

BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

MICHELE BECKMANN,

Appellant,

vs.

WASHINGTON STATE UNIVERSITY,

Respondent.

CASE NO. R-LO-07-001

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 Resources Board, LAURA ANDERSON, Chair; MARSHA TADANO LONG, Vice Chair; and JOSEPH PINZONE, Member. The hearing was held at the Office of the Attorney General in Spokane, Washington, on December 5, 2007.

1.2 **Closing Arguments.** At the request of the parties, written closing arguments were submitted on January 4, 2008.

1.3 **Appearances.** Appellant Michele Beckmann was present and was represented by Eric Nordlof, General Counsel for the Public School Employees of Washington. Donna J. Stambaugh, Assistant Attorney General, represented Respondent Washington State University.

1.4 **Nature of Appeal.** At the outset of the hearing on this matter, the parties stipulated that the issue before the Board is:

Should the employer have implemented layoff procedures when it separated Appellant from employment following her trial service reversion?

II. FINDINGS OF FACT

2.1 Appellant Michele Beckmann was a permanent employee for Respondent Washington State University (WSU). Appellant and Respondent are subject to Chapter 41.06 RCW and the

1 rules promulgated thereunder, Title 357 WAC. Appellant filed a timely appeal with the
2 Personnel Resources Board on March 23, 2006.

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4 2.2 Appellant was employed as a Secretary Senior in University Relations at WSU's Pullman
5 Campus. She competed for and was promoted to a Program Coordinator position in Student
6 Affairs, effective May 30, 2006. Previously, she had worked for WSU in a number of clerical
7 positions including, Office Assistant 2, Office Assistant 3, Secretary, and Secretary Lead.

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9 2.3 Because she had never held permanent status as a Program Coordinator, Appellant was
10 required to serve a trial service period pursuant to WAC 357-19-025. On November 27, 2006,
11 Appellant was notified that she was not satisfactorily meeting the expectations of her Program
12 Coordinator position and that her trial service period was being extended to March 2, 2007.

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14 2.4 By memorandum dated December 19, 2006, Appellant was provided a Performance
15 Improvement Plan. The memorandum identified Appellant's recurring deficiencies, listed her
16 performance expectations, and reminded her of the importance of meeting workplace standards
17 and expectations. Appellant testified that during the first part of February 2007, she was assigned
18 to home to work on two separate projects.

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20 2.5 WAC 357-19-100 states, "[t]he employer may revert any employee who fails to meet the
21 employer's standards during the trial service period. The employee must be notified in
22 accordance with WAC 357-19-105. Upon reversion, the employee has the rights provided by
23 WAC 357-19-115 and 357-19-117.

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25 2.6 WAC 357-19-105 states, "[a]n employer must give seven calendar days' written notice to
26 an employee who is being reverted during a trial service period. If during the last seven days of a
27 trial service period, the employee commits an egregious act which warrants reversion, the
28 employer may immediately revert the employee without seven calendar days notice."
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2 2.7 By letter dated February 21, 2007, Appellant was informed that she was being reverted
3 during her trial service period. Appellant's last working day in the Program Coordinator position
4 was February 28, 2007.

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6 2.8 WAC 357-19-115 states, in relevant part:

7 A permanent employee who does not satisfactorily complete the trial service
8 period . . . has reversion rights with the current employer at the time of reversion.
9 An employee has the right to revert to a position, if available, in accordance with
the following:

- 10 (1) For employees reverting from trial service following a promotion . . . the
11 employer must revert the employee to a vacant position . . . for which the
employee satisfies competencies and other position requirements and which is:
12 (a) Allocated to the class the employee last held permanent status in; or
13 (b) If no positions are available, allocated to a class which has the same or lower
salary range maximum.

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15 2.9 WAC 357-19-117 states: "[i]f the reverted employee is not returned to a permanent
16 position in the class in which the employee last held permanent status, the employee is eligible to
17 be placed on the employer's internal layoff list upon request. General government employees
18 may also apply for placement in the transition pool.

19
20 2.10 When Suzette Yaezenko, Human Resource Consultant for WSU, was informed of the
21 decision to revert Appellant, Ms. Yaezenko conducted a search for vacant positions. Ms.
22 Yaezenko searched comparable 12-month positions that were full time and located within the
23 Pullman geographic area. Ms. Yaezenko found no vacant positions meeting the criteria. As a
24 result, Appellant was separated from employment upon termination of her trial service
25 appointment.

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27 2.11 Ms. Yaezenko testified that at the time of Appellant's reversion, a part-time Office
28 Assistant 3 position was vacant. However, she did not feel that the position was comparable to
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1 Appellant's last permanent position. Therefore, she did not consider the part-time position as a
2 possible reversion option for Appellant.

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4 2.11 By memorandum dated February 21, 2007, Ms. Yaezenko notified Appellant of her
5 reversion options. The memo stated, in part,

6 To revert to a position after trial service, there must be a vacant position available
7 at the time of the reversion in which the position competencies are met. There are
8 currently no vacant positions available in which you meet the competencies.
9 Therefore, at the end of your trial service appointment, you will be separated from
10 employment at WSU, effective Wednesday, February 28, 2007.

11 You are eligible to have your name placed on an internal layoff list(s) for future
12 vacancies in position in the job titles listed below . . .

13 2.12 As requested by Appellant, her name was placed on the layoff lists for future Secretary
14 Lead, Secretary Senior, Secretary and Office Assistant 3 positions.

15 **III. ARGUMENTS OF THE PARTIES**

16 3.1 In summary, Respondent argues Appellant was not laid off and therefore WSU should not
17 have implemented its layoff procedure. Respondent contends that the civil service rules do not
18 provide for a layoff following termination of a trial service appointment and reversion. Respondent
19 asserts that Appellant was properly reverted during her trial service period and all applicable rules
20 were correctly followed. Respondent explains that there were no vacant positions available to
21 Appellant, therefore she was not placed in a vacant position and her trial service appointment was
22 terminated. Respondent contends that Appellant was not laid off, that the civil rules do not require
23 that a layoff be conducted when an employee is reverted during a trial service period, and that WSU
24 should not implement the layoff procedure when such a requirement does not exist in civil service
25 rules. Respondent requests that the appeal be dismissed.

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27 3.2 In summary, Appellant argues that she was competent in her previous positions and asserts
28 that she was separated because no secretary senior or office assistant work was available. Appellant
29 further argues that she did not resign, she was not discharged for cause, she was not separated due to

1 disability and she was not subject to a non-disciplinary separation. Therefore, the only other
2 recognized means of being separated from employment is a layoff. Appellant asserts that no work
3 was available and therefore, her separation from service with WSU was a layoff. Appellant contends
4 that Respondent failed to follow its layoff procedures, failed to provide her proper notice of her
5 layoff, and failed to offer her the appropriate layoff options. Appellant argues that in a layoff, she
6 would have been offered less than comparable positions as layoff options and that at the time of her
7 reversion, a vacant half-time position was available which should have been offered to her.
8 Appellant contends that she was not treated fairly by WSU, that WSU has made certain that she is
9 not interviewed or selected for any vacancies, and that this reversion action was nothing more than a
10 cover for a constructive discharge. Appellant asks the Board to correct this injustice and reinstate her
11 to a position to which she would have been entitled under WSU's layoff policy.

12 13 **IV. CONCLUSIONS OF LAW**

14 4.1 The Personnel Resources Board has jurisdiction over the parties and the subject matter.
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16 4.2 In a hearing on appeal from a layoff action, Respondent has the burden of proof of
17 supporting both the basis for the action taken and compliance with the civil service laws or rules
18 governing the action. WAC 357-52-110.
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20 4.3 The parties stipulated that the issue before the Board is whether WSU should have
21 implemented layoff procedures when it separated Appellant following her trial service reversion.
22 Trial service reversion is not a layoff, therefore the layoff procedures should not have been
23 implemented.
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25 4.4 The rules governing trial service reversion are specific regarding which positions are
26 available to an employee who is reverted. First, the position must be vacant and the employee must
27 meet the competencies and other position requirements. The first level of consideration would be
28 vacant positions in classes in which the employee last held permanent status. The second level of
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1 consideration would be vacant positions in classes which have the same or lower salary range
2 maximum. The rules on trial service reversion do not require that a position be “comparable” to
3 the position in which the employee last held permanent status. In this case, there were no vacant
4 positions at the first level of consideration. However, there was a vacant position at the second
5 level of consideration. A part time Office Assistant 3 position was vacant. The evidence before
6 the Board establishes that Appellant met the competencies for this position. And, this position
7 had a lower salary range maximum than Appellant’s former permanent position. Therefore, at
8 the time of her trial service reversion, Appellant should have been placed in the part time Office
9 Assistant 3 position.

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11 4.5 Respondent has met its burden of proof that the layoff procedures should not have been
12 followed. However, Respondent has failed to demonstrate that no vacant positions were available for
13 Appellant following her trial service reversion. The appeal should be granted in part.

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15 **V. ORDER**

16 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Michele Beckmann is granted
17 in part. Respondent should place Ms. Beckman in the part time Office Assistant 3 position that was
18 available at the time of her trial service reversion.

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20 DATED this ____ day of _____, 2008.

21 WASHINGTON PERSONNEL RESOURCES BOARD

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23 _____
24 LAURA ANDERSON, Chair

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27 MARSHA TADANO LONG, Vice Chair

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JOSEPH PINZONE, Member

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