BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JOHN HUSTON, Appellant, v. WASHINGTON STATE UNIVERSITY, Respondent.	Case No. RIF-04-0015 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, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member. The hearing was held at the Department of Transportation, North Central Office, 1551 North Wenatchee Avenue, Wenatchee, Washington, on August 9, 2005.

1.2 **Appearances.** Appellant John Huston was present and was represented by Christopher J. Coker, of Parr, Younglove, Lyman & Coker, P.L.L.C. Donna Stambaugh, Assistant Attorney General, represented Respondent Washington State University.

1.3 **Nature of Appeal**. This is an appeal from a reduction-in-force action due to lack of funds.

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II. FINDINGS OF FACT

2.1 Appellant is a Maintenance Mechanic II and permanent employee for Respondent Washington State University (WSU). 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 September 2, 2004.

2.2 In May 1987, Appellant began working as a Maintenance Custodian at the WSU Wenatchee Tree Fruit Research and Extension Center within the Agricultural Research Center, College of Agricultural, Human, and Natural Resource Sciences. Appellant subsequently promoted into the positions of Maintenance Custodian II and Maintenance Mechanic II.

2.3 Dr. Jay Brunner directs the Wenatchee Tree Fruit Research and Extension Center. The mission of the Extension Center is to perform research and troubleshoot problems affecting the tree fruit industry by operating a farm and providing an outdoor laboratory for experimenting and testing. The responsibilities of the Maintenance Mechanic II position held by Appellant include maintenance and repairs of farm equipment in the Wenatchee Tree Fruit Research and Extension Center's shop. The Maintenance Mechanic II position is fully funded through state funds allocated to the Agricultural Research Center's budget. Time permitting, the position may be assigned to repair and maintain vehicles belonging to the faculty component of the Wenatchee Tree Fruit Research and Extension Center, as requested by that program. The faculty program operates under a separate budget and does not fund any portion of the Maintenance Mechanic II position. However, the faculty program has, in the past, used both outside vendors and the Wenatchee Tree Fruit Research and Extension Center's shop to service vehicles.

2.4 Dr. Ralph Cavalieri is the Associate Dean of the College of Agricultural, Human, and Natural Resource Sciences, and the Director of the Agricultural Research Center (Area 30). In June

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2003, the Legislature reduced WSU's budget for fiscal years 2004 and 2005 by approximately $21 million. At the same time, the Legislature approved a tuition increase; however, the net effect still resulted in a 3% budget reduction, totaling approximately $19 million. As a result, Vice President of Academic Affairs and Provost Robert Bates required each section to submit a 5% reduction plan. In order to meet the Provost's budget requirement and redirect some funding to academic programs, Dr. Cavalieri reduced the Agricultural Research Center's budget by a total of 6.5%.

2.5 The target reduction of the Agricultural Research Center's allocation to the Wenatchee Tree Fruit Research and Extension Center for fiscal years 2004 and 2005 was $23,980. In fiscal year 2004, the Extension Center had some carryover reserves that allowed an operating budget cut of $20,300. In order to meet the target reduction, Dr. Brunner reduced a computer technician's position, which was also partially funded by grant money, to a 0.92 full-time employee (FTE), creating an additional reduction of $3,694. Appellant's position was not reduced in fiscal year 2004.

2.6 In determining budget cuts for fiscal year 2005, Dr. Brunner consulted with faculty members and the farm and physical plant mangers to determine which areas had the least impact on daily activities and the core mission of the Extension Center's programs and research. Dr. Brunner then proposed to cut the operating budget by approximately $9,000, further reduce the computer technician's position to a 0.8333 FTE (reduction of $7,389) and reduce Appellant's position to a 0.8 FTE (reduction of $7,898).

2.7 By letter dated July 26, 2004, Dr. Cavalieri notified Appellant that his Maintenance Mechanic II position # 41244 was being reduced to 80% (0.8 FTE) due to a lack of funds. Human Resources Manager Lisa Gehring reviewed Appellant's employment history and determined he held permanent status in the positions of Maintenance Custodian, Maintenance Custodian II, and

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Maintenance Mechanic II. As a result, Ms. Gehring determined Appellant's layoff options as follows:

- Placement on layoff lists for the positions of Maintenance Mechanic II; Maintenance Mechanic; Maintenance Custodian II; and Maintenance Custodian I.
- Permanent employment options in lieu of layoff that included a Maintenance Mechanic II position in Pullman; a Maintenance Custodian II position in Prosser; and a Maintenance Custodian I position in Spokane.

2.8 Ms. Gehring also provided Appellant with a list of positions for which he was eligible, provided he successfully completed and passed the required examinations.

2.9 On August 5, 2004, Appellant signed the layoff option form and selected the option to remain in his 80% FTE position.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues Appellant's position was reduced to an 80% FTE based on a lack of funds resulting from a legislative budget reduction. Respondent argues the Wenatchee Tree Fruit Research and Extension Center's portion of the budget reduction was approximately $23,900 and asserts the Extension Center's director carefully exercised how he was going to reduce that budget with the least amount of impact on the program's mission. Respondent asserts that the faculty program manages its own budget, including grant funds, and asserts the Extension Center's director cannot allocate grant money to fund Appellant's position. Respondent asserts that Appellant was offered the appropriate reduction-in-force options and argues Appellant selected the option to reduce his position to an 80% FTE.

3.2 Appellant argues the Extension Center reduced his position by 20% based on a lack of funds; however, he asserts there was not a lack of work. Appellant contends that he historically

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maintained and repaired faculty vehicles in the Extension Center's shop and asserts the money spent to out source that work could be used to fully fund his position. Appellant argues that it is improper to reduce an 18-year employee's hours and then take work that he could be performing to outside vendors. Therefore, Appellant argues he should be reinstated to a full-time position.

IV. CONCLUSIONS OF LAW

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

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 The first issue presented here is whether Respondent complied with WAC 251-10-030(1) when it laid off Appellant because of a lack of funds. 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. Respondent has met its burden of proving that the Agricultural Resource Center's budget, which directly funded Appellant's position, suffered a budget reduction due to legislative mandates.

4.4 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:

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(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.

4.5 Respondent has proven that Appellant was provided with the appropriate layoff options and that Appellant opted to remain in his current position, which was reduced to a 0.8 FTE position.

4.6 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). In Wilkes v. Centralia College, PAB No. 3678-L2 (1994), the Board reversed the hearings examiner and held that Respondent had sustained that there was a lack of funds and that the decision as to where to make budget cuts was the responsibility of the Respondent. 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.

4.7 In this case, Respondent provided credible evidence that a lack of funds existed and, as a result, the Extension Center's director carefully determined that a 20% reduction of Appellant's position affected the core mission of the program the least. The primary role of the Extension Center's Maintenance Mechanic II position is to repair and maintain the farm equipment critical to the daily operations, not to repair faculty vehicles. The evidence supports that the faculty program has the discretion to manage vehicle costs and maintenance in a manner most beneficial to that

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program, and Appellant provided no credible evidence to support that work was inappropriately contracted out. Therefore, the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of John Huston is denied.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Busse Nutley, Vice Chair

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Gerald L. Morgen, Member

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