

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

Sue Jones,

*Appellant,*

v.

Case No. 2014-ABL-07-0171

Youngstown State University,

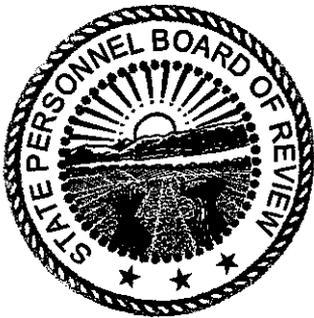
*Appellee,*

**ORDER**

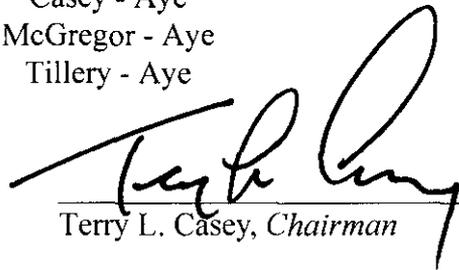
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellant's position is **AFFIRMED**.



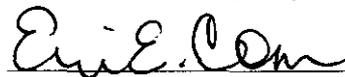
Casey - Aye  
McGregor - Aye  
Tillery - Aye

  
\_\_\_\_\_  
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, June 24, 2016.

  
\_\_\_\_\_  
Eric E. Com  
*Clerk*

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

## NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

**IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD.** Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

**METHOD OF PAYMENT:** for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system (OBM Form 7205), which must be processed prior to the filing of an appeal. To initiate an ISTV, State agencies may call the State Personnel Board of Review Fiscal Office at 614/466-7046.

**IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE July 1, 2016.** You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then **YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.**

**If you have any questions regarding this notice, please contact the Board at 614/466-7046.**

Case Number: 2014-ABL-07-0171

Transcript Costs: \$370.50 Administrative Costs: \$25.00

Total Deposit Required: \* \$395.50

Notice of Appeal and Deposit Must  
Be Received by SPBR on or Before: July 11, 2016

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

William Ingold, et al.

*Appellant*

v.

Youngstown State University

*Appellee*

Case Nos. 2014-ABL-07-0170  
(see attached list)

May 17, 2016

Marcie M. Scholl  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on December 8 and 9, 2015. Present at the hearing were Appellants' representative Stanley J. Okusewsky III, Attorney at Law, accompanied by Connie Frisby, employee of Appellee and Union President of Youngstown State University ACE and Appellee Youngstown State University designee Kevin Reynolds, Chief Human Resources Officer, represented by Joseph N. Rosenthal, Principal Assistant Attorney General, and Matthew J. Karam and Wendy K. Clary, Associate Assistant Attorneys General.

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

**STATEMENT OF THE CASE**

Appellee's first witness was Neal McNally, Vice President for Finance and Business Operations since July, 2015. Prior to that, he was Budget Director and Interim Vice President for Finance and Business Operations. As such, Mr. McNally oversees the finance, budget, procurement, payroll, controller's, information technology and facility operations.

In looking at Appellee's Exhibit 8, Mr. McNally identified the table of organizations for the Finance/Information Technology Department and the Human Resources Department. He explained that currently the Human Resources Department does not report to him, but it was under his purview in fiscal year 2014.

As Budget Director, Mr. McNally testified he is the Chief Financial Officer for the University and it is his responsibility to ensure fiscal solvency. Only he and the President of the University can sign vendor contracts. In doing the budget, Mr. McNally stated he makes revenue and spending projections. He explained the General Fund budget is the largest of the budgets, comprising tuition income and state support money. It is an approximate \$153 million budget. The Auxiliary budget consists of separate revenue streams of ancillary departments such as parking, housing, etc. Mr. McNally stated the Ohio Legislature passes a two year budget bill and in that budget, universities receive an allotment of money which is disbursed through the Ohio Department of Higher Education following a complicated method of doing so. As far as tuition revenue, he explained that the State has a limitation on tuition rates and it is currently 0%. All of these things comprise approximately 98% of the income for Appellee.

Appellee's Exhibit 2, page 5, was identified by Mr. McNally as a chart he created prior to the fiscal year (FY) 2015 budget bill. He stated the figure for 2015 was an estimated figure. The chart show a precipitous drop in state funding from the state in 2012, in the amount of approximately \$7 million. He testified he knew there was going to be a problem because in 2009 and 2010, the university received federal stimulus money that was going to run out and not be replaced. Page 3 of the exhibit also shows a significant drop in enrollment of over seventeen percent or approximately 2,643 students, which no one anticipated. Page 4 of the same exhibit shows the impact of the enrollment decline on tuition revenue. Mr. McNally stated he created this document during FY2015 and it shows approximately \$16.5 million is lost tuition revenue. He testified this made it difficult to have a balanced budget but one is required by the Board of Trustees. Page 6 of that same exhibit shows the combined impact of the decline in tuition, enrollment and state funding. The impact was very significant financially as it added up to approximately \$25 million and the impact was driven home in FY2015.

Mr. McNally testified that while the projected stable state funding levels were concerning, the greater concern was on the enrollment front. They had estimated a two percent decline in enrollment, but in actuality, it was six percent. He discussed this with the Interim President and Interim Provost. He testified recommendations were made to the Budget Development Council and to the President's cabinet that expenditure reductions were needed. Meetings on the subject took place from December, 2013 through June, 2014 and they met a few times a month.

Appellee's Exhibit 3, page 10 was identified by Mr. McNally as a memo he wrote to his supervisor outlining the budget projection scenarios. He stated the bottom line was showing an operating deficit of approximately \$7.9 to \$12.8 million. Mr. McNally testified he wrote Appellee's Exhibit 5 on April 4, 2014 and the letter was directed to the President and his cabinet. He explained the five divisions listed were under the President and they all needed cuts. Athletics were also included, and in total, approximately \$11 million was needed in expenditure reductions. After talking with the President, he talked with all of his managers. The divisions then submitted budget reduction plans. He identified Appellee's Exhibit 4 as a template which was used to help figure out the reductions. This was distributed to the President and the cabinet. Appellee's Exhibit 6 was identified by Mr. McNally as a memo from Mr. Howell, of the Budget Development Council, which was sent to divisions heads emphasizing the need for expenditure reductions. The goal was to reduce expenditures-period. He stated the expenditures included operating costs, payroll, etc. Appellee's Exhibit 14 was identified by Mr. McNally as the completed template submitted to him from the Division of University Advancement, which contained a reduction in force. Appellee's Exhibit 15 was identified by Mr. McNally as the template from the Finance & Administration Division. It showed a reduction in force of full-time employees from the Human Resources division and showed potential savings of \$70,341, \$53,976 and \$121,508. It was these positions that were abolished and his division saved \$821,987 from the reductions in force and by abolishing vacancies.

Mr. McNally testified that all of the templates were submitted and then reviewed by the Budget Council. The templates were submitted in May 2014 and were executed. The upcoming budget was adjusted by the projections on the templates and delivered to the Board of Trustees in June, 2014. After that, the abolishments took place.

Appellee's Exhibit 1 was identified by Mr. McNally as the statement of rationale, dated May, 2014. He testified the statement contained exhibits showing the trend in their share of state funding, the enrollment levels decline, and a combination of the first two. He explained that the "Student FTE" was shown in terms of credit hours whereas previous tables showed actual head count. Mr. McNally testified he created the figures and tables for the rationale.

On cross examination Mr. McNally stated FY2012 began on July 1, 2011. He testified that at that point in time, things started to stabilize and the annual change actually became less. He stated they received approximately \$8.5 million less and the enrollment trends were shifting downward. In looking at Appellants' Exhibit A, Mr. McNally was not sure that he had seen the document before, but stated that the projected FY2014 deficit was probably accurate and that if all the contingencies listed there happened, the budget could have been balanced.

Appellee's Exhibit 3, page 12, shows that the vacancies could save approximately \$7.5 million and Mr. McNally testified some of the vacancies were taken out of the budget. Mr. McNally agreed that if all vacancies on the books were eliminated, then there would have been a savings realized of approximately \$7.4 million. He testified that Appellee's Exhibit 8, page 50, shows the vacant positions that were left on the books and the blacked out squares show the abolished positions. Mr. McNally testified that balanced budgets have been in existence for his entire tenure and that Appellee operated in a deficit in FY2012. He stated that Appellee's Exhibit 2, page 9, represents the actual audited figures.

On redirect examination Mr. McNally testified that in May, 2014, they assumed there would be a budget shortfall. If that was not addressed, then the Appellee could have gone into fiscal insolvency, which would have been very bad. Instead, they chose to go ahead with the reductions.

Appellee's next witness was Kevin Reynolds, Chief Human Resources Officer. He stated has been employed by Appellee for approximately six years. In his position as Chief Human Resources Officer, he is the appointing authority for all classified staff. Mr. Reynolds testified that after he received the April 4, 2014 memo from Mr. McNally, he met with each division chief and key personnel to go over the proposed abolishments and looked at the operational needs. In looking at Appellee's Exhibit 8, page 50, it shows the Benefits Management Representative position, occupied by Appellant Sue Jones, as being abolished. Appellee's Exhibit 9, page 57, was identified by Mr. Reynolds as the position description for Appellant Jones' position. He explained there was already some overlap of duties between Appellant Jones' position and that of employees Kellam and Moore as to pension plans and data work to enroll, payroll with respect to service credit and calculation of payouts of retirement. There was also a plan to refer employees more to the pension system itself to assist the employees. On the template in Appellee's Exhibit 15, Mr. Reynolds testified Appellant Jones was listed on line twelve and he

identified Appellee's Exhibit 10, page 98, as the notice letter given to Appellant Jones.

Appellee's next witness was John Fahay, who stated he is currently retired but was the Vice President of Student Affairs until his retirement in November, 2015. He had been employed by Appellee for approximately thirty-five years. He stated his duties at the time of his retirement included responsibility for the areas of student life, conduct, housing, financial aid, records, admissions, the bookstore, career center and the recreation center, among others. The office of Student Diversity was also housed in the Student Life Division, which fell under his responsibility.

Mr. Fahay testified he was familiar with Appellee's Exhibit 5 and was aware there was a need to make significant cuts in his division of Student Affairs to the tune of approximately \$1,031,604. He stated he was told that the cuts should be base cuts, not one-time cuts as those would not make a difference. Mr. Fahay testified he felt his division was already pretty lean but he consulted with his subdivision leaders and they went through each line item of their budget and reviewed their vacancies. He stated it became clear that positions were going to have be cut and he tried to chose the least detrimental ones. He identified Appellee's Exhibit 8, page 54, as the table of organization for the Office of Student Diversity. He explained it was a very small office consisting of two people who generated approximately fifteen to twenty programs annually. He testified they looked at the productivity and how it helped and served students and concluded that it was on the lower end of the productivity scale. Therefore, the position of secretary, occupied by Appellant Mays, was abolished.

On cross examination Mr. Fahay testified the Office of Student Diversity still exists but is only staffed by a director now. He stated he was given the discretion to make the cuts as to how he saw fit.

Appellee's next witness was Kenneth A. Schindler, Associate Vice President of Information Technology Services/Chief Technology Officer with Appellee since May, 2012. As such, his duties include the management of the information technology services for Appellee. His supervisor is Mr. McNally and he has four direct reports in the areas of Security, Classroom Support, Computer Services for Administration and Grades and Information Technology Services operations.

Mr. Schindler testified he was told by Mr. McNally that he needed to eliminate approximately a quarter of a million dollars from his budget. How he did it was solely up to him. He stated he wanted to do the least amount of customer service damage. In looking at his table of organization in Appellee's Exhibit 8, page 48, he testified he abolished the positions occupied by Appellant O'Neill and another employee, Amy Kyte. He explained Appellant O'Neill was a Computer Operator 2, one of three, and he determined they only needed to have two of those positions, as they were all doing the same duties, as they rotated shifts.

On cross examination Mr. Schindler testified that since the abolishment, he hired an Associate Director, employee Kitt, approximately one year ago. The person he hired was the Interim Assistant Manager who applied for and was hired into the Associate Director position which had been vacant. He also explained that employee Klee used to be a Programmer Analyst and is now an Associate Director. Both Klee and Kitt make approximately \$80,000 per year and they both moved to those positions sometime in the last two years. Appellant O'Neill made approximately \$60,000 per year, but there was only a modest increase in cost, as Kitt and Klee were already on the payroll and their previous positions were not filled.

Appellee's next witness was Scott Evans, Senior Vice President of Institutional Advancement and President's Chief of Staff at Lake Erie College in Painesville, for approximately eighteen months. He stated was previously employed with Appellee as Vice President of University Advancement for approximately two years. While there, Mr. Evans testified his budget was approximately \$2 million at the beginning of his tenure and then increased to approximately \$4 million. He had approximately forty employees under him. He stated in the fall of 2013, he also oversaw Development and Alumni Relations, Marketing and Communications and the radio station. The Communications department produced publications, did digital advertising, and managed the website and social media.

Mr. Evans testified he recognizes Appellee's Exhibits 5 and 6 and stated he needed to reduce his budget by approximately \$410,131. To do so, he looked at salary and operating dollars. He met with his four directors and told them to put together a plan for the reductions. In looking at his table of organization for Marketing, in Appellee's Exhibit 8, page 51, Mr. Evans testified there were two positions recommended for abolishment. One was a Videographer position occupied by Appellant Lewis and the other was a Machine Operator 2 position, occupied by Appellant Ingold in the Print Shop. Mr. Evans testified they determined

that with the advances in technology, these positions could be eliminated. He stated the abolishments of the two positions generated a savings of \$149,000. Mr. Evans testified he presented the recommendations to the Interim President, his cabinet and the Budget Control Committee and walked them through his template. They did not have any disagreement.

Appellants' witness was Connie Frisby, an employee of Appellee for approximately eleven years and currently classified as an Administrative Assistant 1 in Computer Science and Information Systems. Ms. Frisby also testified she is the Union President of ACE and has held that position for approximately two years and three months. As such, she attended all the of meetings held by Human Resources with the employees whose positions were abolished. Ms. Frisby testified she looked at all of the vacancies on the books and asked for a public records request from the General Counsel and Human Resources. She obtained salary reports that are public records.

### **FINDINGS OF FACT**

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

1. Appellee instituted the abolishment of the five Appellants, effective September 14, 2014, due to reasons of economy.
2. Appellants stipulated to the authenticity of, and that they received, the Notification Letters in Appellee's Exhibit 10. Appellants agree that Appellee substantially complied with all procedural requirements of the Ohio Revised Code and the Ohio Administrative Code, including the calculation of retention points, as none of the Appellants are challenging their retention points. Appellants also stipulated to their respective position descriptions found in Appellee's Exhibit 9.
3. Appellee had a decrease in the State Share of Instruction funding allocated by the State of Ohio to Appellee from FY 2011 through FY 2015.
4. Appellee's full-time student enrollment levels decreased from FY 2011 through FY 2015.

5. The decrease in funding, decrease in student enrollment and thus a decrease in tuition revenue, resulted in a combined impact of a loss of \$19.5 million in total revenue from FY 2012 through FY 2014. The estimated loss of revenue for FY 2015 was estimated to be \$2.5 million if the enrollment continued to decline, for a combined loss of approximately \$22 million.
6. Personnel costs make up approximately seventy (70) percent of the Appellee's General Fund Operating expenses.
7. Appellant Ingold's position of Machine Operator 2 and Appellant Lewis' position of Videographer were both abolished due to the fact that improvements in technology made elimination of their positions possible. The savings generated amounted to \$149,000 in salary and benefit costs.
8. The parties stipulated that Appellant Ingold was previously a Printing Machine Operator 2 in Marketing & Communications and his position was abolished and he was laid off.
9. The parties stipulated that Appellant Lewis was previously a Videographer in Marketing & Communication and his position was abolished. He bumped into an Audio Visual Specialist position that was previously held by Bruce Palmer. Appellant Lewis lost pay as a result of being moved from Videographer to Audio Specialist.
10. Appellant O'Neill's position of Computer Operator 2 was abolished due to the fact that there were two other employees performing the same duties. The savings generated amounted to \$52,183 in salary and benefit costs.
11. The parties stipulated Appellant O'Neill was previously a Computer Operator 2 in Media and Academic Computing and her position was abolished. She was laid off as a result of the abolishment.
12. Appellant Mays' position of Secretary was abolished due to the fact that the Office of Student Diversity where she worked was very small, with just two employees. Historically, the office has had just one

employee and it was determined that one employee would be sufficient to run the office. The savings generated amounted to \$72,423 in salary and benefit costs.

13. The parties stipulated that Appellant Mays was previously a Secretary in the Student Diversity Programs and her position was abolished. She bumped into a part-time Secretary position previously held by Meredith Cavour and lost twenty (20) hours in the bumped position.
14. Appellant Jones' position of Benefits Management Representative was abolished as there was some overlap of duties between the employees and more employees were going to be referred directly to the appropriate pension system for their questions. The remaining two employees were going to have Appellant Jones' duties distributed between them. The savings generated amounted to \$53,976 in salary and benefit costs.
15. The parties stipulated that Appellant Jones was previously a Benefits Management Representative in Human Resources and her position was abolished. She was laid off as a result of the abolishment.

### **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 positions due to the statutory reason of economy. Appellee has met its first burden. The second burden is to justify the consequence to the employees by proving that the proper procedures regarding the layoff of the employees were followed. Appellants stipulated that Appellee followed the proper procedures in laying off the five Appellants, so Appellee has met its second burden also.

Appellee's rationale and notice to the Appellants state that their jobs were being abolished due to the statutory reason of "economy". Section 124.321(D)(2) of

the Ohio Revised Code governs the abolishment of positions. It states as follows, in pertinent part:

(D)(2)(a) Reasons of economy permitting an appointing authority to abolish a position and to lay off the holder of that position under this division shall be determined at the time the appointing authority proposes to abolish the position. The reasons of economy shall be based on the appointing authority's estimated amount of savings with respect to salary, benefits, and other matters associated with the abolishment of the position, except that the reasons of economy associated with the position's abolishment instead may be based on the appointing authority's estimated amount of savings with respect to salary and benefits only, if:

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

(ii) In the case of a position in the service of the state, it files a notice of the position's abolishment with the director of administrative services within one year of the occurrence of the applicable circumstance described in division (D)(2)(a)(i) of this section.

(b) The following principles apply when a circumstance described in division (D)(2)(a)(i) of this section would serve to authorize an appointing authority to abolish a position and to lay off the holder of the position under this division based on the appointing authority's estimated amount of savings with respect to salary and benefits only:

(i) The position's abolishment shall be done in good faith and not as a subterfuge for discipline.

(ii) If a circumstance affects a specific program only, the appointing authority only may abolish a position within that program.

(iii) If a circumstance does not affect a specific program only, the appointing authority may identify a position that it considers appropriate for abolishment based on the reasons of economy.

(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.

Appellee proved that its operating appropriation was reduced by legislative action. From sources derived from the Ohio Board of Regents, Appellee received \$46.7 million from its State Share of Instruction in FY 2011; in FY 2012, Appellee received \$39.8 million; in FY 2013, Appellee received \$38.5 million; in FY 2014, Appellee received \$37.7 million; and the estimate for FY 2015 was \$38.2, which equaled a cumulative change of negative \$8.5 million. Along with that decline in revenue, Appellee also proved that student enrollment declined from a high in FY 2011 of 12,093 full-time equivalent students to a low of 10,819 students in FY 2014, with a projected figure of 10,494 students in FY 2015. Translated into dollars, the decline in student enrollment meant less tuition revenue going to Appellee. The cumulative impact of the decline in tuition revenue from FY 2012 through FY 2014 was negative \$10.5 million, with a projection in FY 2015 of another \$3 million dollar loss, bumping the cumulative effect to negative \$13.5 million.

The above declines left Appellee with a projected operating deficit for FY 2015 in the range of \$7.9 to \$12.8 million, depending on what steps the University decided to take to reduce the deficit. Personnel costs make up approximately seventy (70) percent of the Appellee's operating expenses, so it only made sense to look to abolish personnel. All departments were told to reduce their expenditures and other cuts were made in addition to the abolishment of positions.

In looking at actual figures of revenue compared to expenses, Appellee's Exhibit 2, page 9, shows that in FY 2011, revenue was \$208,551,327 and expenses were \$220,457,885 for a loss of \$11,906,558. For FY 2012, revenue was \$198,488,731 and expenses were \$202,241,086 for a loss of \$3,752,355. In FY 2013, revenue was \$195,564,266 and expenses were \$200,324,473 for a loss of \$4,760,207 and in FY 2014 revenue was \$193,775,558 and expenses were \$198,300,930 for a loss of \$4,525,372.

Clearly, Appellee had deficits and needed to take action to have a balanced budget. In looking at the statute, Appellee had options as to what rationale to base the abolishments on. Section 124.321(D)(2)(a) of the Ohio Revised Code states

that the “Reasons of economy permitting an appointing authority to abolish a position. . . shall be determined at the time the appointing authority proposes to abolish the position.” Appellee proposed abolishing positions in FY 2014 and the evidence established that Appellee was operating at a deficit and needed to make cuts in order to present a balanced budget for FY 2015.

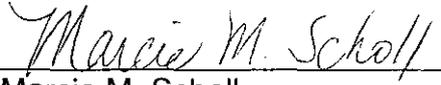
Following the statute, Appellee had the choice to base their reasons of economy on “. . .the appointing authority’s estimated amount of **savings with respect to salary, benefits, and other matters associated with the abolishment of the position, . . .**” (Emphasis added). This is the option chosen by Appellee. The amount saved through salary and benefits due to the abolishment of the Appellants’ position was not the only consideration Appellee had with respect to its deficit. While the abolishment of the Appellants’ positions definitely saved money and helped to reduce the impact to Appellee of its declining enrollment and reduced receipt of state monies, those abolishments were not meant to make up for the entire deficit Appellee faced. The exhibits show that Appellee also took action to decline any increase in salaries and wages, eliminated some vacancies, reduced business travel and possibly increased tuition.

The second option provided to Appellee in section 124.321(D)(2)(a) is to base the reasons of economy solely on just the amount of savings with respect to salary and benefits, and not consider “other matters associated with the abolishment of the position. . .”. Appellee could have chosen this option since it met the criteria in 124.321(D)(2)(a)(i) of having its “. . .operating appropriation reduced or having a current or projected deficiency in funding to maintain current or projected levels of staffing and operations. . .”. Even though the statute provides an “either/or” scenario, Appellee actually had both scenarios taking place. Appellee could have chosen this option and could have made up their entire deficit by abolishing as many positions as it took to make up the deficit. Instead, Appellee chose to lessen the impact on the workforce and enact other spending cuts so that the entire shortfall was not eliminated solely by savings generated by salary and benefits only.

Appellants argued that the statute required Appellee to look only at the staffing levels. That is not correct. As was discussed above, the statute provides an option to Appellee. Appellee did look at staffing levels in light of its deficit and it was determined that job abolishments were necessary along with other actions in order to make up the deficit it was facing. Appellants argued that all vacancies should have been eliminated, thus allowing enough money in the budget then to

retain all filled positions and not abolish any positions. While that may true, Appellee has the authority to determine whether or not a position should be abolished. Appellee did abolish some vacancies and abolished some filled positions. Those decisions are well within the appointing authority's discretion and absent a showing of an abuse of discretion or a showing that an abolishment was done as a subterfuge for discipline, the appointing authority's decision will be upheld. There was no evidence presented showing an abuse of discretion on the part of the appointing authority or showing that the abolishment of Appellants' positions was done as a subterfuge for discipline.

Appellee has proven that it was facing a dire economical picture in FY 2014 and a projected deficit for FY 2015. The evidence established that the abolishments which took place were done to save money or for reasons of economy. There was no showing of abuse of discretion on the part of the appointing authority and the evidence showed the abolishment of positions were done in good faith and not as a subterfuge for discipline. Therefore, it is my **RECOMMENDATION** that the abolishment of the Appellants' positions be **AFFIRMED**.

  
\_\_\_\_\_  
Marcie M. Scholl  
Administrative Law Judge

**NAME****CASE NUMBER**

William Ingold

14-ABL-07-0170

Sue Jones

14-ABL-07-0171

Joel Lewis

14-ABL-07-0173

Carla Mays

14-ABL-07-0174

Nancy Oneill

14-ABL-07-0175