BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

GERALD ADKINS, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. RIF-02-0027 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and BUSSE NUTLEY, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on August 27 and 28, 2003.

1.2 **Appearances.** Appellant Gerald Adkins appeared *pro se*. Mark Anderson, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a reduction-in-force (RIF) action based on lack of funds and a good faith reorganization for efficiency purposes.

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II. FINDINGS OF FACT

2.1 Appellant Gerald Adkins was a Washington Management Service (WMS) employee for the Department of Social and Health Services in the Management Services Administration, Human Resources Division. Appellant was a permanent employee. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC.

2.2 Appellant began his employment as a WMS employee with DSHS in July 1999 as a Classification and Compensation Manager (WMS Band 2). Appellant was the subject of a reduction in force (RIF) action in May 2002; he accepted a position as a Consultant.

2.3 By letter dated September 13, 2002, Philip Wozniak, Acting Director of the Human Resources Division (HRD), informed Appellant that his WMS position of Consultant in the Management Service Administration, Human Resource Division, was being reduced in force, effective at the close of his work shift on October 1, 2002. Appellant filed a timely appeal on October 23, 2002.

2.4 Pamela Pelton and Jesse Powell also held WMS position with the Management Services Administration, Human Resource Division. Ms. Pelton and Mr. Powell were also notified of their RIFs due to lack of funds and good faith reorganization; their RIFs became effective on October 1, 2002. Both filed timely appeals with the Personnel Appeals Board.

2.5 On August 27 and 28, 2003 a hearing was convened pursuant to Board Order dated March 7, 2003, which consolidated this appeal Pelton v. DSHS, Case No. RIF-02-0028, and Powell v. DSHS, Case No. RIF-02-0029 for the purpose of hearing common evidence from DSHS in support of the stated reasons (lack of funds and good faith reorganization) for the RIFs. During the course of the

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consolidated portion of the hearing, Respondent made a Motion for Summary Judgment asking the Board to deny the appeals of Pelton and Powell. The Board took the motion under advisement, and has issued a decision on Respondent's Motion for Summary Judgment under a separate order.

2.6 Appellant Adkins' appeal went forward on August 28, 2003, beginning at 1 p.m. to hear evidence regarding the RIF options provided to him. We now make the following findings on Appellant Adkins' appeal of his reduction in force:

Basis for Lack of Funds and Good Faith Reorganization for Efficiency Purposes

2.7 In June 2001, Mr. Wozniak became aware that the 2002 HRD Supplemental Budget contained significant cuts and reduction of FTEs (full-time equivalents). In total, HRD was required to reduce its budget by 10 percent or 1.6 million dollars and reduce its current FTEs from 112 to 103.

2.8 Subsequently, Mr. Wozniak met with senior members of his management team to prepare a proposal and identify areas where reductions could be made to the budget. HRD had no program funds and because there were limited travel, training and equipment funds, Mr. Wozniak could make few, if any, cuts to these areas. Therefore, he was required to make the majority of the division's reductions through the elimination of staff positions. Mr. Wozniak submitted his Proposed HRD Reorganization and Reduction Plan, which included the following recommendations:

> Reorganization of the division aimed at eliminating redundancies and strengthening personnel support to department managers. Through the reorganization, three offices would be created under the HRD: Management Operations, Human Resources Field Services and Compensation and Benefits.
> Reduce HRD staffing by 15 FTEs.

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Specific FTE reductions were allocated as follows:

> Three FTE reductions in the Classification and Compensation Section
> Eight FTE reductions in the Office of Risk Management
> Reduction of four funded FTEs and eight unfunded FTEs in the Office of Organization and Employee Development.

2.9 Mr. Wozniak's HRD Reorganization and Reduction Plan was approved by the Assistant Secretary of DSHS, the Secretary of DSHS and by the Office of Financial Management. Consequently, the plan and the proposed cuts, including a cut of 15 FTEs, were included in the Governor's proposed budget.

2.10 In November 2001, Mr. Wozniak informed Appellants' supervisor, George Weirich, of the three positions under his supervision in the Classification and Pay unit that were earmarked for elimination. Appellant's position number was identified as one of the three positions.

2.11 The budget was passed in approximately mid-April 2002. Mr. Wozniak was reluctant to implement the RIF; however, in July 2002, when FY03 began, the division's FTE allotments were reduced to 90.3, an 18 FTE reduction from the 103 allotted in June 2002.

2.12 An HRD budget summary sheet for the month of August 2002 supports the division was overspent by $214,000. By September 2002, the division was overspent by $232,579 and was carrying 108 FTEs to its allotted 90.

2.13 Based on the grim financial situation of the division, Mr. Wozniak decided to begin eliminating the positions previously earmarked within the Human Resources Division.

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2.14 Respondent has adopted a reduction in force policy. DSHS Operating Procedures, WMS Procedure No. 4.01, contains the agency's reduction in force policy for WMS positions. The policy indicates that the layoff unit in WMS is the administration in which the position being RIF'd is located and where the search for WMS RIF options is conducted. In summary, the policy requires the appointing authority to advise the affected employee of the intent to eliminate his/her position; determine the RIF options; and to send the affected employee written notification.

RIF Options

2.15 WMS Procedure No. 4.01 outlines the procedure for determining RIF options as follows:

> Beginning with the current management band and below, options to WMS positions will be determined by the Assistant Secretary or designee. ... Options will be offered based on seniority, and will be identified sequentially as follows:
>
> 1) A vacant position within the layoff unit that is at the employee's same level of responsibility and duties for which the employee possesses the required job skills.
>
> b) If no options under (1), a vacant/filled WMS position within the layoff unit at the same salary and management band, and the same or progressively lower level responsibilities and duties for which the employee has the required job skills and applicable personal work history.

....

2.16 Randi Burk is the DSHS RIF Coordinator. Appellant completed and submitted a state job application to Ms. Burk, who reviewed it along with a position description of Appellant's position. Ms. Burk used Appellant's employment history to determine layoff options based on Appellant's education, work history and experience. Consequently, Ms. Burk determined that Appellant was qualified for positions in occupational codes 300 (human resource management), 350 (education management), 600 (social service program management), and 860 (equipment management).

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2.17 Ms. Burk subsequently accessed a WMS database in order to identify potential options within each of DSHS' eight administrations. Ms. Burk then mailed a notice of the need to RIF a WMS employee to the DSHS Assistant Secretary of each administration. Attached to the memo was a list of potential position options identified within each of the administrations, Appellant's job application, and a job description of the WMS Consultant position held by Appellant. The Assistant Secretaries were asked to review the options listed and determine whether Appellant qualified for any of the positions identified based on the information provided. Ms. Burk was unable to identify any options for Appellant.

2.18 By letter dated September 13, 2002, Philip Wozniak, Acting Director of the Human Resources Division (HRD), informed Appellant that his WMS position of Consultant was being reduced in force. Appellant's RIF became effective on October 1, 2002. The letter further indicated that there was no option for continued employment.

2.19 After further review of potential positions, Ms. Burk identified an option, and by letter dated September 26, 2002, Mr. Wozniak offered Appellant a RIF option to position #QQ65, WMS Human Resource Manager (part-time - 60 percent) WMS (Band 1 in the Management Services Division, Aging and Adult Services Administration (Thurston County). This position represented a lower salary standard and lower evaluation points.

2.20 On October 7, 2002, Appellant accepted the RIF option and he was subsequently appointed to position #QQ65.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that it has proven by a preponderance of the credible evidence that Appellant's position was RIF'd due to a lack of funds and good faith reorganization for efficiency

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purposes. Respondent argues that management has the authority to review its operations and reorganize and eliminate positions as it deems appropriate. Respondent further argues that Appellant was provided with the appropriate RIF options.

3.2 Appellant argues that there was no lack of funds, that no good faith reorganization took place and that he was removed from his position with prejudice and bias. Appellant also argues that Respondent failed to establish that the department offered him the proper options. Appellant argues that the division did this by systematically selecting employees, upgrading their positions without any review of their duties and raising their salaries, thereby making them less vulnerable to being bumped by him and other more senior employees.

Appellant further asserts that the RIF coordinator failed to look at his past work history, to look for available positions in other class codes for which he should be deemed as qualified and to take into account his seniority.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In an appeal of a reduction-in-force, Respondent has the burden of proof. WAC 358-30-170. Respondent has the burden of proving by a preponderance of the credible evidence that it laid the employee off for the reason stated in the RIF letter. O'Gorman v. Central Washington University, PAB No. L93-018 (1995).

4.3 In Talbott and Hobson v. Dep't of Social and Health Services, PAB Case Nos. L81-2 & L81-3 (Murphy, Hrgs, Exam.)(1981), the hearings examiner found that the reorganization was effected after consideration of many factors affecting the efficiency of the overall unit, and not

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designed to inconvenience the two appellants whose positions were transferred as a result of the reorganization and consolidation.

4.4 It is not our function to determine whether the reorganization proposal itself was right or wrong, but only to determine if the reorganization was done in good faith. George v. Dep't of Agriculture, PAB No L94-026 (1996).

4.5 In Amundsen v. Dep't of Labor and Industries, PAB Case No. L85-1 (1985), aff'd (Thurston Co. Super. Ct. No. 85-2-02185-9 (1987), the appointing authority determined, upon the recommendation of an assistant, that to accomplish the revised goals of his administration, a position could be better used if it was reallocated to another class. The Board held that it is not the Board's function to probe the mental processes by which the decision was reached, nor to substitute its judgment for that of the agency when there is a showing of reasonable basis for such decision.

4.6 The first issue here is whether Respondent complied with WAC 356-56-550(1) when it laid off Appellant because of a lack of funds and good faith reorganization for efficiency purposes. WAC 356-56-550, which governs reduction in force procedures for WMS employees, indicates as follows:

> (1) Washington management service employees may be separated due to reduction in force in accordance with the statutes and the agency's reduction in force procedures . . . because of lack of funds .... or good faith reorganization for efficiency purposes. . . .

4.7 Respondent has met its burden of proving that the Human Resources Division suffered a 10 percent reduction in its budget and a significant reduction of FTEs. Mr. Wozniak, the appointing authority, made a determination, based on agency needs and a desire to reorganize the division, to eliminate the positions held by the Appellants. In this case, Respondent has met its burden of proof

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that Appellant's reduction in force was the result of a lack of funds and good faith reorganization for efficiency purposes and in compliance with the requirements of WAC 356-56-550.

4.8 The second issue presented is whether Respondent provided Appellant with appropriate layoff options. WAC 356-56-550, subsection (3) indicates:

> Each agency shall develop a reduction in force procedure that is consistent with the following:
>
> . . . .
>
> (i) Appointing authorities will seek within the agency a funded vacant Washington management service position for which the employee has the required job skills, and that is at the same salary standard and/or same evaluation points.
>
> . . . The appointing authority will first look within the current management band for equivalent funded position at the same salary standard and/or the same evaluation points, and if none are found, then progressively to positions with a lower salary standard . . ..

4.9 Respondent's WMS policy is consistent with WAC 356-56-550(3). During the initial RIF process, Ms. Burk was unable to identify a viable option; however, Ms. Burke continued her search and ultimately found a 60 percent position. That position was offered to Appellant, and he accepted the position. Unfortunately, Appellant's only option resulted in a significant reduction in his salary. However, Appellant failed to provide any supporting evidence that he should have been offered other available fulltime positions that were at his former salary standard and met the conditions of WAC 356-56-550(3).

4.10 Respondent has met its burden of proving that the department complied with their RIF policy and WAC 356-56-550.

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4.11 Respondent has met its burden of proof, and the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Gerald Adkins is denied.

DATED this _____ day of _____, 2003.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

_____
Busse Nutley, Member

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