

BEFORE THE PERSONNEL RESOURCES BOARD
STATE OF WASHINGTON

FRANK OHLY,

Appellant,

vs.

DEPARTMENT OF CORRECTIONS,

Respondent.

CASE NO. R-LO-09-021

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, DJ MARK, Vice Chair, and JOSEPH PINZONE, Member. The hearing was held on February 16, 2011, in the Personnel Resources Board hearing room in Olympia, Washington.

1.2 **Appearances.** Appellant Frank Ohly was present and appeared *pro se*. Valerie Petrie, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal of the layoff process and options offered to Appellant.

II. FINDINGS OF FACT

2.1 Appellant Frank Ohly is a permanent employee for Respondent Department of Corrections (DOC). Appellant and Respondent are subject to Chapter 41.06 RCW and the rules promulgated thereunder, Title 357 WAC. Appellant filed a timely appeal with the Personnel Resources Board on December 3, 2009.

2.2 Appellant has been employed by the State of Washington for approximately 23 years. He has been employed with DOC for approximately 20 years and has approximately 14 years of experience as a supervisor. Appellant has worked as a Community Corrections field supervisor

1 and work release supervisor, as well as a Community Corrections Specialist. At the time of his
2 layoff, Appellant was working in Kitsap County as a Washington Management Service (WMS)
3 work release supervisor assigned to WMS Band 2. Kitsap County is part of DOC's Southwest
4 Region.

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6 2.3 In 2009, DOC experienced significant budget cuts in addition to program changes which
7 resulted in the elimination of more than 700 positions agency wide. Appellant's position was not
8 eliminated, but was impacted, in part, from the implementation of SB 5288 which changed the
9 focus of the services provided by Community Corrections. Under SB 5288, Community
10 Corrections supervised fewer offenders, and therefore, required fewer staff to perform the work.

11
12 2.4 In order to manage the volume of layoffs that were occurring, DOC created a statewide
13 layoff team to oversee the process for all impacted employees. The team was located at DOC
14 headquarters and worked with appointing authorities and regional human resource staff to
15 implement the layoffs.

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17 2.5 The layoffs occurred in waves. One of focuses of the layoff team was to place as many
18 employees as possible into fulltime permanent positions. Therefore, DOC determined that when
19 formal layoff options were found, informal layoff options would not be offered because those
20 positions could be formal options for employees impacted by future waves.

21
22 2.6 When a layoff was to be initiated, the affected divisions provided the statewide layoff
23 team with a list of impacted positions within their divisions. Steven Johnson was the Field
24 Administrator for the Community Corrections Division in the Southwest Region. As the
25 appointing authority, he determined which positions would be eliminated within his area of
26 responsibility. One of the positions he identified for elimination was a Community Corrections
27 field supervisor in Kitsap County. This was the position occupied by Mike Ison.

2.7 Bonnie Francisco is the Human Resource Manager for DOC's Southwest Region Community Corrections Division. She provided support to the statewide layoff team by verifying seniority dates, including military time, gathering position description forms, and obtaining Skills, Abilities, and Experience Worksheets from impacted employees within the region. Ms. Francisco verified Mr. Ison's military service and adjusted his seniority date accordingly. After military credit was added to Mr. Ison's state service time, Appellant became the least senior Community Corrections supervisor in Kitsap County. Ms. Francisco provided this information to the layoff team.

2.8 All of the Kitsap County field supervisor positions and work release supervisor positions were within the WMS and assigned to WMS Band 2.

2.9 DOC's WMS layoff policy, Policy 810-815, sets forth the process to be followed when layoffs occur. The policy states, in relevant part:

I. General Requirement

A. If unable to avoid layoffs, the appropriate Appointing Authority will determine which positions, by location, are to be abolished . . .

1. Employees will be notified of the need for a layoff prior to implementation of a layoff action.

2. The Department will assist each employee with employment opportunities in lieu of separation due to layoff.

. . . .

II. Seniority

A. An employee's retention rating, hereafter referred to as the employee's seniority date, is the employee's most recent date of hire into state service , as adjusted for qualified military service . . .

B. The computation of seniority is the responsibility of Human Resources.

C. Seniority is the basis for determining layoff options subject to the employee possessing the required job skills for the position.

. . . .

III. Option

1 A. A formal option, the position that the employee has a right to, if one exists,
2 will be provided to a Washington Management Service employee in
descending order with the appropriate layoff unit:

- 3 1. A funded vacant Washington Management Service position that has the
4 same point value as the employee's current position for which the employee
has the required job skills.
- 5 2. A filled Washington Management Service position at the same point value
6 held by the least senior employee. The employee being laid off must have
the required job skills for the position.
- 7 3. A funded Washington General Service position, which is vacant or filled by
8 the least senior incumbent at the same or similar salary in a classification
9 for which the employee has held permanent status. A vacant position will
10 be offered before a filled position. To determine same or similar salary, the
employee's current salary must be within the salary range of the
Washington General Service classification.
- 11 4. A funded Washington Management Service position that is vacant or filled
12 at a lower point value in descending order in conjunction with Washington
13 General Service positions which the employee has held status and are at
14 lower salary ranges. A vacant position will be offered before a filled
15 position. The employee must have greater seniority than the employee
occupying a position and must have the required job skills for Washington
Management Service positions.

16

17 E. An offer to explore possible informal options will be made to employees when
18 they receive their formal option. Informal option(s) . . . may be identified when:

- 19 1. No formal option is available and the employee may be separated from
employment, and/or
- 20 2. An employee desires to explore alternative to the formal option.

21

22 VII. Layoff Units

23 A. The county in which the employee's permanent workstation is located will be
the first layoff unit used for determining an option(s).

24 B. If no formal option is available within the county layoff unit, the layoff unit
25 expands to the County Group, as identified on the County Group Layoff Units
(Attachment 1).

26 C. If no formal option is available within the Group Layoff Unit, the statewide
27 layoff unit will be used.

28

2.10 WAC 357-58-460 provides, in relevant part:

The employer's layoff procedure must:

(1) Identify clearly defined layoff unit(s) that minimize disruption of the employer's total operation and provide options to employees scheduled for layoff;

....

2.11 In Policy 810.815, DOC identified that the county in which an employee's permanent workstation is located is the first layoff unit, the county group is the second unit, and statewide is the third unit.

2.12 WAC 357-58-465 provides:

(1) Within the layoff unit, a permanent employee scheduled for layoff from a WMS position must be offered the option to take a position, if available, that meets the following criteria:

(a) The employee has the required competencies for the position.

(b) The WMS position is at the same salary standard and/or evaluation points. If no option to a position with the same salary standard and/or evaluation points is available, the employer must consider other WMS positions with a lower salary standard and/or evaluation points, or general service positions in accordance with WAC 357-46-035(1) in descending salary order if the employee has held permanent status in a WGS classification. At the agency's discretion, the employee may be offered a vacant position at higher evaluation points.

(c) The position being offered as the option is funded and vacant. If no vacant position is available, the position being offered as the option must be occupied by the employee with the lowest retention rating.

(2) If a permanent employee has no option available under subsection (1) of this section, the employer must determine if there is an acting position in the layoff unit for which the employee is qualified.

2.13 The layoff team determined the possible options for the employees being laid off based on a number of factors, including seniority, position requirements, skills and abilities possessed by the employee being laid off, positions held by the employee being laid off, and the layoff unit

1 in which the employee worked. If no possible options were found in the layoff unit, the team
2 broadened the search to the county group and if necessary, statewide.

3
4 2.14 When identifying options for Mr. Ison, the layoff team first looked within Kitsap County
5 for a vacant, funded WMS Band 2 position, but there were none. The team then looked for a
6 WMS Band 2 position filled by a less senior employee. Because Appellant was the least senior
7 WMS Band 2 Community Corrections Supervisor in Kitsap County, his position was identified
8 as a possible option for Mr. Ison.

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10 2.15 Mr. Johnson credibly testified that Mr. Ison possessed the required education, skills,
11 abilities, and competencies to perform the duties of a work release supervisor. These
12 requirements were described in the position description form for Appellant's position,

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14 2.16 Appellant's position was offered as the formal layoff option to Mr. Ison. Mr. Ison
15 accepted the option and "bumped" Appellant from the position. This caused Appellant to be laid
16 off.

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18 2.17 When identifying options for Appellant, the layoff team first looked within Kitsap County
19 for a vacant, funded WMS Band 2 position, but there were none. The team then looked within
20 the county for a WMS Band 2 position filled by a less senior employee, but there were none. The
21 team then looked within the county for a funded Washington General Service position, which
22 was vacant or filled by the least senior employee at the same or similar salary in a classification
23 in which Appellant held permanent status and then for a position in the county in which
24 Appellant held status and which was at a lower salary range. After following the layoff steps in
25 descending order, the layoff team identified a Community Corrections Officer 3 position in the
26 Washington General Service as Appellant's formal layoff option. This position was offered to
27 Appellant and he accepted it. Because a formal option was found for Appellant, the team did not
28 look further.

1
2 2.18 Before a layoff option was offered, the layoff process was double checked to assure the
3 correct option had been identified and that nothing was overlooked. This process was employed
4 by the layoff team for all layoffs, including Appellant's.

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6 2.19 Both Mr. Johnson and Ms. Francisco credibly testified that they had many conversations
7 with Appellant before the layoff process began and during the layoff process. Prior to the layoff,
8 Ms. Francisco worked with Appellant to verify and double check his seniority date and provide
9 him information about the layoff process and what might happen if the position of a more senior
10 supervisor was eliminated. In addition, Ms. Francisco assisted Appellant by providing him with
11 information about employment opportunities and how to find other positions within DOC.

12 13 **III. ARGUMENTS OF THE PARTIES**

14 3.1 Respondent argues that DOC implemented the layoff appropriately and in compliance with
15 DOC policy and the merit system rules. Respondent contends that Mr. Ison was qualified for
16 Appellant's position and that because Appellant was the least senior supervisor in Kitsap County,
17 his position was correctly identified as Mr. Ison's layoff option. Respondent further argues that the
18 policy and applicable merit system rules were followed in determining Appellant's layoff options.
19 Respondent contends that when a formal option is found, the process of identifying options is
20 complete. Respondent asserts that the agency followed the layoff process very methodically and
21 mechanically to assure that all employees were afforded their layoff rights.

22
23 3.2 Appellant does not refute the need for the layoffs. However, he believes that DOC failed to
24 offer him a viable layoff option, that they should have offered him informal options in addition to
25 his formal option, and that the search for options should not have been limited to Kitsap County.
26 Appellant contends that the duties of a field supervisor and a work release supervisor are very
27 different. Appellant further contends that he had more years of experience as a supervisor and in a
28 field office than Mr. Ison. Appellant believes that the differences in duties and his length of
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1 experience as a supervisor and in work release should have been taken into consideration before he
2 was bumped. Appellant argues that the layoff process was flawed because Respondent failed to
3 conduct any statistical analysis prior to implementing the layoff. And, while he appreciates the
4 layoff team and the enormous task they had, Appellant argues that the process, though it may have
5 been correct, was not right.

6 7 **IV. CONCLUSIONS OF LAW**

8 4.1 The Personnel Resources Board has jurisdiction over the parties and the subject matter.

9
10 4.2 In a hearing on appeal from a layoff action, Respondent has the burden of proof. WAC
11 357-52-110.

12
13 4.3 Respondent met its burden of proof. Respondent showed that DOC Policy 810.815 and the
14 applicable merit system rules were followed and that the appropriate layoff option was identified
15 and offered to Appellant.

16
17 4.4 In instituting a RIF for lack of funds, agencies have discretion to determine in good faith
18 which positions to eliminate. Van Jepmond v. Employment Security Dep't, PAB No. L86-15
19 (1988), aff'd Thurston Co. Super. Ct. No. 88-2-00274-3 (1989). The position to be eliminated
20 and those to be retained when the budget is reduced is left to the good faith judgment of
21 management. University of Washington v. Harris, 24 Wn.App., 228, 230, 600 P.2d 653 (1979)
22 rev. denied 93 Wn.2d 1013 (1980). Respondent was within its right to review its existing
23 programs and reduce staff as it deemed appropriate. Sinclair v. Dep't of General Administration,
24 PAB No. L93-023 (1995).

25
26 4.5 Appellant does not refute that a reduction of positions was necessary due to budget
27 reductions and program changes. Respondent proved that Mr. Ison had more seniority than
28 Appellant, and that Mr. Ison had the experience, skills, competencies, and met the qualifications
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1 for the work release supervisor position held by Appellant. Respondent also proved that
2 Appellant was the least senior Community Corrections Supervisor in the Kitsap County layoff
3 unit. Respondent followed its layoff policy and complied with the applicable rules when it
4 implemented the layoff that resulted in Appellant being “bumped” from his position.

5
6 4.6 Respondent proved that the process used to identify Appellant’s formal layoff option
7 complied with the provisions layoff policy and applicable rules. Respondent searched first within
8 Kitsap County for formal options in descending order as outlined in the rules and policy. When a
9 formal option was found within Kitsap County, neither the rules nor the policy require that
10 Respondent search further. Appellant argues that he should have been offered informal options.
11 However, neither the rules nor the policy require that informal options be offered when a formal
12 option has been found.

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14 4.7 Respondent has met its burden of proof that the actions leading to Appellant’s layoff and
15 identification of his formal layoff option complied with the applicable merit system rules and DOC
16 policy. Therefore, the appeal should be denied.

17
18 **V. ORDER**

19 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Frank Ohly is denied.

20
21 DATED this ____ day of _____, 2011.

22 WASHINGTON PERSONNEL RESOURCES BOARD

23
24 _____
DJ MARK, Vice Chair

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26 _____
JOSEPH PINZONE, Member