

BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

DONNA ARNOLD & JANICE LARSEN,

Appellants,

vs.

DEPARTMENT OF SOCIAL AND HEALTH
SERVICES,

Respondent.

CASE NOS. R-LO-09-014 & R-LO-09-015

ORDER OF THE BOARD GRANTING
RESPONDENT'S MOTION FOR
SUMMARY JUDGMENT AND DENYING
APPEAL

I. INTRODUCTION

1.1 Hearing on the Motion. This matter came before the Personnel Resources Board, LAURA ANDERSON, Vice Chair, and DJ MARK, Member, on November 9, 2009, for hearing oral argument on Respondent's Motion for Summary Judgment.

1.2 Appearances. Alicia O. Young, Assistant Attorney General, and Gina Comeau, Assistant Attorney General, represented Respondent Department of Social and Health Services (DSHS). Appellants represented themselves, *pro se*.

1.3 Documents Considered. The Board considered the files and documents in this matter, including:

- 1) Respondent's Motion and Memorandum for Summary Judgment and Dismissal, filed October 2, 2009, including:
 - a) Declaration of John Black, filed October 2, 2009, with Exhibits 1-3;
 - b) Declaration of Judy Fitzgerald, filed October 2, 2009, with Exhibits 1 and 2;
- 2) Appellant Donna Arnold's written response, filed October 16, 2009, including Exhibits 1-10;
- 3) Appellant Janice Larsen's written response, filed October 16, 2009; and
- 4) Respondent's Reply to Appellants' Response to Motion for Summary Judgment, filed October 23, 2009, including:
 - a) Second Declaration of John Black in Support of Department's Motion for Summary Judgment, filed October 23, 2009;

b) Declaration of Glen Christopherson, filed October 23, 2009, with Exhibit 1.

II. FINDINGS

2.1 In response to an unprecedented budget crisis, Respondent began considering alternatives to layoff as early as the Summer of 2008. (Declaration of Glen Christopherson.)

2.2 Prior to the layoffs at issue in these appeals, the Director of Children's Administration's Finance and Operations Support Division considered and weighed alternatives to avoid or minimize layoffs including: transfers, voluntary demotion, voluntary reduced work schedule, or voluntary leave without pay. She determined that none of those alternatives were viable options. (Declaration of Judy Fitzgerald.)

2.3 In Children's Administration, budget cut decisions were based on available resources and DSHS/Children's Administration priorities. In order for alternatives to layoff to be viable options, there must be vacancies for individuals to transfer to or to voluntarily demote to, or workloads that will support someone working reduced hours or taking leave without pay. These options are normally considered prior to identifying positions for layoff. As stated above, management for Children's Administration considered alternatives to reduce the impacts of layoff but determined that the alternatives were not viable options. (Declaration of Judy Fitzgerald.)

2.4 There is no dispute that DSHS followed its layoff procedure when it offered Appellants' Supplemental Security Income (SSI) Program Manager position as a layoff option to an employee, Mr. Hobbs, who had more seniority than Appellants. Mr. Hobbs chose the SSI Program Manager as his bump option. This resulted in there being more employees entitled to the position than the number of positions available.

2.5 Consequently, Appellant's were laid off from their Washington Management Service position of SSI Program Manager in the Children's Administration/Finance & Operations Services Division. Appellants had occupied the SSI Program Manager position in tandem.

2.6 On July 20, 2009, Appellant Arnold filed an appeal of her layoff. On July 20, 2009, Appellant Larsen filed an appeal of her layoff.

2.7 On October 2, 2009, Respondent filed a Motion for Summary Judgment.

III. ARGUMENTS OF THE PARTIES

3.1 In summary, Respondent argues that the basis for Appellants' layoffs is undisputed, that the agency complied with the requirements of the applicable rules, and that the appeals should be dismissed.

Respondent asserts that DSHS suffered a significant budget shortfall due to a reduction in funding, Mr. Hobbs' position was eliminated, he had more seniority than Appellants, and he bumped into the position held by Appellants. Respondent contends that the basis for Appellant's layoff is undisputed.

In addition, Respondent asserts that the agency complied with its layoff procedure and the applicable Washington Management Service rules. Respondent contends that WAC 357-58-460 does not create an individual right for employees to be offered alternatives to layoff. Rather, Respondent argues that the rule requires that such opportunities be included in the agency's layoff procedure. Respondent contends that the agency incorporated consideration of layoff alternatives into its layoff procedure as directed by the rules. Respondent further contends that the agency considered whether avoidance or minimization of layoff was possible in this case and ultimately determined that it was not. Therefore, Respondent asserts that the agency complied with the rules and its layoff procedure.

3.2 In summary, Appellants argue that Respondent failed to offer them alternatives to reduce the impacts of layoff as required by the rules. Appellants contend that Respondent should have asked for voluntary or insisted on mandatory periods of leave without pay for all staff which would have provided an opportunity to save positions. Appellants assert that other administrations offered

1 such options and saved many positions. Therefore, Appellants contend that their layoffs were not
2 consistent with WAC 357-58-460.

3 Appellants further argue that there was no lack of work. Appellants contend that the workload was
4 increasing substantially. Appellants also argue that there was no lack of funds because their position
5 generated revenue. Appellants contend that they could have earned the cost of their pay and benefits
6 through money they could have generated had they been retained.
7

8 IV. DISCUSSION

9 4.1 The Board may decide an appeal by motion if the documents on file, depositions and
10 affidavits show there is no genuine issue as to any material fact and the appeal should be
11 dismissed as a matter of law. WAC 357-52-140. All facts and reasonable inferences therefrom
12 are to be determined in favor of the nonmoving party. *See, Hall v. University of Washington*,
13 PAB No. 3863-V2 (1995).
14

15 4.2 In order to preclude summary judgment, the non-moving party must set forth specific
16 facts by affidavit or otherwise show a genuine dispute of material fact. A material fact is one
17 upon which the outcome of the litigation depends. *Hudemand v. Foley*, 73 En.2d 880, 886, 441
18 P.2d 532 (1968).

19 4.3 It is undisputed that Appellants were bumped from their position by an employee with more
20 seniority. It is also undisputed that the agency followed their layoff procedure in implementing
21 Appellants' layoff. The issue remaining before the Board is whether the agency's layoff procedure
22 complies with the requirements of WAC 357-58-460.
23

24 4.4 WAC 357-58-460, what must be included in the employer's layoff procedure, provides, in
25 relevant part:

26 The employer's layoff procedure must:

27 . . .
28
29

(2) Provide opportunities to avoid or minimize layoff, such as transfers, voluntary demotion, voluntary reduced work schedule, or voluntary leave without pay

4.5 DSHS Administrative Policy No. 18.58 contains the operating procedures for the agency's Washington Management Service positions. Section 92 addresses what must be included in the agency's layoff procedure. Part 3 of this section states, in part:

The Department, to the extent available resources allow, will maintain a work force capable of meeting its mandated responsibilities. If there is a need to reduce staff, the department will attempt to avoid or minimize layoffs through transfers, voluntary demotion, voluntary reduced work schedule, or voluntary leave without pay.

4.6 DSHS's layoff procedure contains opportunities to avoid or minimize layoff. Therefore, the procedure complies with the requirements mandated in WAC 357-58-460. Further, as anticipated by the rule and DSHS's procedure, DSHS management considered alternatives to minimize the impact of layoff prior to implementing the layoffs at issue here.

4.7 Based on the uncontroverted facts, Respondent's motion should be granted, and the appeals of Donna Arnold and Janice Larsen should be denied.

The Board having reviewed the files and documentation, being fully advised in the premises now enters the following:

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion for Summary Judgment is granted, and the appeals of Donna Arnold and Janice Larsen are denied.

DATED this ____ day of _____, 2009.

WASHINGTON PERSONNEL RESOURCES BOARD

LAURA ANDERSON, Vice Chair

DJ MARK, Member