

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

FRANK T. LAMBROS,

*Appellant,*

v.

Case Nos.: 05-LAY-01-0027  
05-REM-01-0028

BROWN COUNTY SHERIFF,

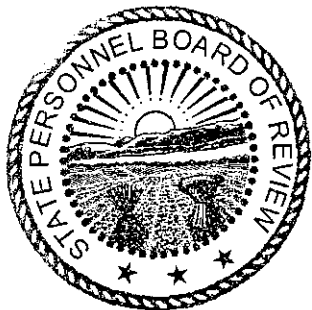
*Appellee.*

**ORDER**

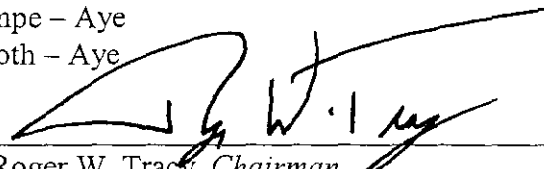
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to this 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 Appellant's layoff be **AFFIRMED**. However, because Appellant was not allowed to exercise his proper displacement rights, it is **FURTHER ORDERED** that Appellant be allowed to exercise displacement rights into a bargaining unit position, effective February 8, 2005, pursuant to R.C. 124.321(B) and O.A.C. 123:1-41 *et seq.* Correspondingly, it is additionally **ORDERED** that Appellant's companion removal appeal be **DISMISSED**, pursuant to R.C. 124.03(A).



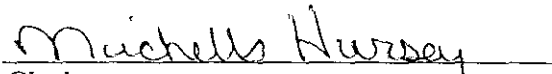
Tracy – Aye  
Lumpe – Aye  
Booth – Aye

  
\_\_\_\_\_  
Roger W. Tracy, *Chairman*

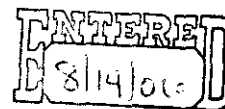
**CERTIFICATION**

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that the foregoing is ~~(the original)~~ a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, August 14, 2006.

  
\_\_\_\_\_  
Michelle Hursey  
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**

Frank T. Lambros,

*Appellant*

v.

Brown County Sheriff,

*Appellee*

Case Nos. 05-LAY-01-0027  
05-REM-01-0028

June 6, 2006

Jeannette E. Gunn  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on to be heard on September 19, 2005. Appellant was present at the record hearing and was represented by David H. Landis, Attorney at Law. Appellee was present through its designee, Chief Deputy John Dunn and was represented by Prosecuting Attorney Thomas F. Grennan.

The subject matter jurisdiction of this Board was established pursuant to R.C. 124.03 and R.C. 124.328.

**STATEMENT OF THE CASE**

John Dunn testified that he is presently employed by Appellee Brown County Sheriff as Chief Deputy, and has held that position for approximately five years. He indicated that his primary responsibility is oversight of the administrative functions of the Sheriff's Office. Mr. Dunn confirmed that he prepares the budget as part of his duties and recalled that the 2005 budget approved by the County Commissioners reflected a funding cut of approximately \$340,000; he explained that in addition to having its 2005 funding reduced, the Sheriff's Office also became responsible for paying all of its employees' retirement contributions, which amounted to increased expenses of approximately \$220,000. The witness testified that the Sheriff's Office also had the extra expense in 2005 of a negotiated salary increase for bargaining unit employees.

Mr. Dunn testified that the Sheriff became aware of the pending budget deficit in December 2004, and that he and the Sheriff discussed how to handle the

shortfall. The witness recalled that employee layoffs were only one of the money-saving steps they took, along with reducing meal and prisoner laundry service costs in the jail, and implementing cost-saving policies related to vehicles.

He confirmed that a total of ten employees were laid off, including eight collective bargaining unit employees, one administrative clerk, and one supervisor (Appellant). Mr. Dunn recalled that prior to the layoff, five other positions were vacated and absorbed through attrition. The witness stated that following the layoff the remaining positions were one lieutenant's position (jail administrator), two corporals' positions, and eight corrections officers' positions.

Mr. Dunn noted that the Brown County Sheriff's Office has a collective bargaining agreement in place that includes all sworn personnel with a rank of corporal or below. He identified Appellee's Exhibit 8 as portions of the collective bargaining agreement and noted that Article 1 addresses bargaining unit membership, while Article 11 addresses seniority.

Mr. Dunn recalled that Sheriff Wenninger notified the Ohio Department of Administrative Services (DAS) when he determined it would be necessary to lay off employees, and identified Appellee's Exhibit 1 as a copy of the statement of rationale filed with DAS. He testified that Appellee initially processed the layoff improperly and had to redo the paperwork. The witness explained that Appellee was required to file paperwork with DAS to implement the layoff for Appellant's sergeant position and an employee holding an administrative clerk's position because neither position was included in the collective bargaining unit. Mr. Dunn identified Appellee's Exhibits 5 and 6 as correspondence between Appellee and DAS regarding the calculation of retention points for the sergeant and administrative clerk positions, and Appellee's Exhibit 7 as DAS' letter authorizing Appellee to proceed with the layoff.

The witness confirmed that the position of Corrections Sergeant that was occupied by Appellant prior to his layoff was created by Appellee in 2004, when Appellant was ordered reinstated by SPBR and returned to the rank of sergeant. Mr. Dunn indicated that Appellant had the least seniority of the three individuals occupying sergeants' positions. He stated that Appellant was notified on January 26, 2005, that he was not able to displace any of the other sergeants and referenced Appellee's Exhibit 4 as a copy of the letter so notifying Appellant. Mr. Dunn indicated that Appellee's Exhibit 4 also informed Appellant that he could not

exercise his displacement rights to bump into a position contained in the collective bargaining unit.

Mr. Dunn explained that Appellant is a deputy sheriff and confirmed he possessed the proper certification to work as a road patrol deputy and be involved in investigations. He noted that Corrections Officers are paid a lower wage than a Deputy Sheriff and do not need law enforcement certification.

Mr. Dunn indicated that layoffs of positions in the collective bargaining unit are handled according to contract provisions. He stated that the language contained in Appellee's Exhibit 8, stating that the bargaining unit represents full-time sworn personnel below the rank of sergeant is what prevents Appellant from bumping an employee occupying a collective bargaining unit position. The witness noted that the layoffs from collective bargaining unit positions were made by the Sheriff's recommendation, and not as a result of negotiations with the union.

Mr. Dunn confirmed that there were four road deputies in the collective bargaining unit who had less seniority than Appellant, and that Appellant was also senior to at least one road corporal. He noted that the administrative sergeant position from which Appellant was laid off has not been abolished, and confirmed that Appellant would have a right of recall to that position if sufficient funds were available to fill the position.

Appellant testified that he has been employed as a law enforcement officer for approximately twenty-three years and has worked the entire spectrum of assignments, from corrections to investigation to administration. He noted that he was also employed for a period of time as a union representative for the law enforcement field. Appellant stated that he was hired by Appellee in April 2000.

Appellant recalled that he was terminated by Appellee in July 2001, but appealed his termination to this Board and was reinstated in February 2004. He observed that SPBR ordered him to be reinstated to the rank of staff sergeant, and testified that upon reinstatement he was assigned to a position in the jail as deputy sergeant.

Appellant identified Appellant's Exhibit A as a copy of the layoff notice he received in December 2004 and observed that his date of service, which appears on the second page, was incorrect. He identified Appellant's Exhibit D as a copy of a

letter rescinding the December 2004 layoff letter, noting that he was placed on involuntary vacation leave at that time due to vacation accrued. Appellant identified Appellant's Exhibit E as the layoff letter he received in January 2005 notifying him of his layoff effective February 8, 2005.

Appellant identified Appellant's Exhibit B as his own handwritten notes identifying individuals over whom he believed he had seniority. He identified Appellant's Exhibit C, F, G and H as letters he wrote to Sheriff Wenninger notifying him of his desire to exercise his displacement rights and requesting information related to the layoff. Appellant identified Appellant's Exhibit L as a list of employees he believes that he was able to displace.

Appellant noted that he has maintained current state certification and had that certification both at the time of the layoff and at the time of the record hearing. He noted that he believes his previous experience qualifies him to perform both road patrol duties and investigations, and observed that it is fairly common for a deputy sheriff to switch between jail duty and road duty.

### **FINDINGS OF FACT**

Based upon the testimony presented and evidence admitted at record hearing, I make the following findings of fact:

Appellant has been employed as a law enforcement officer for approximately twenty-three years and has worked the entire spectrum of assignments, from corrections to investigation to administration. He was hired by Appellee in April 2000, and terminated in July 2001. Appellant appealed his termination to SPBR and was reinstated in February 2004; upon reinstatement he was assigned to a position in the jail as deputy sergeant.

As a result of increased expenses and funding cuts in its 2005 budget, Appellee implemented a layoff of personnel that resulted in ten employees being laid off. Appellee laid off one administrative clerk, one supervisor (Appellant) and eight corrections officers. The Department of Administrative Services verified Appellee's calculation of retention points for affected employees and authorized Appellee to proceed with its layoff on January 21, 2005. Appellee took additional money-saving steps within its organization, including reducing meal and prisoner

laundry service costs in the jail, and implementing cost-saving policies related to vehicles.

Appellant was notified of his layoff on January 21, 2005, to be effective February 8, 2005. Of the three individuals occupying sergeants' positions in the Brown County Sheriff's Office, Appellant had the least amount of retention points, and he was unable to displace any of the other sergeants in Appellee's office. Appellant requested that he be allowed to exercise his displacement rights and take a corporal's position in the Patrol Section, but was refused based upon Appellee's understanding that the collective bargaining agreement prevented an individual from bumping into a bargaining unit position. The collective bargaining agreement includes all sworn personnel with a rank of corporal or below.

At the time of his layoff, Appellant was senior to at least one road corporal and four road deputies in the bargaining unit. He was a sworn officer and possessed the proper certification to work as a road patrol deputy and to be involved in investigations. Appellant has maintained current state certification and had that certification both at the time of the layoff and at the time of the record hearing.

### **CONCLUSIONS OF LAW**

R.C. 124.321(B) provides that when a county appointing authority determines that a lack of funds makes a layoff of employees necessary, the appointing authority must file a statement of rationale and supporting documentation with the director of the Department of Administrative Services prior to sending a layoff notice. See also, O.A.C. 123:1-41-03. Testimony and evidence presented at record hearing indicates that Appellee made the determination that the substantial funding cuts reflected in its 2005 budget necessitated such a layoff and complied with the statutory filing requirement.

O.A.C. 123:1-41 sets forth the guidelines to be followed by an appointing authority in effectuating a layoff. The record reflects that Appellee calculated retention points for those employees affected by the layoff and provided them with notification of the layoff in a timely manner. The notification letter provided by Appellee to Appellant appears to have substantially complied with the requirements

of O.A.C. 123:1-41-10, with the exception of notification of displacement rights, which is the issue in dispute in the instant matter.

Appellee advised Appellant in its January 21, 2005, layoff notification letter that he was unable to displace another employee. Testimony established at record hearing that Appellant had the least retention points of the three individuals who occupied sergeant positions. Testimony further established that Appellant had more retention points than at least one individual occupying a corporal position and four individuals occupying deputy positions.

Appellant requested on January 21, 2005, that he be allowed to exercise his displacement rights to "bump" an employee in a corporal position. Appellee denied Appellant's request, based upon its interpretation of the collective bargaining agreement. Appellee relied upon the language contained in Article 1, Section A of the collective bargaining agreement between the Brown County Sheriff's Office and the Fraternal Order of Police/Ohio Labor Counsel, which restricts membership in the collective bargaining unit to those employees who are full-time sworn personnel below the rank of sergeant.

Upon a thorough review of the portions of the collective bargaining agreement introduced as evidence at record hearing, I find that Appellee's reliance upon such language to prevent Appellant from exercising his right to displace an employee in the bargaining unit is unfounded. The language referenced by Appellee does not restrict the ability of a properly qualified individual to bump into a position covered by the collective bargaining unit.

In the instant case, it appears that Appellant possessed the necessary qualifications and certifications to displace an employee in the collective bargaining unit. In the event that Appellant elected to displace into such a position, he would also be required to submit to a reduction in rank without fault, to whatever rank was appropriate for the position he displaced to (i.e., corporal or deputy).

As previously noted, Appellee appears to have properly complied with the other procedural requirements of Appellant's layoff. Therefore, I respectfully **RECOMMEND** that Appellant's layoff be **AFFIRMED**, but because Appellant was not allowed to exercise his proper displacement rights, it is further **RECOMMENDED** that Appellee be **ORDERED** to allow Appellant to exercise displacement rights into a bargaining unit position, effective February 8, 2005.

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Appellant shall be entitled to any accrued back pay and benefits, subject to set-off,  
that may arise as a result of such displacement.

  
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Jeannette E. Gunn  
*Administrative Law Judge*

JEG: