BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

LINDA MIKLOSKO, Appellant, v. WASHINGTON STATE UNIVERSITY, Respondent.	Case No. RIF-02-0025 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, GERALD L. MORGEN, Vice Chair, and BUSSE NUTLEY, Member. The hearing was held in the Compton Union Building at the Washington State University in Pullman, Washington, on October 2, 2003 and December 17, 2003. WALTER T. HUBBARD, Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Linda Miklosko was present and represented herself *pro se.* Donna Stambaugh, Assistant Attorney General, represented Respondent University of Washington.

1.3 **Nature of Appeal.** This is an appeal of a reduction-in-force (RIF) action due to a lack of funds and good faith reorganization.

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II. FINDINGS OF FACT

2.1 Appellant Linda Miklosko was an Information Specialist III and permanent employee for Respondent Washington State University. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on October 4, 2002.

2.2 Appellant began working for Washington State University (University) on January 13, 1995, and for the Wood Materials and Engineering Laboratory (WMEL) in May 1997. During her employment with Washington State University, Appellant held permanent status as an Office Assistant III, Editor 1- Research Publications, Information Specialist II, and Information Specialist III.

2.3 At the time her position was abolished, Appellant was an Information Specialist III. Appellant was responsible for coordinating the annual International Wood Composite Materials Symposium sponsored by WMEL. The symposium was a self-sustaining three-day event that generated revenues from participant registration fees. All costs associated with the symposium, including 75 percent of Appellant's salary, were paid from those revenues. Although Appellant's primary responsibility entailed managing and coordinating the logistics of the conference, she also spent a small percentage of her work time performing other duties, including website development, archiving and responding to various email correspondence. The remaining 25 percent of Appellant's position was financed by other state funds.

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2.4 A decline in symposium participant registration fees resulted in a reduction in revenues. For example, in 2002, total expenses exceeded revenues and resulted in a loss of $4,160 and in 2003, total expenses again exceeded revenues and resulted in a loss of $3,370. Budget documents support registration fees declined as follows:

Year	Gross Receipts
1999	$164,433
2000	$152,986
2001	$147,500
2002	$126,624
2003	$ 94,175

2.5 In addition, the University's 2002-2003 overall budget was reduced by three percent, which precluded the department from absorbing the symposium's loss of revenue to maintain Appellant's position.

2.6 Dr. Don Bender, Director of the Wood Materials and Engineering Laboratory, evaluated whether it was economically sound to continue funding a position when the principle responsibility was to coordinate the annual symposium when the event was no longer yielding a profit. Mr. Bender also considered other possible solutions to manage the decline in revenues and reduce expenses. Consequently, Mr. Bender met with a representative of the Cooperative Extension, a group that provided conference coordinating services. Ultimately, Mr. Bender determined that the decline in revenues could be offset by eliminating Appellant's position and by contracting with the Cooperative Extension, which could coordinate the conference more cost-effectively. Therefore, Mr. Bender recommended to Dr. Anjan Bose, Dean of the College of Engineering and Architecture, that Appellant's position be eliminated.

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2.7 The Washington State University's Layoff Procedure requires Human Resources Services (HRS) to initiate a layoff in accordance with WAC 251-10-030, which indicates:

> An appointing authority may layoff or reduce the number of working hours or the work year of an employee without prejudice because of lack of funds, lack of work, and/or good faith reorganization for efficiency purposes.

The layoff procedure requires that the affected employee be notified of his/her layoff options in accordance with WAC 251-10-030. Options are offered first within the layoff unit and in the order of seniority.

2.8 Karen Erp, Human Resource Consultant, was responsible for determining Appellant's RIF options. Ms. Erp reviewed Appellant's employment history to determine what layoff options were available to her. Ms. Erp conducted an unsuccessful search to locate any available positions to offer Appellant in the Editor 1 – Research Publications, Information Specialist I, Information Specialist II, or Information Specialist III job classifications. However, Ms. Erp successfully identified positions at the Office Assistant 1, Office Assistant 2, and Office Assistant 3 levels and offered them to Appellant, who accepted the Office Assistant 3 position.

2.9 By letter dated August 15, 2002, Dean Bose informed Appellant of the reduction in force of her position as an Information Specialist III due to lack of funds and good faith reorganization, effective September 5, 2002.

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2.10 After Appellant's position was eliminated, the majority of the position's duties were outsourced to the Washington State University's Cooperative Extension group, and the remaining duties funded by sources other than the symposium were absorbed by other Wood Materials and Engineering Laboratory staff.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues the elimination of Appellant's position resulted from a lack of funds and good faith reorganization, and for no other reasons. Respondent asserts that Appellant spent a majority of her time coordinating the International Wood Composite Materials Symposium, which is a self-sustaining single annual event, but that when the symposium experienced a steady decline in revenues, the University could no longer fund Appellant's position. Respondent argues that management has the authority to review its operations and to reorganize and eliminate positions as it deems appropriate. Respondent further asserts that Appellant was offered the appropriate RIF options according to the WACs and the University's layoff procedures.

3.2 Appellant argues that Respondent did not follow the WACs in implementing the RIF of her position, and she asserts the University did not abolish her position due to good faith reorganization or lack of funds. Appellant contends her position was eliminated due to retaliation for prior disagreements she had with her supervisor regarding overtime compensation and her objections to a co-worker's offensive language in an e-mail. Appellant also argues the RIF of her position was motivated by gender discrimination and because of a medical condition she disclosed to her supervisor. Appellant further asserts she was not offered positions for which she was qualified, and that her RIF into the Office Assistant 3 position adversely affected her salary, professional growth,

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reputation and promotional possibilities. Appellant asks the Board to grant her appeal and fully reinstate her.

IV. CONCLUSIONS OF LAW

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

4.2 Respondent may layoff an employee for lack of funds or lack of work. WAC 251-10-030(1). 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 This Board continues to hold that management has discretion in determining which positions to eliminate and which budgets to reduce when faced with a demonstrated lack of funds. In instituting a RIF for lack of funds, agencies have discretion to determine in good faith which positions to eliminate. Van Jepmond v. Employment Security Dep't, PAB No. L86-15 (1988), aff'd Thurston Co. Super. Ct. No. 88-2-00274-3 (1989). The positions to be eliminated and those to be retained when the budget is reduced is left to the good faith judgment of management. University of Washington v. Harris, 24 Wn.App., 228, 230, 600 P.2d 653 (1979) rev. denied 93 Wn.2d 1013 (1980). Respondent was within its right to review its existing programs and reduce staff as it deemed appropriate. Sinclair v. Dep't of General Administration, PAB No. L93-023 (1995).

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4.4 In Cowden v. University of Washington, PAB No. L93-038 (1994) (Condon, Hrgs, Exam.), the Board held that it could not second guess management decisions with respect to a layoff when there is a documented lack of funds.

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

4.6 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).

4.7 The first issue presented here is whether Respondent complied with WAC 251-10-030(1) when it laid off Appellant due to a lack of funds and good faith reorganization. WAC 251-10-030(1) permits an appointing authority to layoff or reduce the number of working hours or the work year of an employee, in part, because of a lack of funds, lack of work or good faith reorganization. Respondent has met its burden of proving that a lack of funds existed because the International Wood Composite Materials Symposium suffered a steady decline in participant registration fees, which resulted in a loss of revenues. Furthermore, the department contemplated a reorganization of the duties assigned to the Information Specialist III position and ultimately transferred those duties to the Cooperative Extension program and to other staff within the department. Respondent has shown a reasonable basis for the reorganization. In this case, Respondent has met its burden of

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proof that Appellant's reduction in force was the result of a lack of funds and that the reorganization was done in good faith and in compliance with the requirements of WAC 251-10-030(1).

4.8 The second issue presented is whether Respondent provided Appellant with appropriate layoff options as required under the higher education rules. WAC 251-10-030(4) provides, in part:

> Within the layoff unit, a permanent status employee scheduled for layoff shall be offered employment options to position(s):
> (a) For which he/she meets any specific position requirements;
> (b) Which are comparable, as determined by the personnel officer; and
> (c) Which are in:
> (i) Class(es) in which the employee has held permanent status which have the same or lower salary range maximum as the current class;
> (ii) Lower class(es) in those same class series for which the employee is qualified.
>
> The employee may exercise either option subsection (4)(c)(i) or (ii) of this section provided that the employee being replaced is the least senior in a comparable position in the class and has less layoff seniority than the employee replacing him/her. . . .

Respondent correctly identified and provided Appellant with the appropriate layoff options. Subsequently, Appellant was offered those options, selected the Office Assistant 3 position, and was appointed to that position.

4.9 Appellant makes numerous claims against Respondent, including gender discrimination and prior disagreements with her supervisor. However, there was no credible evidence to support that Respondent abolished the Information Specialist III position for any reason other than lack of funds and good faith reorganization for efficiency purposes. In fact, Appellant was offered and accepted a position, albeit at a lower classification, and she continues to be employed at the University.

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4.10 Respondent has met its burden of proof that Appellant's layoff was the result of a lack of funds and good faith reorganization, and the appeal of Linda Miklosko should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Linda Miklosko is denied.

DATED this _____ day of _____, 2004.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Gerald L. Morgen, Vice Chair

_____
Busse Nutley, Member

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