim Director before she became the Executive Director. Ms. Phillips explained that she and Ms. Maddox appeared to come into employment as a team. Ms. Phillips further explained that she was never told a separate classification specification existed for the position of Executive Secretary.

As Executive Secretary for Ms. Maddox, Ms. Phillips explained she retained records, filed documents and performed various secretarial duties for Ms. Maddox. In April of 2012 the Greene County Board of Commissioners decided to remove Ms. Maddox from her position. Much debate occurred about Ms. Maddox's firing because the meeting was held behind closed doors. In June of 2012, Ms. Maddox was officially removed from office in an open door meeting. That case is still ongoing to this day.

After Ms. Maddox was removed from office, Ms. Alberter took over as Interim Director. A Senior Team was assembled to handle the organization until a new director would be chosen. Ms. Phillips explained she acted as the secretary for any member of the Senior Team who needed her assistance, not just Ms. Alberter. Ms. Phillips then explained she was a supporter of Ms. Maddox and was against her firing, Ms. Phillips stated she spoke up many times about Ms. Maddox being removed.

Ms. Phillips then explained that she was not mistreated when Ms. Alberter took over as interim Executive Director. Ms. Phillips stated that she and Ms. Alberter had an understanding about Ms. Phillips dedication to Ms. Maddox, but Ms. Phillips was the Executive Secretary and served Ms. Alberter. Ms. Phillips explained that even though she testified in court for Ms. Maddox, she was never mistreated by the agency or was accused of having any ill-will towards the agency.

Ms. Phillips then identified Appellants Exhibit I as the minutes from the Greene County Commissioners Board meeting from August 14, 2012. These minutes explained when Ms. Phillips spoke up about the situation at CSB. Further, Ms. Phillips then identified Appellants Exhibit J as a letter sent to the Board of Commissioners from the agency's staff. The letter was initially rejected because it did not have any signatures. The letter was later signed, and Ms. Phillips explained that she too signed the letter, along with about 25 others.

Ms. Phillips then identified Appellants Exhibit K as Ms. Rubin's official notification dated November 19, 2012, via an e-mail that CSB was officially part of DJFS. Upon questioning, the witness testified that she found out her position was being abolished on November 27, 2012. Ms. Phillips explained that Ms. Julie White told her Ms. Beth Rubin would be having a meeting in her office, and she needed to attend. Ms. Phillips attended the meeting; both Ms. Rubin and Mr. Johnson were in attendance, and that Ms. Rubin explained that Ms. Phillips position had been voted on at the Commissioners meeting, and that it was being abolished. Ms. Phillips specifically asked if there was anywhere in the agency or in the county she could go. The witness testified that both Mr. Johnson and Ms. Rubin told Ms. Phillips she could not bump anyone and there was nowhere for her to go, and if she wished to continue to work she would need to apply like other applicants. Ms. Phillips was also told she would not be given any preferential treatment due to her employment with the CSB.

Ms. Phillips then explained that Mr. Calvin Brown, the CSB Operations Director, was offered a new position after the merger of the agencies. Mr. Brown was told he could move into a new position after the merger, but he denied the offer. The witness identified Appellants Exhibit M as the email Mr. Brown wrote pertaining to the position, and his denial of the offer. Additionally, Ms. Phillips identified Appellants exhibit P as an email sent to Mr. Perales, the President of the Greene County Administrators, from Ms. Monica Schiffler, the Public Relations Director for CSB, outlining her displeasure with regards to what was happening to Ms. Phillips position.

Ms. Phillips then identified Appellants Exhibit Q as an email sent out from Ms. Beth Rubin to all staff explaining Ms. Julie White's new position and the abolishment of Mr. Calvin Brown and Ms. Phillips positions. The email also contained the original message from Mr. Ken Johnson explaining when the Board of Commissioners voted on the job abolishment. Next, Ms. Phillips identified Appellants Exhibit R, as an email she sent to Ms. Rubin because she did not see Ms. Patricia Steiner's name on the list for HR Secretary position, along with identifying Appellants Exhibit T as the Greene County Employee Handbook, to which she believed that she had adhere to.

Ms. Phillips then identified Appellants Exhibit U as the one page table of organization that was passed out to staff on November 28, 2012 the witness

explained that the list contained a much abbreviated list for the new merged agency. Ms. Phillips explained Mr. Brown was written in as a supervisor for the position he was offered before he had the opportunity to deny the offering.

Ms. Phillips identified and explained that Appellants Exhibit V was a public records request which Ms. Phillips submitted on May 23, 2013. Ms. Phillips had been notified that Ms. Tasha Ertel was brought back to the agency, and Ms. Phillips was curious what Ms. Ertel was being rehired in the Parks & Trails Department since Ms. Ertel, as the newest hired secretary, she likely had the fewest retention points.

On cross examination Ms. Phillips was questioned about the Parks & Trails secretary's position. The witness stated she found out about the job opening because it was posted at the agency in house, but she did not apply for the position. Ms. Phillips felt she was qualified for the position, but did not apply for it. Ms. Phillips further explained that she included herself in the secretary information request in Appellants Exhibit R because she was no longer part of the agency at the time of the request.

As Executive Secretary Ms. Phillips explained she attended Senior Team meetings and Leadership Team meetings. The Leadership Team was Senior Team and all supervisors who would meet twice a month to discuss agency matters. Senior team was the Executive Director, Operations Director, Program Director and the two managers who were added to the agency in 2011. Ms. Phillips believed the agency allowed for her to attend these meetings because she was a trustworthy individual. Ms. Phillips further stated that she believed she was not offered a new position after the merger because she opposed the merger and supported Ms. Alice Maddox, specifically supporting Ms. Maddox in Court. Ms. Phillips stated she was unsure if Ms. Julie White supported Ms. Alice Maddox. Ms. Phillips stated she had no evidence to the claim she was not offered a new position because she opposed the merger and supported Ms. Maddox. Ms. Phillips further stated that many employees opposed the merger and supported Ms. Maddox at the time of the merger.

Appellant's next witness was Ms. Alice Maddox who explained that she worked for Greene County CSB from 1989 to March 2012. The last position Ms. Maddox held was the Executive Director, and before that position she was the Operations Director. As Operations Director and Executive Director, Ms. Maddox

explained she had knowledge of classification series and specifications. Specifically, Ms. Maddox explained the secretaries at CSB were all classified in the same classification series. She explained the position of Executive Secretary, which Ms. Phillips held, was in the same classification series as other secretaries. Ms. Maddox stated she was never told that the Executive Secretary position was in a different classification series

On cross examination, Ms. Maddox stated she did recall a document that specified classification series. Upon further questioning, the witness stated that the classification document was submitted to SPBR in 2001, and the series was approved by CSB, although documentary evidence was submitted to evidence this fact.

Appellee's first rebuttal witness was Ms. Julie White. Ms. White explained she is currently employed in the Greene County Personnel Department. She began working for Greene County CSB on March 27, 2000, as an HR Analyst. She stopped working for CSB on December 4, 2012. At CSB Ms. White was responsible for hiring, discipline and other HR matters, she was also involved in collective bargaining. Further, upon questioning Ms. White testified that she never saw a document listing classification series for CSB employees, nor was she aware of the CSB ever approving a document, as well. Ms. White stated that had a document existed she likely would have been aware of it. Ms. White further stated she had opposed the merger of the agencies in April and had spoken out about the matter frequently.

On cross examination, Ms. White explained she had never seen classification series for CSB employees during her time at HR. The witness explained that she never saw a series specifically for Executive Secretary or for secretaries, for that matter. Ms. White explained her position at CSB was abolished in 2012 and she found a new job at Personnel. She was not given the job, and had to apply competitively against other applicants.

Appellee's second rebuttal witness was Mr. Ken Johnson. Mr. Johnson explained he was involved with the transition of the agencies, and during the transition phase he did make an effort to classify employees. Mr. Johnson explained that the Fox-Lawson study did include the CSB even though they were not involved in the County plan. Mr. Johnson explained he had his staff search for classification

specifications, but was unable to find them. Mr. Johnson explained CSB did not adopt the Fox Lawson study, and CSB did not have any classification series.

Appellee's final rebuttal witness was Ms. Beth Rubin. Ms. Rubin explained she had seen Appellants Exhibit J, the letter opposing the merger, before, and began reading the signatures on the form. Ms. Rubin explained that Mr. Burger, who signed the document, was still employed with the agency. Ms. Rubin explained that Ms. Otto who also signed the document was still with the agency. Ms. Rubin went through the entire document explaining that all who signed the document were still employed either by the agency or the county. Ms. Rubin further explained there was a personnel related team who dealt with the agency merger. Ms. Rubin stated she had never heard of a classification series for the agency during these personnel team meetings.

FINDINGS OF FACT

1. I find that the Appellant, Victoria Phillips, was employed by the Greene County Department of Job and Family Services as an Executive Secretary at the time she was notified of her position being abolished on or about December 10, 2012, which was to be effective January 2, 2013. Further, the parties stipulated to the timely filing of Ms. Phillips' appeal to this Board.

2. The reasons for the abolishment and resultant layoff of the Appellant was due to the reorganization for the efficient operation of the agency, a fact that was not contested at the record hearing.

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. I find that on or about August 2012, the Greene County Board of County Commissioners sent its intent letter to combine the Greene County Children Services Board and the Greene County Department of Job and Family Services. The evidence revealed that the position of Children Services Executive Secretary, the position that was occupied by the Appellant herein, and the position of Children Services Operations Director (a position which was vacant at the time of the merger,

as Ms. Susan Alberter was serving as an Interim Director at the time of the merger, which after the merger ceased to exist) were abolished, along with two other vacant positions.

5. After the merger, no other Executive Secretary position existed. However, as was stipulated by the parties, the Appellant, Ms. Victoria Phillips, held a secretary position with the Greene County Children Services Board within the previous three years.

6. The evidence revealed that the Greene County Children Services Board did not have classification specifications assigned to anyone's position so a *de facto* classification plan was presented at the record hearing. While the County argues there were no other Executive Secretaries employed by the Department of Job and Family Services which Ms. Phillips could have displaced, the County failed to classify her under the Department of Job and Family Services classification plan after the merger. Additionally, the County failed to calculate the retention points for various individuals classified as secretaries allegedly because they were not listed in the Executive Secretary class series. Appellee did calculate the retention points for Ms. Nancy Dakin, a Secretary, because as explained by Mr. Ken Johnson said that under the code Ms. Phillips may have had an option to revert to a previously held position. Moreover, the County compared the retention point calculation of Ms. Nancy Dakin, a Secretary, to the retention points assigned to Ms. Phillips. Ms. Dakin had 727 retention points, approximately 300 more than the Appellant herein. The County failed to calculate retention points for any other secretaries employed by the Department of Job and Family Services, most of whom, according to Appellee's Exhibit 6 all had dates of hire after the Appellant.

7. With respect to displacement rights, the documentary evidence revealed that there were no vacant secretarial positions within the Greene County Department of Job and Family Services that the Appellant could displace into. The testimonial and documentary evidence revealed that after the merger the Appellant was an employee of the Greene County Department of Job and Family Services and, as such, should have been assigned a classification specification under the Greene County's classification plan. Further, Ms. Phillips should have also been allowed to bump back into any of her previously held positions within the last three years pursuant to the Ohio Revised Code and Ohio Administrative Code.

8. The issue of bad faith on the part of the Appellee in implementing the instant job abolishment was not proven by a preponderance of the evidence, although it was raised by the Appellant.

CONCLUSIONS OF LAW

In this layoff appeal, the Appellee must prove by a preponderance of the evidence that the Appellant, Ms. Victoria Phillips' abolishment and resultant 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.* In this case, the Appellee has failed to meet its burden with respect to allowing the Appellant herein to displace into a Secretary position which she had held previously within the last three years.

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 is the finding of this Administrative Law Judge initially that the Appellee substantially complied with all of the applicable statutes and rules pertaining to when an abolishment is implemented.

PERMANENT 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 Greene County Department of Job and Family Services, due to reasons of reorganization for the efficient operation of the agency, a fact that

was not contested at the record, did act in good faith when combining the Greene County Children Services Board and the Greene County Department of Job and Family Services.

Consequently, this Board finds that the Greene County Board of Commissioners acted in good faith when it instituted the instant job abolishment of the Appellant's position of Executive Secretary.

THE APPELLANT SHOULD HAVE BEEN ALLOWED TO DISPLACE INTO A SECRETARY POSITION AT THE AGENCY

It should be noted that the Appellant did contest her right to displace her as a Secretary, not as an Executive Secretary, in this matter. Based upon the below reasoning, the undersigned concludes that Ms. Phillips should have been allowed to displace into a Secretary position at the agency, as the Appellant had held a previous secretary position within the last three years.

As a review, section 124.324 of the Ohio Revised Code governs the layoff and displacement procedures. That statute states as follows, in part:

(A) A laid-off employee has the right to displace the employee with the fewest retention points in the following order:

- (1) Within the classification from which the employee was laid off;
- (2) Within the classification series from which the employee was laid off;
- (3) Within the classification the employee held immediately prior to holding the classification from which the employee was laid off, except that the employee may not displace employees in a classification if the employee does not meet the minimum qualifications of the classification or if the employee last held the classification more than three years prior to the date on which the employee was laid off.

In the case at bar, the Appellant, Ms. Victoria Phillips, at the time of the abolishment at issue had held her position of Executive Secretary for approximately the last two years. The evidence revealed that the Appellant held a position as a

Secretary, Foster Parent Training (Western Ohio Regional Training Center) from March 5, 2007 until January 2011, wherein she then became an Executive Secretary. The evidence also revealed that up until November 19, 2012 she worked for the Greene County Children Services Board and then she worked for the Greene County Department of Job and Family Services until her abolishment and resultant layoff effective January 2, 2013. At the time of Ms. Phillips's layoff she had accumulated 396 retention points.

Appellee argues that Ohio Revised Code Section 124.324 does not apply to layoffs resulting from job abolishments and that Ohio Revised Code Section 124.321, being a more specific statute, should control. The Appellee continues to argue that Appellant Phillips was in a stand-alone classification and had no displacement rights.

Ohio revised code section 124.321(D)(3) states as follows:

(3) Each appointing authority shall determine itself whether any position should be abolished. An appointing authority abolishing any position in the service of the state shall file a statement of rationale and supporting documentation with the director of administrative services prior to sending the notice of abolishment.

If an abolishment results in a reduction of the work force, the appointing authority shall follow the procedures for laying off employees, subject to the following modifications:

(a) The employee whose position has been abolished shall have the right to fill an available vacancy within the employee's classification.

(b) If the employee whose position has been abolished has more retention points than any other employee serving in the same classification, the employee with the fewest retention points shall be displaced.

(c) If the employee whose position has been abolished has the fewest retention points in the classification, the employee shall have the right to fill an available vacancy in a lower classification in the classification series.

(d) If the employee whose position has been abolished has the fewest retention points in the classification, the employee shall displace the employee with the fewest retention points in the next or successively lower classification in the classification series.

However, Appellee's argument fails in that the statutes regarding job abolishments and resultant layoffs Ohio Revised Code Sections 124.321 through 124.328, along with Ohio Administrative Code Chapter 123:1-41, and specifically Ohio Administrative Code Section 123:1-41-12 regarding the Order of Displacement, all must be read in *pari materia*, as laws must be construed with reference to each other. Also, Ohio Revised Code Section 124.321 discusses the procedures used for laying off employees, while Ohio Revised Code Section 124.324 governs the order that those procedures shall follow.

With respect to Ohio Administrative Code section 123:1-41-12 (C) regarding the Order of Displacement, states the following:

(C) Displacement to a classification previously held. An employee who is to be laid-off or who is displaced may fill an available vacancy, or if no vacancy exists, displace the employee with the fewest retention points in the classification the laid-off or displaced employee held immediately prior to his or her current classification, provided the classification is lower or equivalent classification to the employee's current classification.

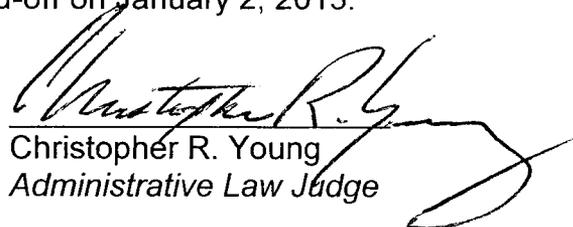
A laid-off or displaced employee may displace into a classification previously held if:

- (1) The laid-off or displaced employee held a **position in the previous classification within the three years preceding the date an employee was laid off or displaced**; and
- (2) The laid-off or displaced employee still meets the minimum qualifications of the previous classification; and
- (3) The laid-off or displaced employee shall have successfully completed his or her original probationary period. (Emphasis Added).

With respect to displacement rights the evidence established the Appellant held a secretarial position within the preceding three years of employment. The burden of proof in this matter, as in all abolishments resulting in a resultant layoff, remains upon the Appellee. This case had a couple of twists that made it difficult for the Appellee to effectuate the job abolishment at issue. First, as admitted by the Appellee, the County and the Greene County Department of Job and Family Services, not the Greene County Children Services Board, which was still a separate agency prior to the merger, opted not to adopt the County classification system, thus creating a *de facto* classification system. Further, as testified by the Appellant the Children Services Board created classifications for secretaries, instead of a secretarial pool, while she was employed at the Children Services Board. When the two entities merged in November 2012, the Greene County Department of Job and Family Services was faced with the task of rewriting the Children Services Board's job classifications to fit within the Department of Job and Family Services classification system. Second, while the Greene County Department of Job and Family Services did not have a classification of Executive Secretary, as testified to by Mr. Ken Johnson, that fact alone did not relieve the Appellee to place the Appellant into their classification system prior implementing the instant job abolishment.

RECOMMENDATION

I respectfully **RECOMMEND** that the abolishment of the Executive Secretary's position at the Greene County Department of Job and Family Services be **AFFIRMED**. However, I further **RECOMMEND** that since the Appellee did not follow the order of displacement in allowing the Appellant to displace into a previously held position of Secretary, that the Appellee's action in this regard be **DISAFFIRMED**. Wherefore, it is **RECOMMENDED** that the instant job abolishment be **AFFIRMED** and that he subsequent layoff be **DISAFFIRMED**. As such, the Appellant should be allowed to displace into a Secretary's position following the first pay period after the Appellant was actually laid-off on January 2, 2013.


Christopher R. Young
Administrative Law Judge

CRY: