

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Gabrielle Wonnell,
and
Kory Miller,

Appellants,

v.

Recorder Franklin County,

Appellee,

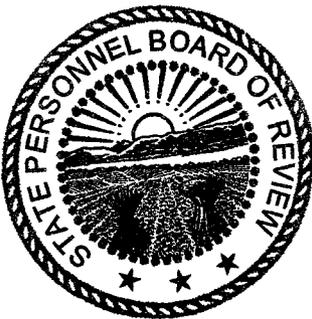
Case Nos. 2013-ABL-04-0109
2013-INV-04-0110
2013-ABL-04-0111
2013-INV-04-0112

ORDER

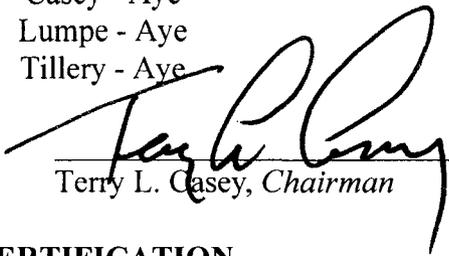
These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals. Further, the Full Board has held an Oral Argument on these matters. The Board notes that both counsel at Oral Argument were extremely well prepared and performed admirably at the Oral Argument.

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, as well as the Oral Argument presented to the Full Board, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the **ABOLISHMENT** of Appellant Wonnell's and Appellant Miller's respective positions be **DISAFFIRMED**, due to Appellee's failure to substantiate by a preponderance of the evidence the statutory reason of reorganization for the efficient operation of the organization in abolishing Appellant Wonnell's and Appellant Miller's respective positions, pursuant to R.C. 124.03 and R.C. 124.328.



Casey - Aye
Lumpe - Aye
Tillery - Aye

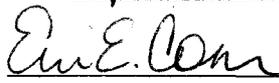

Terry L. Casey, *Chairman*

CERTIFICATION

4/7/14

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, April 07, 2014.


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**

Gabrielle Wonnell and Kory Miller

Case Nos. 2013-ABL-04-0109,
2013-INV-04-0110, 2013-ABL-04-
0111, 2013-INV-04-0112

Appellants

v.

December 2, 2013

Franklin County Recorder

Marcie M. Scholl
Administrative Law Judge

Appellee

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on July 25 and August 13, 2013. Present at the hearing were Appellant Gabrielle Wonnell, represented by Michael Moses, Attorney at Law and Appellee Franklin County Recorder Terry Brown, represented by Denise DePalma and Amy Hiers, Assistant Prosecuting Attorneys.

The subject matter jurisdiction of the Board was established pursuant to sections 124.03 and 124.328 of the Ohio Revised Code.

Prior to the beginning of the hearing, Appellant Wonnell had filed a Motion in Limine. After hearing oral argument on the Motion, the Motion was **DENIED**.

Appellants Wonnell's and Miller's positions were abolished effective May 3, 2013. The parties stipulated that all of the procedural aspects of the job abolishments were done in a timely manner and were in substantial compliance with the statutes and administrative code, with the exception that they dispute their displacement rights.

STATEMENT OF THE CASE

Appellee's first witness was Jada Brady, Director of Operations with Appellee since January 7, 2013. In that position, Ms. Brady testified she is responsible for the day to day operations of the office, which consists of three departments: Recording, Data and Quality Management, and Customer Service. She explained

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the Appellee is responsible for recording documents such as deeds, mortgages, plats, Powers of Attorney, living wills and military releases. She stated that since May 20, 2013, the office has been issuing military identifications which contain photos and look much like a driver's license.

Ms. Brady testified the initial employee the public meets is the employee at the counter. That person looks at the document presented and determines if it is a recordable document. If so, the name of the person is entered into the system and a credit card payment is taken at the kiosk. The Electronic Data Management section inputs the data. Once the document is taken in, it is scanned and then forwarded to the data section for input. The Quality Assurance section reviews all the information but does not enter any data. The Customer Service section is responsible for mailing the original documents back to the customers, running the grids to show who owns what property, takes orders from the internet, does microfilming, scans plats, makes certified copies and helps the public.

Appellee's Exhibit 15, page 246, was identified by Ms. Brady as the table of organization reflecting the office in January, 2013 when she began in her position. Page 359 of that same exhibit is a current table of organization. Ms. Brady testified that in January, 2013, the Office Specialists reported to the Director of Operations. She explained the Office Specialists were known as floaters, as they went to any area they were assigned. Ms. Brady stated Marcie Egan is the supervisor of Recording Services and in order to learn how to record documents, she would sit with Ms. Egan in the afternoons. It was during this time that Ms. Brady observed Appellant Wonnell, as Appellant Wonnell did recording services in the afternoon. Ms. Brady testified she could not recall where Appellant Wonnell was in the mornings. After approximately one week of Ms. Brady's hire, Appellant Wonnell went on maternity leave and the other two Office Specialists kept rotating throughout the office. When Appellant Wonnell returned to the office in April, she floated between the cash register and customer service.

Ms. Brady testified Appellant Miller was also a floater between Recording Services, Customer Service and Reception. Ms. Brady stated the employee in the scanning room went on medical leave and employees were taking turns in the scanning room, but she thought it made more sense to have just one person doing the scanning, so she assigned Appellant Miller to the scanning room until the employee returned in February, 2013. Subsequent to that, Appellant Miller went to

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Customer Service, but also floated throughout the other divisions. Ms. Brady testified she wanted just one person throughout the day at the reception desk.

Appellee's Exhibit 17, page 227, was identified by Ms. Brady as a position description for the Office Specialist position. She testified the first time she saw this document was approximately two days ago and that she had no part in writing the description as it was written before she was hired. In looking at the document, Ms. Brady testified that the duties which fall into the seventy-five percent category are not an accurate description of the duties she observed in January, 2013. She stated the duties appearing on the position description were done by the data entry employees, while the Office Specialists had cashier bags and floated between the departments. Under the twenty-five percent category, Ms. Brady testified when the Office Specialists were assigned to the reception desk, they did perform these duties. She also stated there was no Administrative Assistant position in the office when she began her duties in January, 2013, although the position description references such a position. In looking at page 226 of the same exhibit, Ms. Brady testified she did not prepare this position description for Office Specialist, but did have input into it and stated it is an accurate description of Appellant Wonnell's duties, although there is still no Administrative Assistant position. She added there were no cashiering duties listed but Appellant Wonnell did do those duties. Ms. Brady testified every employee had the knowledge and ability to do data entry, but neither Appellants Wonnell nor Miller did those duties.

Appellee's Exhibit 18 was identified by Ms. Brady as a performance matrix, showing how many documents were scanned, the number of documents entered, etc. Ms. Brady testified the supervisor from January to May 2013 over Data Entry and Quality Assurance was Beth Patterson, then Brian Geigner took over the position. Mr. Kalo then took over Mr. Geigner's previous position in Data Entry, another employee was moved from Data Entry to Recording Services and another employee went from Customer Service to Data Entry.

Ms. Brady testified that it was the Customer Service area that tracked the number of telephone calls coming in as well as walk-ins, faxes and emails. She stated she had an issue with that because the employee in the office whose responsibility it was to do a quarterly report told her the numbers in those areas were too low and did not accurately reflect the true numbers. Ms. Brady testified she was told the problem was caused by the floaters as they could not consistently

track the numbers since they were floaters. Ms. Brady explained these numbers are part of the budgetary control process and they affect their budget numbers. She testified she relayed her concerns to the supervisor. When two employees from the Treasurer's office came to observe, they were disturbed, as it was their opinion too many people were handling money. She was told by them that the office needed to delete employees' access to the program and that especially people who handled cashier bags should not have bookkeeping access and should not be able to delete any transactions they entered.

Ms. Brady testified it was her opinion that with the rotation scenario, numbers could not be tracked and it was too difficult to pinpoint who was at the window when. She stated there was no routine as to who opened mail, etc. Therefore, it was determined to abolish positions for reasons of efficiency, as there was no benefit to the continual change. She wanted routine and stationary people. After the notification of the job abolishments were distributed, then the position of Office Manager was created and filled.

Appellee's Exhibit 16 was identified by Ms. Brady as the position description for Office Manager, which she testified was an accurate description of the duties. The position reports to her. Ms. Brady stated the Office Manager does not handle any money unless the bookkeeper is out and then Ms. Brady and the Office Manager do it together. The position also assists Ms. Brady in her absence with running different reports every day for title searchers, which she stated the Office Specialists were never able to do. The Office Manager makes sure all the drawers are balanced and now everyone has distinct duties. The bookkeeper is not on a register and the employees in customer service know what documents to accept.

On cross examination Ms. Brady testified the abolishments provided fluidity and routine in the office with less people handling money and one consistent person at the reception desk. Ms. Brady stated Jared Smith is the Office Manager. There is one person at the reception desk and Ms. Fox, formerly an Office Specialist, is now a cashier in Recording Services and no longer does any reception duties. In looking at Appellee's Exhibit 11, Ms. Brady testified it was the notification letter to Mr. Smith that he had been promoted to Office Manager, effective May 6, 2013. She testified the position was posted one week after notice of the job abolishments. Prior to his promotion, Mr. Smith worked in Data Entry. In describing the differences in the table of organizations to the present one, Ms. Brady explained Ms.

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Tammy McCall moved to Data Entry from Customer Service; Tom Woodyard moved from Recording to Customer Service; Beth Patterson was gone and Mr. Geigner filled her position; and Ms. Hamilton moved from Data or Customer Service to Recording Services. She testified there was no additional training needed for Mr. Woodyard, as all employees were cross-trained in all areas, but some said they forgot some of the duties.

In reviewing the tables of organizations on pages 242 and 243 of Appellee's Exhibit 15, Ms. Brady noted they are both dated April 18, 2013 and on the first one (page 242), there is a vacant Office Manager position. That date is one day prior to the notices of abolishment being distributed.

Ms. Brady testified Appellant Wonnell applied for the Office Manager position two days before her abolishment. She confirmed Mr. Smith had only three months experience, but previously worked in the office of the Attorney General in constituent concerns and majored in political science and communications. He had no experience in running reports for the title abstractors, but the floaters did not either. Ms. Brady stated access to the software is necessary to run the reports and she trained Mr. Smith how to run the reports. She testified the Appellants could not have had this access due to their conflict with their monetary duties. She confirmed that the qualifications for the position require a high school diploma or equivalent and that all supervisors train their employees in each area. Ms. Brady testified the cashiers are in Recording Services and they take documents by email, walk-in or e-file. The Appellants floated between Recording Services, Customer Service and Reception and had a cashier bag. She stated they did not do any data input.

When asked what specifics were used to determine that the system of using floaters was not efficient, Ms. Brady testified it was based on the phone calls coming into the office which said "I talked to a lady" but didn't know who, because there was no continuity and the money issue. She testified that after she placed Appellant Miller in customer service permanently, the numbers for tracking went way up, which was a positive impact on the numbers and the budget. Ms. Brady testified the efficiency improved even more when Mr. Smith was promoted, as he knew her filing system and could do the reports, plus order supplies.

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Ms. Brady testified her predecessor told her the office was behind and they needed to catch up. She stated the office was 4,177 documents behind when she began working. She testified there is still a backlog currently, but she cannot remember how many documents are in the queue, although she does not remember having a great deal of lingering documents as of May 3, 2011. Ms. Brady also testified that all employees currently in the office are being cross-trained and that they are doing the cross-training in shifts, in all of the departments.

Appellee's next witness was Brian Shinn, Chief of Staff for Appellee since January 7, 2013. As such, it is his responsibility to ensure the statutory obligations of the office are being met and that the office runs smoothly. He stated he helped with the transition of office and that it became apparent early on that they had concerns that the position descriptions they were given were not matching up to the duties. With regard to the Office Specialists' duties, the position description listed seventy-five percent of their time was spent doing data entry, but in reality, they did not do much with data entry. Mr. Shinn testified it did not make sense to have three employees floating when everyone in the office had been cross-trained on a short term basis.

In looking at the different tables of organization, Mr. Shinn testified he was able to locate five tables from the previous Recorder, Ms. Hawk. He stated Appellee's Exhibit 15, page 251, dated March 3, 2011, is the earliest table he found on his computer and it showed Appellant Miller as the only Office Specialist. Appellant Wonnell shows up in Customer Service and Jessica Fox shows up in Recording Services. The tables on pages 250, 248 and 249, were all under Ms. Hawk's tenure and all three of those tables are the same as the one found on page 251. Mr. Shinn testified he therefore concluded that at some point Appellant Wonnell worked in Customer Service, Ms. Fox worked in Recording Services and Appellant Miller had always been an Office Specialist.

Mr. Shinn testified it was the beginning of February, 2013, when the topic of abolishing the Office Specialist position arose. It came up due to the non-matching of the actual duties with the position descriptions. The determination between human resources, Ms. Brady, Recorder Brown and himself was that the office was fully staffed and the Office Specialists were duplicative of services due to cross training. He stated the reasons for the abolishments were greater efficiency and a change of philosophy in that they wanted everyone to be experts in their jobs. The

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office then consulted with the Prosecutor's office and the Department of Administrative Services' packet regarding job abolishment. The rationale for the abolishments is the reorganization for greater efficiency. He stated he recommended the abolishments of the Office Specialists.

Appellee's Exhibit 16 was identified by Mr. Shinn as the position description for the Office Manager position which he drafted. He stated Ms. Brady, Human Resources and Recorder Brown all had input. Mr. Shinn stated the position description is accurate as to the duties of the position. Originally the thought was to create a reception position in order to have a consistent "face" of the office, but it was later decided there would not be enough work for one person to only do reception duties, so they decided Ms. Brady needed some help with her duties. The Office Manager position was created as a confidential and fiduciary advisor to Ms. Brady.

Appellee's Exhibit 13 was identified by Mr. Shinn as the rationale for the abolishments. He testified he compared the Office Specialist position to all of the classified positions of cashier, data entry, quality assurance, scanner and bookkeeper and determined Office Specialist was the lowest classification, sort of a jack-of-all trades, master of none. He opined the position should have been called a Generalist, as there was no depth of knowledge needed to understand the documents. Mr. Shinn stated he could not find any other comparable positions as the positions were just floaters with no experience nor depth of knowledge. Appellee's Exhibit 14 was identified by Mr. Shinn as the list of retention points and displacement rights which he created.

With respect to Appellant Wonnell, Mr. Shinn stated all of the tables of organization and performance evaluations showed her to be in Customer Service, so he determined her displacement rights were in Customer Service, but she had the lowest retention points. Appellant Miller was only ever shown as an Office Specialist and her performance evaluations were signed by the Director of Operations. It appeared this was the only classification she ever held and since there were no lower classifications, there were no displacement rights. With respect to Jessica Fox, the tables and performance evaluations were somewhat ambiguous, as they had her listed as both a receptionist and an Office Specialist but her performance evaluation was signed by Marcie Egan in Recording Services or cashiering, so that is where he determined her displacement rights to be.

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Appellee's Exhibit 12 was identified as the memorandum from Recorder Brown which started the abolishment process and it is dated April 1, 2013. Mr. Shinn identified Appellee's Exhibits 1, 2, 5, 6, 8 and 9 as the abolishment notices and acknowledgement documents given to Appellant Miller, Appellant Wonnell and Ms. Fox, respectively.

Mr. Shinn testified the posting for the Office Manager position was an internal posting and Appellee's Exhibit 11 was identified by him as the award letter to Mr. Smith. He stated it was a promotion for Mr. Smith and his salary increased from \$12.50 per hour to that of \$15.00 per hour. Appellee's Exhibit 10 was identified as Mr. Smith's initial hire personnel action, showing him to have been hired into the Data Entry section. In looking at Appellee's Exhibit 15, Mr. Shinn testified the table of organization on page 243 is the one immediately prior to the abolishments and the one on page 242 is the one immediately after the abolishments. He stated Ms. Hamilton resigned on April 23, 2013 and Ms. Fox then went into that position. The table of organization on page 359 shows the current make up of the office.

Mr. Shinn identified Appellee's Exhibit 19 as the documents comprising the response to the Procedural Order of June 5, 2013. He stated he did not calculate retention points for any unclassified employees.

Since the abolishments, Mr. Shinn testified there is one consistent face of the office who answers the phone and does the mail. There are no conflicts of an employee working in one section but not reporting to that section supervisor, Ms. Brady has more time to do her duties and has coverage in her absence and there is a person to fill in for the bookkeeper. He stated the operation flows better and more smoothly and there have been no negative effects from the abolishments.

Upon cross examination Mr. Shinn testified the real estate market is on the rise so that means more filings than when Recorder Brown came into the office. He stated there are eleven employees doing the work which the Appellants did. He confirmed the rationale for the abolishments stated only Mr. Smith or the Office Manager employee would be performing the duties of the Appellants. Mr. Shinn also opined that the term "Deputy Recorder" is not a classification but is only a statutory title. He stated there was a position description created in their

administration for a Special Filings Deputy and he confirmed there have been no classification specifications created.

Mr. Shinn testified there has been no data looked at to determine efficiency and he stated he did not know Appellant Miller was Ms. Hawk's daughter-in-law. He also testified he did not ask either Appellant Miller nor Appellant Wonnell what their duties were and he stated Appellant Wonnell was out on maternity leave approximately two weeks after they took office and she did not return until April.

On redirect examination Mr. Shinn testified that his rationale states that "All employees in Recording Services have been cross-trained, . . ." but that he meant and should have stated "Operations" instead of "Recording Services".

On re-cross examination Mr. Shinn explained that cross-training is not as in-depth, so it only allows for short-term placement in a position and not on a regular basis.

Appellants' first witness was Terry Brown, as if on cross examination. In looking at Appellee's Exhibit 13, the rationale, Recorder Brown testified he approved the document. He testified he relied on Mr. Shinn and Ms. Brady's judgment and stated he attended training with other new Recorders where he talked with the Stark County Recorder. Recorder Brown also testified he has past experience working with other county offices and that he worked as the Assistant to the Director of Human Resources for the Commissioners for one year.

On direct examination Recorder Brown testified he had never seen a full-time position used as a floater and that it was not an efficient use of staff resources nor of the public dollars. He stated the three full-time employees were being used to fill in for others on an occasional basis. Recorder Brown testified he has no knowledge of the political affiliation of the Appellants and that it was not until after the abolishments that he found out Appellant Miller was Ms. Hawk's daughter-in-law. He stated all of the employees in his office are Deputy Recorders, as all employees can act in his stead. He testified that all of the duties in the office are not interchangeable, as there are distinct duties and responsibilities, with different authorities and permissions.

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Recorder Brown testified the abolishments of the positions had a positive impact and experience on the office. The feedback he has received is that the customers like having the consistency of one person at the reception desk and the Director of Operations knows where all of her employees are. He stated specialization is needed in positions and with cross-training it only provides enough to know to be dangerous. What is needed is someone in a position full-time with an in-depth knowledge.

On re-cross examination Recorder Brown testified there has been no change in processing times since the abolishments. The number of filings have increased due to the military identifications, which began the Monday prior to Memorial Day and since then, approximately three hundred have been processed. He stated two employees have been out on a long term medical leave. Recorder Brown opined that to have an analysis of processing times, it is necessary to have the same people every day doing the same thing with a consistent number of documents. He stated that scenario does not happen in their office.

Appellant Wonnell testified she had been employed a little over two years as a Deputy Recorder by Appellee. When she began her employment, she was trained and given an overview of the office over an approximate two to two and half-week period. She testified she was trained in the duties of an Office Specialist and then by all of the directors of the departments since she was working in all of them. As an Office Specialist, Appellant Wonnell testified she would fill in as needed in any given department. She had been rotating on a two week schedule prior to Recorder Brown taking office and she testified she always did data entry on a back-up basis. When she returned from maternity leave in mid-April 2013, she was assigned to rotate on a daily basis.

Appellant Wonnell testified she worked in every department and could do data entry from any computer. She entered legal descriptions on deeds, cross referenced mortgages, entered names of borrowers and banks, etc., essentially entering relevant information that one would need to search if doing a title search. Appellant Wonnell testified she never did any quality assurance duties and did not do any data entry in recording due to being with customers all day long. She stated she spent ten to twenty percent of her time in other departments and that there was cross-training in all departments, as employees were moved from one department to another as needed.

Appellant's Exhibit A was identified by Appellant Wonnell as documents from her personnel file. She testified she was hired before Appellant Miller and Ms. Fox, as she was hired on January 3, 2011. Appellant's Exhibit M, page 290, was identified as Jessica's Fox initial hire personnel action, showing her hire date as March 8, 2011. Appellant Wonnell testified she was also hired prior to Jared Smith, formerly in Data Entry and now Office Manager. She also was hired prior to Ted Kaylo, a Data Entry Clerk, who has hired after Recorder Brown took office. Another employee hired after Appellant Wonnell was Dan Stewart, who only started this year under Recorder Brown. She testified she has approximately seven years of prior county service.

In looking at Appellant's Exhibit F, Appellant Wonnell identified pages 226 and 227 as position descriptions for Office Specialist. She stated the first one she was given when she began her employ in 2011. She testified it is generally accurate although the Administrative Assistant went with a former Recorder, Mr. Montgomery, so that is when the rotation began. She stated the position description does not include the work in Recording Services, which she did regularly. She did receptionist and recording duties two out of six weeks and reception at lunch time. The Director of Operations under Ms. Hawk was Brent Wentzel and he made the rotation schedule. The schedule was posted for a two month period. Appellant's Exhibit F, pages 222 to 224, were identified by Appellant Wonnell as position descriptions for Data Entry. She testified all employees entered the same data, and would just take the data to be entered from the queue. She explained there was an electronic image and the data entry fields were at the bottom of the document, so all one had to do is read through the document and fill in the fields. She was told to do data entry when things were slow.

Appellant Wonnell identified Appellant's Exhibits H, I, J, and K as emails to and from her and Mr. Wentzel asking her to do data entry. There is one email pertaining to bookkeeping, which she testified she was never trained in. Appellant Wonnell testified she was only in Recording Services for the six days prior to her maternity leave. She stated monthly reports were kept on tracking and initials were put in on the mail log so everyone could see who did what piece of mail. Prior to the abolishment, Appellant Wonnell testified Mr. Smith and Mr. Kalo both did data entry. Prior to her position being abolished she testified it was one to two days between the filing of a document and the recording of a document.

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Appellant's Exhibit N was identified by Appellant Wonnell as a printout she created on July 24, 2013, from Recorder Brown's website. She explained it is a list of documents recorded in chronological order. The "display document" column means the document has been recorded; "Access denied" means the document has not yet been recorded; and "Release" means the document has to go through data entry and quality assurance. Appellant Wonnell testified she always recorded military discharge papers and provided the veteran with a miniature copy of the discharge papers. She stated she was trained to record the discharges and to make the miniatures. During her two week rotation, approximately one veteran a week would come in and it would take approximately five minutes to record the document and another approximate three minutes to make the miniature card.

On cross examination Appellant Wonnell testified Angela Smith worked under Recorder Montgomery and is later listed as Ms. Hawk's Executive Assistant. She also stated that on page 272 of Appellee's Exhibit 15, there is no Office Specialist listed on the table of organization for Recorder Montgomery's office, as it only states Deputy Recorder.

Appellant Miller testified she had been employed as a Deputy Recorder with the Recorder's office just over two years when her position was abolished. She testified she spent approximately two weeks in each department and was trained by Ms. Egan in Recording Services; Ms. Horvath in Data Entry; Mr. Johnson in Customer Service and Ms. Fuller in Bookkeeping, spending a month with her in training. Angela Smith trained her in the Office Specialist duties.

Appellant Miller testified that while she was in Recording Services she recorded documents that came in and did the initial input of data. In Customer Service, she answered the phone, assisted the walk-ins and returned the original documents to the owners. As receptionist, Appellant Miller stated she answered the phone, logged in the mail and processed the military discharge documents. She testified she did data entry, entering the grantor and grantee's names, legal descriptions and other relevant information. She stated she would do data entry when she had down time at the reception desk and in customer service. She spent approximately twenty-five percent of her time doing data entry. Appellant Miller testified she rotated in her duties every two weeks and stated everyone was expected to do and know everyone else's job.

Appellant's Exhibit 2 was identified by Appellant Miller as her personnel file. She testified she was hired into the Recorder's office on February 4, 2011, after Appellant Wonnell but before Jessica Fox, Mr. Smith, Mr. Stewart and Mr. Kaylo. Appellant Miller testified under Recorder Hawk, she reported to Mr. Wentzel and under Recorder Brown she reported to Ms. Brady. Initially, during the first week after Recorder Brown took office, she was asked to move from Recording Services to Scanning. She would pick up documents from the clerk and scan them. Appellant Miller testified everyone knew how to do data entry and she continued to do data entry until her position was abolished.

Appellant's Exhibit F, page 226, was identified by Appellant Miller as the position description for Office Specialist which she stated she probably saw for the first time when Mr. Wentzel showed it to her. She testified there were no receptionist duties on the position description and she was not asked to sign off on the document.

Appellant Miller testified she knows Angela Smith, as she was an Office Specialist and was then promoted to Executive Assistant. Appellant Miller testified that during her first week of working for Recorder Brown, her emails were removed and she was told not to sit at the front desk. She stated she was the only employee to have her email access removed and she never received her access back. Appellant Miller testified there was a one to two business day turnaround time on documents prior to the abolishment and all employees were expected to fulfill this standard.

On cross examination Appellant Miller explained that Appellee's Exhibit 20 was an unclassified acknowledgement which she signed showing her to be an Executive Assistant, as that was the position she applied for as shown in Appellant's Exhibit B, pages 112 and 113, which she identified. She testified however, that she was hired in as an Office Specialist.

Appellant Miller identified Appellant's Exhibit B, page 58, as the notice of job abolishment she received.

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Recorder Brown was called as a rebuttal witness for Appellee. He testified the numbers as to the amount of people served was not an accurate number from the Office Specialists and since the abolishments, there has not been any issues with accuracy. In looking at Appellant's Exhibit N, Recorder Brown stated the document is a result of a search done on his website, but he does not what the parameters were that were put in. He stated the "Recorded" column means the date and time a document comes into the office. He testified the types and number of documents coming in and the number of staff working all affect processing times. Recorder Brown stated that the military identifications and the DD14 are different. The identification is new under his tenure and it was very well received. He stated there has been a 900% increase over last year.

Recorder Brown testified he is not aware of Appellant Wonnell's politics. He stated he took away email and internet access to all employees who did not need it, but eventually he decided all employees should have it, so he returned access to all employees.

On cross examination Recorder Brown testified the office had to report the contacts reception made and the accuracy of that reporting in the last three months of 2012 was off and he was told this was due to the Office Specialists. He stated he was not there then, so he relied on what he was told by Charlene Schultheis. He explained that the military identifications which the office issues currently contains a photo, address and hologram which allows the veteran to access some services and to vote. Before they were only given a miniature version of the discharge papers.

On redirect examination Recorder Brown stated the column on Appellant's Exhibit N labeled "Instrument number" means the document has been recorded but may not be viewable for whatever reason. He stated the public can always come to the office and view a document.

Appellant Wonnell was called as a rebuttal witness. She testified Charlene Schultheis never indicated to her that her numbers were inaccurate. Appellant Wonnell testified she provided her numbers to Mr. Wentzel and she created the spreadsheet they were recorded on. She testified she never had a conversation with anyone regarding inaccuracies in the numbers.

FINDINGS OF FACT

After thoroughly reviewing the testimony of the witnesses and the documents admitted into evidence, I find the following facts:

1. Appellant Wonnell was hired by Appellee on January 3, 2011. She took an oath of a Deputy Recorder and had a working title of Office Specialist. She was trained to work in all of the departments and under Recorder Brown's predecessor, she rotated to the different departments on a two week schedule. After Recorder Brown took office, Appellant Wonnell was out of the office on maternity leave. When she returned in mid-April 2013, she rotated to the different departments on a daily basis.
2. Appellant Wonnell did data entry, reception and recording duties as well as all of the duties assigned to her in the other departments. She never did any quality assurance duties.
3. Appellant Miller was hired by Appellee on February 4, 2011. She took an oath of a Deputy Recorder and had a working title of Office Specialist. She trained in each department for approximately two weeks upon her hire except for bookkeeping, in which she spent one month in training.
4. Appellant Miller worked in Recording Services, recording documents and doing the initial input. She also worked in Customer Service and Reception, answering phones, assisting walk-ins, logging mail, processing military ID's and returning documents to owners. Approximately twenty-five percent of her time was spent doing data entry.
5. Effective May 3, 2013, both Appellants' jobs were abolished due to the "reorganization for the efficient operation" of Appellee. It was determined by Appellee that neither Appellant possessed any displacement rights.
6. Appellee utilized a *de facto* classification plan in determining the layoff and displacement rights of the Appellants. Another Office Specialist, Jessica Fox, had her position abolished but she was permitted to fill a

vacant position. Ms. Fox was hired after both Appellants Wonnell and Miller.

7. All employees of Appellee were either cross-trained or were in the process of being cross-trained at the time of the hearing. Appellants Wonnell and Miller could perform duties in any of the sections, as they had already been trained in the duties of all sections, with the exception of bookkeeping and quality assurance.

CONCLUSIONS OF LAW

The appointing authority has two primary burdens to prove by a preponderance of the evidence in an abolishment case. The first burden is to justify the abolishment of a position due to the statutory reason of a reorganization for the efficient operation of the appointing authority, for reasons of economy, for a lack of work or any combination thereof. The second burden is to justify the consequence to the employee by proving that the proper procedures regarding the layoff or displacement were followed. Appellee has failed to meet either of its burdens.

Appellee's rationale and notice to the Appellants state that their jobs were being abolished due to the statutory reason of "reorganization for the efficient operation" of the Appellee. Section 124.321(D)(1) Of the Ohio Revised Code governs the abolishment of positions. It states as follows, in pertinent part:

(1) Employees may be laid off as a result of abolishment of positions. As used in this division, "abolishment" means the deletion of a position or positions from the organization or structure of an appointing authority.

For purposes of this division, an appointing authority may abolish positions for any one or any combination of the following reasons: as a result of a reorganization for the efficient operation of the appointing authority, for reasons of economy, or for lack of work.

As can be seen from reading the above statute, Appellee was within its discretion to abolish Appellants' positions for reasons of efficiency; however, Appellee did not meet its burden to prove by a preponderance of the evidence that the abolishment of Appellant Wonnell's and Millier's position resulted in any efficiency.

In the case of *Bispeck v. Bd. of Commrs. of Trumbull Cty.* (1988), 37 Ohio St.3d 26, 523 N.E.2d 502, the Supreme Court of Ohio held that an appointing authority has the burden of proving that more efficiency resulted from a job abolishment and in so proving, must examine the operations of the agency both before and after the abolishment. In the instant case, Appellee did not prove that its operations are more efficient due to the abolishment of Appellant Wonnell's and Appellant Miller's positions.

There was no documentary evidence to compare the efficiency of the office prior to the abolishments and after the abolishments as required in *Bispeck, Id.* Mr. Shinn, Chief of Staff for Appellee, specifically testified there was no data which Appellee looked at to determine efficiency. Recorder Brown reiterated that fact. When Ms. Brady was asked what measuring stick was used to determine that the office is running more efficiently after the abolishments, she testified the office no longer receives phone calls stating that the caller does not know who they talked to since there was no consistent person at the reception desk. A statement such as that has been held not to meet the necessary level of probative evidence of increased efficiency. *Monger v. Fairfield Cty. Dept. of Human Serv.* (2000) 2000 Ohio App. LEXIS 1503.

There was ample testimony by Appellee's witnesses that after the abolishment of Appellant Wonnell's and Miller's position, the office is more efficient (with no documentary evidence to substantiate the testimony), but there was also testimony by those same witnesses which indicated there was no improved efficiency. Ms. Brady testified that one of the primary reasons for the abolishments was that she was told the numbers in a quarterly report tracking the number of telephone calls, walk-ins, faxes and emails coming into the office was not accurate and the reason for that was because of the Office Specialists working in Customer Service on a floating basis. Those reports prior to and after the abolishments were not entered into evidence. Ms. Schultheis, the employee whom Recorder Brown and Ms. Brady relied on about the inaccuracy of the numbers, did not testify. Ms. Brady's testimony conflicted with that of Mr. Shinn and Recorder Brown, both of

whom said there was no data available to look at to determine efficiency. (In fact, Appellee's counsel made the statement that "Appellee has not offered any hard data regarding efficiency). Ms. Brady further testified that when she assigned Appellant Miller to work in Customer Service for a two week consecutive period, the numbers on the report went way up. That statement then begs the question of why, if the numbers went up with Appellant Miller there and working, was it necessary to abolish her position in order to increase efficiency?

Ms. Brady testified there was a backlog of documents when Recorder Brown took office and she stated there was still a backlog currently, after the abolishments. Recorder Brown testified there has been "no change in processing times since the abolishments". All of Appellee's witnesses testified the employees in the office have either been cross-trained or were being cross-trained at the time of the hearing. Time and money was being spent on doing this task when the testimony from Appellee's same witness all indicated Appellants Wonnell and Miller had been cross-trained already and performed all of the functions of the departments they were assigned to. There was no testimony that their work was inefficient or that they had received any negative feedback regarding the work of Appellants Wonnell and Miller.

There was not one scintilla of hard data produced by Appellee to prove that the job abolishments resulted in any increased efficiency. The quarterly reports that supposedly so remarkably improved after the abolishments were not offered into evidence; the starting backlog number of documents (4,177) was testified to, but the current number was not given to show any increased efficiency; Recorder Brown testified the processing times did not change, but there was no documentary evidence to show any processing times in order to determine how he could make that statement. Even taking that statement at face value, it does not show any increased efficiency, as he is stating the processing times remained the same. All of Appellee's witnesses made many statements about how much more efficient the office is running subsequent to the abolishments, but there was no data to prove what they were testifying to was correct. Testimony to the effect of "It is more efficient because I say it is" is not enough to meet Appellee's burden of proving that increased efficiency resulted from the abolishment of Appellants Wonnell's and Miller's positions. Without any data to corroborate their statements, Appellee did not prove by a preponderance of the evidence that by abolishing Appellants Wonnell's and Miller's position, the efficiency of the office increased. In fact, the

testimony indicated there was still a backlog of documents and processing times stayed the same.

In looking at the rationale provided by Appellee for the abolishments, it states "The remaining 25% of the job duties for the Office Specialists is to provide back up support to the Administrative Assistant for performing secretarial and receptionist functions as needed." However, Ms. Brady testified there was no Administrative Assistant position in the office when she began her duties in January, 2013, and she further testified that currently there is still no Administrative Assistant position. Mr. Shinn, who testified he prepared the rationale, also testified he did not ask either Appellant what their job duties were, so it is hard to reconcile then how he would be able to determine if abolishing their positions would or would not be more efficient. He also states in the rationale that "Having one employee perform the Office Manager duties is significantly more efficient than having three Office Specialists divide the public contact duties and secretarial support for the Director of Operations on an as-needed basis"; however, once again, there was an absence of evidence to show that the abolishments resulted in any increased efficiency, let alone a "significant" increase in efficiency.

In the case of *Penrod v. Ohio Dept. of Adm. Servs.*, (2007) 113 Ohio St.3d 239, 2007-Ohio-1688, the Department of Administrative Services abolished the position of Ms. Penrod on the basis of efficiency, but the evidence the Department presented went to economy. Although the facts of that case are not similar in that respect to the instant case, the Supreme Court of Ohio held that "Furthermore, DAS bore the burden of proving the sufficiency of the substantive reasons it asserted for the position abolishment." *Penrod* at pg. 247, citing *Bispeck*, supra. Similarly, Appellee bears the burden of proving the efficiency reasons it asserted for the abolishment of Appellants Wonnell and Miller's position. Appellee has failed to meet that burden by failing to comply with the statutory reason for the abolishment in that no efficiency, increased or otherwise, was proven to have resulted from the abolishments. Therefore, the abolishments must be disaffirmed.

Given the fact that the abolishments fail due to Appellee's failure to meet its burden on the justification issue, there is no need to discuss the impropriety of the Appellants having no displacement rights. However, it should be noted that the Appellants should have been able to exercise their displacement rights in the event that the abolishment of their positions are found by the Board to be justifiable.

The testimony by Mr. Shinn was that the position descriptions they were given were not accurate and that there were several tables of organizations found from previous Recorders. Yet, it is those position descriptions and tables of organizations which were relied on to determine the Appellant's duties and displacement rights. Mr. Shinn also testified he did not question the Appellants as to their duties. However, in looking at the duties actually performed by Appellants Wonnell and Miller, the evidence established that they both did data entry, contrary to the testimony of Ms. Brady. Other than that, there were no discrepancies in the duties performed by the Appellants, only that they did those duties on a rotating basis versus a permanent basis.

Appellee presented a *de facto* classification plan, as their argument was that even though all employees are Deputy Recorders, that is not a "classification". Recorder Brown testified, however, that all employees can stand in his stead and perform his duties. In looking at the position descriptions prepared by Appellee as part of its *de facto* class plan, the position descriptions for Cashier/Recording Services, Customer Service Clerk and Electronic Data Maintenance Clerk are all descriptions of duties which were performed by both Appellant Wonnell and Appellant Miller. The Scanner Operator could also apply to Appellant Miller. There was no showing that any of those positions listed above required a "more in-depth knowledge" of the duties than the knowledge possessed by the Appellants in performing all of those duties for the entire time they were employed by the Appellee. The fact they performed the duties on a rotating basis does not negate the fact that they performed the duties and did so without any evidence of performance issues.

Therefore, Appellants Wonnell and Miller should have been given displacement rights to the *de facto* classifications of Cashier/Recording Services, Customer Service Clerk and Electronic Data Maintenance Clerk. Appellant Miller should also have been given displacement rights to the Scanner Operator classification. Therefore, retention points should have been calculated for employees in all of those positions and then displacement rights should have been determined from there. Based on the above analysis, Appellee has also failed to meet its burden of proving by a preponderance of the evidence that it correctly determined the displacement rights of Appellant Wonnell and Appellant Miller.

Gabrielle Wonnell and Kory Miller

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Thus, it is my **RECOMMENDATION** that the abolishment of Appellant Wonnell's and Appellant Miller's positions be **DISAFFIRMED** due to Appellee's failure to substantiate by a preponderance of the evidence the statutory reason of reorganization for the efficient operation of the organization in abolishing Appellants' position. In the event that the Board affirms the abolishments, then it is my **RECOMMENDATION** that Appellant Wonnell's and Appellant Miller's displacement rights were not properly identified and therefore Appellee must calculate the retention points for all employees in the *de facto* classifications of Cashier/Recording Services, Customer Service Clerk and Electronic Data Maintenance Clerk and then determine the displacement rights of Appellant Wonnell and Appellant Miller.



Marcie M. Scholl

Administrative Law Judge

:mms