

BEFORE THE PERSONNEL RESOURCES BOARD
STATE OF WASHINGTON

EFRAIN QUIROZ,

Appellant,

vs.

WASHINGTON STATE UNIVERSITY,

Respondent.

CASE NO. R-LO-08-001

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 in the First Floor Conference Room at the Department of Social and Health Services Community Services Office in Yakima, Washington, on June 18, 2008. Subsequent to the hearing but prior to issuing this decision, the Board's titles changed. The signatures on this document reflect the Board's current titles.

1.2 **Appearances.** Appellant Efrain Quiroz was present and was represented by Etoy Alford, Attorney at Law. Donna J. Stambaugh, Assistant Attorney General, represented Respondent Washington State University.

1.3 **Nature of Appeal.** This is an appeal of a layoff due to good faith reorganization.

II. FINDINGS OF FACT

2.1 Appellant Efrain Quiroz was a permanent employee for Respondent Washington State University (WSU). 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 February 5, 2008.

2.2 Appellant began his employment with WSU in May 1996 as a Farm Equipment Operator 1. The Farm Equipment Operator 1 classification was subsequently converted to the Farmer 2 class. At the time of the layoff giving rise to this appeal, Appellant was a Farmer 5 in the Irrigated Agriculture Research and Extension Center (IAREC) located at Prosser, Washington. IAREC is part of the College of Agriculture, Human, and Natural Resource Sciences (CAHNRS). Appellant worked within the stone fruit program, specifically with cherry orchards.

2.3 In early 2007, Appellant's supervisor, Dr. Matthew Whiting, prepared a strategic plan for the WSU cherry research orchards in which he identified the research needs and the supporting orchard operations needed for the program. Among the strategies Dr. Whiting suggested was the elimination of the two salaried orchard maintenance positions. Appellant's position was one of the positions proposed to be eliminated. Dr. Whiting also suggested elimination of approximately 80% of the existing plantings. Dr. Whiting testified that the goal was to reduce the orchard from 35-37 acres to 15 acres. During his testimony, Dr. Whiting confirmed that half of the previously planted cherry trees were eliminated before the 2008 season.

2.4 Dr. Whiting credibly testified that Appellant did a good job maintaining the orchards but that the program was evolving which created a greater need for more research in genetics, breeding and genomics as well as more sophisticated and complex orchard management. Dr. Whiting further credibly testified that a position was needed that coordinated some of the orchard operations previously performed by Appellant and that also worked closely with and provided research support for four research programs, represented the programs at meetings, and provided budget and fiscal management for the programs.

2.5 Dr. Ralph Cavalieri is the Associate Dean for CAHNRS and was Appellant's appointing authority. Dr. Cavalieri credibly testified that a reorganization of the stone fruit research program was necessary because research efforts at WSU had not kept up with the industry. Dr. Cavalieri was aware of Dr. Whiting's concerns and the need to expand the research program. Dr. Cavalieri

1 helped draft WSU's 2007-2008 Operating Budget Request for the Industry-based Unified
2 Agriculture Initiative. In part, the request identified a need for additional research into new
3 horticultural crop varieties including a stone fruit breeder to be co-located in Prosser and
4 Wenatchee to reinvigorate WSU's cherry breeding program. WSU's request asked for \$10.8
5 million but the legislature gave them \$6.8 million.

6
7 2.6 Subsequently, Dr. Cavalieri determined that reorganization was needed to elevate the
8 level of support provided to the researchers at Prosser. Dr. Cavalieri concluded that a new
9 Orchard and Vineyard Manager position would provide the elevated level of research support
10 and program management functions needed and that the day-to-day orchard maintenance work
11 could be performed by other staff such as Farmer 2 positions.

12
13 2.7 The Orchard and Vineyard Manager position was not a classified position and was not a
14 position previously held by Appellant. Although Appellant testified that he was qualified to
15 perform the Orchard and Vineyard Manager duties, the position description included duties and
16 responsibilities that had not been assigned to Appellant's Farmer 5 position.

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18 2.8 By letter dated January 15, 2008, Dr. Cavalieri notified Appellant that due to good faith
19 reorganization, his Farmer 5 position was being abolished. Dr. Whiting and Julie Nelson,
20 Director of Human Resources for WSU-Tri-Cities, both credibly testified that they met with
21 Appellant at 2:00 p.m. on January 15, 2008 and that the layoff letter was given to Appellant at
22 that meeting. A Layoff Option Form and a copy of WSU's Layoff Procedure were included as
23 attachments to the layoff letter. The Layoff Option Form indicated that Appellant could have his
24 name placed on the Farmer 4 and 5 layoff lists.

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26 2.9 Suzette Yaezenko, Human Resource Consultant, credibly testified that she conducted the
27 search for Appellant's layoff options. She found no comparable position for which Appellant
28 was the most senior employee and for which he met the competencies of the position. She then
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1 expanded her search for less than comparable positions. She found a Farmer 3 position for which
2 Appellant met the competencies and which was held by a less senior employee. The position was
3 located in Pullman, Washington. The position was offered to Appellant but he did not accept it.
4 Consequently, he was laid off at the end of his work shift on January 31, 2008.

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6 2.10 After the effective date of Appellant's layoff, Ms. Yaezenko discovered that a Farmer 2
7 position was available in Prosser and that the position should have been offered to Appellant as a
8 layoff option. Appellant was notified of the error by letter dated May 16, 2008. The May 16,
9 2008 letter was provided to Appellant by regular and certified mail. The letter offered the Farmer
10 2 position to Appellant as a layoff option and indicated that if he accepted the position, his
11 appointment would be made retroactive to the effective date of his layoff. Appellant did not
12 accept the position.

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14 2.11 Appellant provided conflicting testimony regarding his receipt of the January 15, 2008
15 layoff letter. Appellant testified that he was not provided the January 15, 2008 layoff letter
16 during the meeting with Ms. Nelson and Dr. Whiting, but that it was mailed to him by certified
17 and regular mail. However, in his January 22, 2008, letter of appeal to the Board, Appellant
18 clearly states, "on January 15th, I had a meeting with Julie Nelson . . . and my supervisor Dr.
19 Whiting. I was informed that my position was going to be abolished as of January 31st. . . ." We
20 find Appellant's testimony regarding this matter inconsistent with the testimony provided Dr.
21 Whiting and Ms. Nelson and inconsistent with his own statement in his letter of appeal. It may
22 be that because the May 16, 2008 letter was sent by regular and certified mail, Appellant was
23 confused about which letter he received when. Nonetheless, a preponderance of the credible
24 testimony establishes that on January 15, 2008, Appellant received the letter notifying him of his
25 layoff.

26 27 **III. ARGUMENTS OF THE PARTIES**

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3.1 Respondent argues that Appellant was provided the correct layoff notice and layoff options and that when an error was discovered, Respondent corrected that error. Respondent acknowledges that Appellant was a good employee and that WSU had no problems with his performance. But, Respondent contends that the layoff was the result of a good faith reorganization needed to move the research programs forward, to address critical gaps the industry had identified in WSU's research programs, and to meet the needs of the citizens of Washington state. Respondent acknowledges that there is a need for some of the spraying, pruning and irrigating that Appellant performed, but asserts that the extent of that work is less partially due to the sizable decrease in the acreage being farmed. Respondent asserts that the research programs needed a manager position to encompass higher level duties than those performed by the Farmer 5 position. Consequently, Respondent argues that the Farmer 5 position was surplus and that the reorganization was done in good faith.

3.2 Appellant asserts that he did not receive proper notice of his layoff. Appellant argues that because his world was turned upside down by his layoff, his recollection of when he received the layoff notice is clear. Appellant contends he received the notice by mail on January 18, 2008 and that he met with Ms. Nelson and Dr. Whiting after he received the letter. Appellant further argues that the layoff was not based on good faith reorganization. Appellant submits that he was laid off for speaking out in support of a subordinate employee who was not being paid for his accrued comp time. Appellant claims that the lack of proper notice is a technical violation that warrants reinstatement to his Farmer 5 position. Appellant further claims that the lack of good faith reorganization warrants reinstatement to his Farmer 5 position.

IV. CONCLUSIONS OF LAW

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

4.2 In a hearing on appeal from a layoff action, Respondent has the burden of proof of supporting both the basis for the action taken and compliance with the civil service laws or rules governing the action. WAC 357-52-110.

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2 4.3 Respondent has established that based on elevated research needs, a deliberative effort was
3 followed to reorganize the staffing of the research programs to best meet the needs of the researchers
4 and the industry and to provided a level of program management not provided previously by the
5 Farmer 5 position.

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7 4.4 Based on a preponderance of the credible evidence, Respondent has established that the
8 layoff process was consistent with the applicable rules and regulations and with WSU's layoff
9 procedures. Respondent has also established that Appellant was provided the appropriate layoff
10 notice and layoff options.

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12 4.5 Respondent has met its burden of proof and the appeal should be denied.

13
14 **V. ORDER**

15 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Efrain Quiroz is denied.

16
17 DATED this ____ day of _____, 2008.

18 WASHINGTON PERSONNEL RESOURCES BOARD

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20 _____
21 MARSHA TADANO LONG, Chair

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23 _____
24 JOSEPH PINZONE, Vice Chair

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26 _____
27 LAURA ANDERSON, Member