

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

MARTHA E. SHINKLE,

Appellant,

v.

Case Nos. 05-LAY-01-0036
05-RED-01-0037

CLERMONT COUNTY BOARD OF MR/DD,

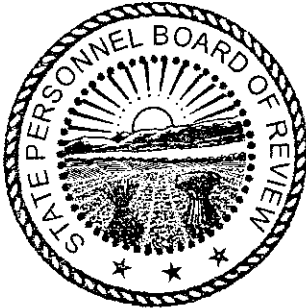
Appellee.

ORDER

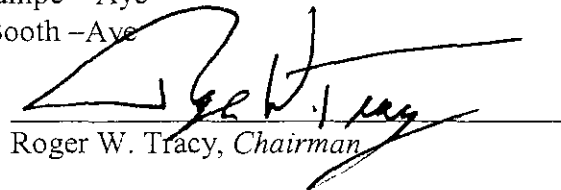
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned consolidated appeals.

After a thorough examination of the consolidated record and 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 Appellant's position and the resulting layoff therefrom be **AFFIRMED** and that Appellant's companion reduction appeal be **DISMISSED**, pursuant to R.C. 124.328 *et seq.*



Tracy – Aye
Lumpe – Aye
Booth – Aye

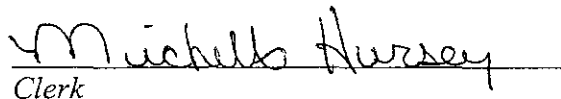


Roger W. Tracy, *Chairman*

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 7, 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**

Martha E. Shinkle,

Case No. 05-LAY-01-0036
Case No. 05-RED-01-0037

Appellant

v.

May 10, 2006

Clermont County Board of Mental Retardation
and Developmental Disabilities,

Appellee

Christopher R. Young
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on October 5, 2005, at approximately 10:30 a.m., following a pre-hearing held that same morning at 10:00 a.m. The Appellant, Martha E. Shinkle, was present and appeared *pro se*. The Clermont County Board of Mental Retardation and Developmental Disabilities (MR/DD), was present through its designee, Sharon Woodrow, the Superintendent of the Clermont County Board of Mental Retardation and Developmental Disabilities, and the Clermont County Board of Mental Retardation and Developmental Disabilities was represented by Elizabeth Mason, an Assistant Prosecuting Attorney.

On or about January 20, 2005, the Appellant received a notice of job abolishment and resultant layoff from the Appellee. This action was to be effective February 28, 2005. Thereafter, the Appellant timely filed her appeal to this Board on January 27, 2005. In addition, the parties agreed and stipulated as to the jurisdiction of this Board to consider this matter, as well as this appeal being timely filed.

At the pre-hearing, which immediately preceded the record hearing in this matter. The jurisdiction of this Board was established and stipulated to. Additionally, an initial finding was made by the undersigned that the Appellee agency substantially complied with the procedural requirements set forth under Ohio Revised Code Section 124.321 and under Ohio Administrative Code Section 123:1-41-10(B) as follows:

- 1) The Appellee informed the Appellant of the reason for the abolishment;
- 2) The Appellee informed the Appellant of the effective date of the action;
- 3) The Appellee informed the Appellant of her accumulated retention points;
- 4) The Appellee informed the Appellant of her right to appeal to the State Personnel Board of Review within ten (10) days after receiving notice;
- 5) The Appellee informed the Appellant of the right to request and receive a copy of Ohio Administrative Code Chapter 123:1-41;
- 6) The Appellee informed the Appellant of her right to displace other employees if exercised within five (5) days;
- 7) The Appellee informed the Appellant of her right to reinstatement or reemployment;
- 8) The Appellee informed the Appellant that she was responsible for maintaining her current address with the Appellee;
- 9) The Appellee informed the Appellant that she had the option to convert accrued leave if the opportunity existed.

It should be noted that all of the above was stipulated to at the record hearing with the exception of whether or not the Appellant was properly classified as Administrative Assistant 1 as indicated in her notice and/or whether she was in fact and Administrative Assistant 2 at the time the abolishment took place.

STATEMENT OF THE CASE

The first witness to testify was the Appellant, Ms. Martha Shinkle, as if on cross-examination. Ms. Shinkle upon questioning testified that she presently works in the Services and Support Division of the Clermont County Board of MR/DD (hereafter known as the Board). The witness further testified that her direct supervisor at the present time or at the time of the implementation of the instant job

abolishment was Mr. Eric Metzger, the Director of the Services and Support Division and had been so since July 2003. The witness explained that prior to July 2003, Sharon Woodrow, the present Superintendent was in fact the Director of Adult Services and had supervised her from May 2002 up until July 2003, when Mr. Eric Metzger then supervised her. Further, the witness testified that prior to May 2003, her direct supervisor was the Director of Community Resources, Ms. Sharon Richmond, and had been so since March of 2000. Additionally, the witness testified that prior to March 2000 she had worked directly for the Superintendent, Mr. Banziger, and that he had been her supervisor from the time that she was hired in late 1996 up until the time she transferred into the Community Resources Division within the Board. Upon further questioning, the witness testified that she did report directly to Mr. Banziger when he was the Superintendent and that when she transferred to the Community Resources Division she did in fact have a different job when she was working under Ms. Richmond. Ms. Shinkle explained that when she worked for the Superintendent directly, Mr. Banziger, she had to have direct knowledge of all the departments and that she would from time to time disseminate information to all the directors. However, Ms. Shinkle testified when she took her job with Mr. Richmond, she basically was in charge of Medicaid billing and ensuring certain licensures were up to date. Moreover, the witness testified that she in fact requested that she be transferred out of Mr. Banziger's office and the Superintendent's office because of the way the politics were run and that she perceived that she needed a change away from this activity. Additionally, the witness testified that when she was employed with and under Mr. Banziger, she had to attend monthly Board meetings two to three times per month and that she just wanted to get away from this activity, as she had children and did not want to have to work nights. Ms. Shinkle testified that at these Board meetings she would take minutes and she would prepare them. She testified that after the transfer into the Community Resources Division, she no longer did this activity and that in fact two people were brought on to do her job, one which she described as an Administrative Assistant 2 and a Clerk 1.

Ms. Shinkle explained that in 1996, when she was hired, she believed she was hired into an Administrative Assistant 2's position, as she was actually given a job posting which indicated the same. The witness then identified Appellee's Exhibit B, page 5, which shows that the job description that was utilized when she came into the employ of the Board, the class title that she was hired into was an Administrative Secretary 1, and that the position title was an Administrative Assistant. It should be noted that the Administrative Assistant was never notified as an Administrative

Assistant 1 and/or and Administrative Assistant 2. When looking at Appellee's Exhibit B, pages 6, 7 and 8, the witness agreed that this is a position description and was illustrative of the duties which she performed in the performance of her job when she did in fact work under Mr. Banziger, the Superintendent up until March 2000, when she was transferred under Ms. Richmond, the Director of Community Resources. When questioned as to pages 1,2 and 3 of Appellee's Exhibit B, she testified that she has never seen the position description noted as Administrative Assistant 1 where her name was located on, nor did she ever sign-off on this. However, the witness testified, after reviewing the essential functions of the position noted on pages 1 and 2 of Appellee's Exhibit B, she did in fact perform these duties in 2004 prior to the instant job abolishment.

Next, Ms. Shinkle was questioned when she transferred from Ms. Richmond, the Director of Community Resources to the Adult Care Services Division where she worked with Ms. Sharon Woodrow, the then Director, now Superintendent of the Board. The witness testified when she transferred into this division, the Adult Care Services Division, she worked as a Receptionist for a little over two years. Further, she testified that she at that time never questioned her classification and/or the apparent reduction in her duties by either filing an appeal with the State Personnel Board of Review or even inquiring about it with the Board. However, she testified that in July of 2003, she then after being approached by Mr. Metzger, who was the Director of the Services and Support Division, asked that she come to work for him and that her duties did increase from that of being a receptionist, in her words, to those listed on Appellee's Exhibit B, on pages 1, 2 and 3. Further, Ms. Shinkle testified at no time did Mr. Metzger ever give her a position description or told her what she was classified as, to the best of her knowledge.

Upon further questioning, Ms. Shinkle testified when she worked for Ms. Richmond, she handled more Medicaid and payroll activities, along with collecting timesheets and leave requests from employees and that she did not have any payroll responsibilities when she worked for Mr. Banziger. The witness explained that when she worked for Mr. Banziger she answered questions on behalf of him from the Directors as she could but that the major difference between working for Mr. Banziger and Ms. Richmond was that when working for Ms. Richmond she was involved in more money matters and/or fiscal matters and that with Mr. Banziger she was usually directed to more Board matters and confidential information. Additionally, she testified that when she worked for Ms. Richmond she spent approximately twenty-five percent of her time handling Medicaid billing and

approximately the other twenty-five percent of the time was handled by typing up provider evaluations and that approximately fifty percent of her time was covering the phones and answering questions. She then identified Appellant's Exhibit 2, on page 4, and explained that these performance evaluations dictate the responsibility and are examples of the duties that she performed while working for Ms. Richmond.

Ms. Shinkle's attention was then directed to the timeframe between May 2002 through July 2003 when she went to work for Ms. Sharon Woodrow, as the Director in the Adult Services Division. The witness testified that again, her duties mainly consisted as one handling a reception position and that at no time did she ever receive a position description and/or file an appeal to this Board with regards to any kind of a reduction in duties. Again, she testified that in July 2003 that she then went to work for Mr. Metzger in the Services and Support Division.

Upon questioning by the undersigned, Ms. Shinkle testified that she did provide assistance to the Director and/or Superintendent, Mr. Banziger, when she in fact worked for him in what she thought was an Administrative Assistant 2's position as she would act for the administrator by serving as a liaison between the administrator and his subordinates where she would transmit decisions and directives. Further, the witness stated she would not exactly represent the administrator at meetings, but would be accompanying him to explain the needs that the other Directors of the agency needed. However, she explained that when she was working for Mr. Metzger, prior to the implementation of the job abolishment, she did not act for Mr. Metzger or serve as a liaison between the different Directors as she had done when employed by Mr. Banziger when she first was hired on at the agency.

The next witness to testify was Ms. Sharon Woodrow, currently the Superintendent of the Clermont County Board of Mental Retardation and Developmental Disabilities. The witness testified that she has held her present position since May 2003 and that she has been employed with the Board since March 1993 and has held a variety of positions before becoming the Superintendent.

The witness then identified Appellee's Exhibit A and noted that this packet of information and/or page 1, was sent to Ms. Martha Shinkle which explained that her position was being abolished due to a lack of funds. Ms. Woodrow explained that there are a variety of reasons, but mostly due to cuts in Medicaid funding and the

non-passing of levies in the county for mental retardation and developmental disabilities Boards that a shortfall of funds was projected as the basis and justification for the implementation of the instant job abolishment. She then directed her attention to page 10 of Appellee's Exhibit A and noted that this revised five-year forecast draft for Clermont County MR/DD was in fact supplied by Marie Serbu to the Department of Administrative Services for their justification and rationale for the positions to be abolished. Moreover, Ms. Woodrow testified that there were in fact three Administrative Assistant 1 positions abolished, along with a Data Processor's position. Moreover, the witness also noted that one of the Administrative Assistant 1 positions that were abolished was in fact vacant. For informational purposes, the witness described in detail the fiscal background dating back to the years 2001 and 2002, where there had been no passages of tax levies which left the projected amount of income coming in the agencies in jeopardy. Ms. Woodrow testified money was actually lost in 2003 from the non-passage of the levy in 2001, and that this amounted to approximately 2.2 million dollars being lost in 2003. However, the witness did state that an additional levy request went back on the ballot in November 2003, which was passed however, a 1.7 million dollar shortfall in Medicaid funding was still projected due to the Ohio Department of Mental Retardation and Developmental Disabilities directives in not being able to forecast and allow for a six percent match due to the decrease in Title 19 Medicaid funding.

Further, the witness explained that there have been a number of activities from 2003 to the present which had taken place such as in 2003 there were approximately 220 employees and that presently there are only 183 and that approximately eighty percent of the employees are comprised in the bargaining unit and that these contracts can only be negotiated every three years, with the last one being negotiated in 2003. Ms. Woodrow noted that in June 2006, the current bargaining unit contract expires and most likely cuts will have to be made in addition to the ones that have already been made. She testified that in 2003 during the contract negotiations concessions were made in that contract but they were only realized in 2004 as it was noted that the Board's employees were then being required under the contract to pick up a part of their health insurance. Additionally, Ms. Woodrow testified that the Federal Health and Human Services Department did an audit in 2003 and that the agency was reminded, in a stern sense, to address the current waiting list of individuals who are seeking to have assistance through the Clermont County Board of MR/DD, and that these amounted to approximately 100 clients or so.

Next, Ms. Woodrow identified Appellee's Exhibit C as the actual total revenues and expenditures for calendar year 2003 and 2004, different than page 10 of the only projected calendar year revenues and expenditures. While it was noted on Appellee's Exhibit B, page 10, that there was only a carry over projected from 2004 to 2005 of 1.1 million dollars that in fact an actual carry over as noted on Appellee's Exhibit C was 1.9 million dollars. However, it was noted also on these exhibits that in 2004 there was an actual decreasing of revenues by approximately \$600,000.00 but due to cost containments such as freezing vacant positions, stopping transportation to schools, laying off approximately eighteen people in the collective bargaining unit and providing no new services, the expenditures also dropped from approximately 1.4 million dollars. The witness noted that on Appellee's Exhibit C the once projected calendar year revenues on Appellee's Exhibit B, page 10, was fourteen million dollars had in fact on Appellee's Exhibit C decreased to 13.4 million dollars. Thus, Ms. Woodrow opined that these reasons were in fact noted in the rationale which were utilized in determining the implementation through strategic planning that the impending abolishment of these positions noted above needed to be taken place. Furthermore, she testified that the delivery of client services also was looked at not to have an impact if the Administrative Assistants and the Data Processors were to be abolished as opposed to first line care providers, as well. Ms. Woodrow testified although this is after the fact, in July 2005 Medicaid funding has gone away in a large part, although it is noted as a revenue stream in calendar year 2005, the projected revenue streams from this funding are also noted as zero after that fact. Additionally, Ms. Woodrow noted that their expenses are constantly rising whether they like it or not, whether due to inflation or in terms of personnel, step increases for the bargaining individuals and/or merit raises, which need to be given out from time to time.

Ms. Woodrow's attention then focused on to Martha Shinkle and the duties that she performed while at the Board. The witness testified that she is familiar with Ms. Shinkle's duties, when she was with Mr. Banziger, as well as when she worked for herself as the Adult Services Director, as well as when she has been Superintendent. Ms. Woodrow explained when Ms. Shinkle worked with Mr. Banziger, she would notify the Directors and acting on and in his behalf on numerous times to disseminate information to the Directors and that after she was not under his employ and under different individuals at the agency she no longer did this. The witness testified that when Ms. Shinkle worked for her in the Adult Services she was simply a Receptionist and that she did light typing and filing as part of her job duties. The witness explained that in 2003, Mr. Metzger had

approached her to have Ms. Shinkle work for him in the Services Support Division and that her duties included being the person there to field questions, processing the payroll, process reports and fill out forms in Mr. Metzger's absence, although she did not act in his stead as either herself or other Directors would take care of this activity. The witness explained that presently she has an Administrative Assistant 2 working for her as a Superintendent and that she is responsible for all the Board confidential information, as well as working for the Board and that she is the liaison between the Board and the County Commissioners and that she does in fact act on her behalf if she is not present.

Moreover, Ms. Woodrow testified to the best of knowledge, when Martha Shinkle came to work for her in the Adult Services Unit she was an Administrative Assistant 1 but that she only performed reception duties and that the duties were fewer wherein she had fewer responsibilities than a typical Administrative Assistant 1. However, the witness testified that Ms. Shinkle never questioned about her changing duties and/or never filed an appeal with regards to her change in duties to the State Personnel Board of Review. Again, as previously mentioned, the witness explained that three Administrative Assistant positions were abolished, two positions which were held by Martha Shinkle and Maryann Lefker, and one being a vacant position. Further, Ms. Woodrow testified that also a Data Processor's position was abolished, as well. The witness then identified Appellee's Exhibit A, page 12 and 13, the table of organizations, as they existed before and after the implementation of the abolishments in question. Ms. Woodrow testified that the Human Resources Department generated these documents and that they accurately reflect the before and after effects of the positions in question.

There was no cross-examination of Ms. Woodrow by the Appellant. However, as previously mentioned, the parties did stipulate as to all the proper notice requirements as well as filings with the Department of Administrative Services were correct and not going to be challenged at the hearing.

The Appellant began her case-in-chief by calling herself to the witness stand, Ms. Martha Shinkle. Ms. Shinkle testified that on October 6, 1996, she was hired in to the Clermont County Board of MR/DD as a Administrative Assistant 2. The witness identified Appellant's Exhibit 1 as a job posting for an Administrative Assistant 2 employment application and the list of duties which she should perform and an additional position description which was noted by the undersigned as stating under class title the Administrative Secretary 1 and position title of

Administrative Assistant , not 1 or 2, but just Administrative Assistant. Further, the witness testified that she began her employment with the Clermont County Board of MR/DD, she was in fact working directly under the supervision of the Superintendent Mr. Banziger.

Next, Ms. Shinkle identified Appellant's exhibit 2 as a June 2002 performance evaluation of herself, which noted that her primary role was that of a receptionist at the Grissom Center, backup receptionist for other departments. It was noted through these performance evaluations that she did have her duties substantially diminished from the time that she began her employment as an Administrative Assistant to the time that she was working for the then Director of Adult Services, Ms. Sharon Woodrow as a receptionist. The witness then identified Appellant's Exhibit 3 as a copy from the Department of Administrative Services employee records which shows among other things the duties, which she performed, and was listed by the Department, but did not indicate what position or title was utilized.

The witness then identified Appellant's Exhibit 4 as a notification which she received on or about January 20, 2005 along with the Clermont County Board of MR/DD's monthly bulletin and a couple of newspaper articles. Further, Mr. Shinkle identified Appellant's Exhibit 5 as a series of table of organizations dating back from February 2002 until January 2005, which indicate, among other things, that the Administrative Assistant classifications were not depicted as either 1s or 2s up through 2004 but there was an indication as to Administrative Assistant 1 and 2 in the January 2005 table of organization at the agency. The Appellant's last exhibit, Exhibit 6, was identified by Ms. Shinkle as the salary ranges and/or salary adjustment notices which she received throughout her tenure with the Clermont County Board of MR/DD. However, as noted by the undersigned, in each and everyone of these salary adjustment notices and/or classification notices there was nothing to indicate that Ms. Shinkle ever held an Administrative Assistant 2 position and/or Administrative Assistant 1 position, but only held the position of Administrative Assistant.

There was no cross-examination of the witness.

FINDINGS OF FACT

1. I find that the Appellant, Martha Shinkle, was employed by the Clermont County Board of Mental Retardation and Developmental Disabilities as an Administrative Assistant 1 at the time of the implementation of the instant job abolishment.
2. The reason for the abolishment of the Appellant's position was for the lack of funds.
3. Additionally, I find that the Appellee agency followed all of the substantive and procedural requirements set forth in Ohio Revised Code and Ohio Administrative Code pertaining to an abolishment resulting in a layoff of the Appellant. Further, that compliance included providing materials to DAS, including the calculation of the Appellant's retention points which DAS verified and which demonstrated that there was no employee in Appellant's classification series or any other position into which the Appellant could have displaced.
4. I find that the Appellant's position as Administrative Assistant 1 and another Administrative Assistant 1 and along a Data Processor were abolished as a result of lack of funds of the Clermont County Board of Mental Retardation and Developmental Disabilities. The evidence revealed in 2001 revenue started to decline at the Clermont County Board of MR/DD as a result of levies failing to pass which effected the actual revenue income stream generated into the agency which precipitated in the agency utilizing cost saving measures such as freezing positions, stop providing transportation to schools, laying off eighteen people prior to implementing the instant abolishments and providing no new services to clients. The timeframe that this happened was from 2001 through 2004 prior to the implementation of the job abolishments at issue. Further, the evidence also revealed that the Medicaid funding formula and/or Title 19 Medicaid/CAFS was in fact going to be cut and/or the sixty percent matching funds were going to be taken away pursuant to a directive from the Ohio Department of Mental Retardation and Developmental Disabilities. Thus, staffing cuts were implemented and the positions

utilized as Administrative Assistant 1s and Data Processor were eliminated as these positions did not impact client services as much as others would have at the agency. Moreover, the lack of funds was indicated in not only the projected forecast in Appellee's Exhibit B, page 10, but also of the actual revenues which were taking in as indicated on Appellee's Exhibit C. The evidence revealed that there was an actual decrease on 14 million to 13.4 million, and/or a \$600,000.00 decrease, which needed to be made up, which, the Superintendent, Sharon Woodrow did the implementation of the actions which were performed by reducing staff and providing no new services.

CONCLUSIONS OF LAW

According to section 124-1-02(B) of the Administrative Rules of the State Personnel Board of Review, an "abolishment" means:

* * *

The permanent deletion of a position from the organization or structure of an appointing authority due to lack of continued need for the position, due to reorganization for efficient operation, economy, or lack of work.

* * *

This definition refers to the position, not the person occupying the position. It, also, does not mandate whether the duties formerly assigned to that position be reassigned to other personnel, or simply discontinued on the basis of the abolishment. Though an abolishment may result in a layoff, these occurrences are separate and not synonymous. Additionally, Administrative Rule 124-7-01(A)(1) of the State Personnel Board of Review states that an appointing authority has the burden of proof to establish, by a preponderance of the evidence, that a job abolishment was undertaken due to a lack of continuing need for the position due to a reorganization for the efficient operation of the appointing authority, or reasons on economy, or a lack of work expected to last one year or longer. Further, the appointing authority also must establish pursuant to Administrative Rule 124-7-01(A)(2) that the appointing authority has the burden of proof to establish, by a

preponderance of the evidence that a layoff was undertaken due to a temporary lack of work or lack of funds expected to last less than one year.

Moreover, pursuant to Administrative Rule 124-7-01(A)(3) it states that layoffs and abolishments may only be affirmed if the appointing authority has substantially complied with procedural requirements set forth in section 124.321 of the Revised Code, et seq., and the administrative rules promulgated pursuant to these statutes. Moreover, pursuant to Administrative Rule 124-7-01(B), certification of lack of funds or lack of work is not required for job abolishments. Thus, one can determine in reading the administrative rules in total that a job abolishment can proceed due to a lack of funds under the basis of reasons of economy and/or based on a reorganization for the efficient operation of the appointing authority.

I. PERMANENT DELETION OF APPELLANT'S POSITION.

A critical guideline in the abolishment of a civil service position is that it must have been done in good faith, *Weston v. Ferguson* (1983) 8 Ohio St. 3d 52. In the appeal before this Board, the Appellee has presented testimony affirming that the appointing authority, the Clermont County Board of Mental Retardation and Developmental Disabilities abolished various positions due to lack of funds and reasons of economy including the Appellant's position as Administrative Assistant 1. The evidence reflected through the testimony of the Superintendent, Sharon Woodrow, for the Board, and to the Appellee's exhibits and or documentation which it submitted at the record hearing, that through the implementation of the statement of rationale that due to a lack of funds and by reasons of economy the instant abolishment was necessary for the agency to stay fiscally sound. Further, as a result of the implementation of the job abolishment at issue, the Appellant's position as an Administrative Assistant 1, as well as all others at the agency were deleted from the organization.

While the Appellant argued that she was not classified as an Administrative Assistant 1, but rather as an Administrative Assistant 2, the evidence revealed that this was not true. The Appellant did not put forth any document and/or evidence to indicate that she was in fact an Administrative Assistant 2, and even after an examination of her job duties that she performed prior to the implementation of the instant job abolishment revealed that she was properly as an Administrative Assistant 1. Further, it should be noted that the Appellant never filed a reclassification appeal or reduction appeal prior to the instant job abolishment, as well.

II. LACK OF CONTINUED NEED FOR THE APPELLANT'S POSIITON IS JUSTIFIED BY REASONS OF ECONOMY AND FOR LACK OF FUNDS.

The appointing authority, the Clermont County Board of Mental Retardation and Developmental Disabilities, must demonstrate, by a preponderance of the evidence that this abolishment "... was undertaken due to a lack of continued need for the position, for a reorganization for the efficient operation of the appointing authority, for reasons of economy..." O.A.C. 124-7-01(A)(1). The Appellee presented reasons of economy and lack of funds as its primary justification for the abolishment of the Appellant's position as well as others. The testimony clearly presented demonstrated that as a way of achieving the instant rationale the three positions of Administrative Assistant 1 and of Data Processor were all abolished including the Appellant's position. Further, the testimony revealed, along with the documentary evidence that was submitted at the record hearing that other cost cutting measures were implemented due to decreased income and increase in costs and the inability of the county to ensure its Medicaid funding due to the State Department of Mental Retardation and Developmental Disabilities not being able to provide a sixty percent match to its Medicaid revenue. Further, it was noted that the Board also implemented cost cutting measures of reducing transportation, freezing various vacant positions, laying off an additional eighteen people in providing new services prior to implementing the abolishment to further streamline its cost cutting efforts. A job abolishment implemented for reasons of economy is a valid rationalization for implementing the same. O.A.C. 124-7-01(A)(1). In summary, the agency has presented that it substantially complied with all pertinent Ohio Revised Code and Ohio Administrative Code provisions dealing with an abolishment of a position and subsequent layoff due to the abolishment. Further, the Appellee has presented and demonstrated that its rationale for reasons of economy/lack of funds was a valid justification for the abolishment of the Appellant's position, because it appeared that due to decreasing income, cuts needed to be made.

III. COMPLIANCE WITH PROCEDURAL REQUIREMENTS.

The Appellee has the burden to establish that the job abolishment was procedurally correct. The appointing authority must comply with the administrative procedure set forth in Ohio Administrative Code Section 123:1-41-10(B) in addition to presenting adequate justification for the abolishment of the Appellant's position.

These procedures require the appointing authority to inform the employee whose position is abolished of the following:

- 1) The Appellee informed the Appellant of the reason for the abolishment;
- 2) The Appellee informed the Appellant of the effective date of the action;
- 3) The Appellee informed the Appellant of her accumulated retention points;
- 4) The Appellee informed the Appellant of her right to appeal to the State Personnel Board of Review within ten (10) days after receiving notice;
- 5) The Appellee informed the Appellant of the right to request and receive a copy of Ohio Administrative Code Chapter 123:1-41;
- 6) The Appellee informed the Appellant of her right to displace other employees if exercised within five (5) days;
- 7) The Appellee informed the Appellant of her right to reinstatement or reemployment;
- 8) The Appellee informed the Appellant that she was responsible for maintaining her current address with the Appellee;
- 9) The Appellee informed the Appellant that she had the option to convert accrued leave if the opportunity existed.

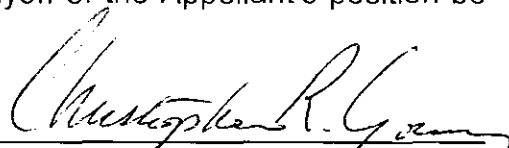
The Ohio Administrative Code Section 124-7-01(A)(3) states that an abolishment can only be affirmed if the appointing authority substantially complies with the procedural requirements set forth in Section 124.321 through 124.328 of the Ohio Revised Code, and the Administrative Rule promulgated pursuant to these statutes. See, *Jacko v. Stillwater Health Center* (1982) PBR 82-LAY-03-0876, where an employer substantially complied with the rules regarding layoffs, the employee's rights were not violated, and the abolishment of their positions will be affirmed.

RECOMMENDATION

As was previously stated, it was the finding of this Administrative Law Judge initially that the Appellee agency substantially complied with all the applicable statutes and rules pertaining when an abolishment is implemented. Therefore, this Board concludes that the Appellee substantially complied with all the applicable statutes and rules. See, Ohio Administrative Code Section 123:1-41-10(B) and Ohio Revised Code Sections 123.321 through 124.328.

Because Appellee has demonstrated, by a preponderance of the evidence, that the abolishment of the Appellant's position was made in compliance with the requirements of Ohio Administrative Code Section 124-7-01, and that the Appellee substantially complied with all the procedural requirements set forth in Ohio Administrative Code Section 123:1-41-10(D), it is therefore **RECOMMENDED** that the instant job abolishment and subsequent layoff of the Appellant's position be **AFFIRMED**.

CRY:dIm


Christopher R. Young
Administrative Law Judge