

BEFORE THE PERSONNEL RESOURCES BOARD
STATE OF WASHINGTON

KATHLEEN ARNOLD,

Appellant,

vs.

DEPARTMENT OF CORRECTIONS,

Respondent.

CASE NO. R-LO-06-003

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, LARRY GOODMAN, Member. The hearing was held on August 29, 2006, at the office of the Personnel Resources Board in Olympia, Washington. LAURA ANDERSON, Chair, reviewed the record, including the file, exhibits, and the entire recorded proceedings, and participated in the decision in this matter. Subsequent to this hearing but prior to issuing this decision, the Board's titles change. The signatures on this document reflect the Board's current titles.

1.2 Appearances. Appellant Kathleen Arnold was present and appeared *pro se*. Elizabeth Delay Brown, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 Nature of Appeal. This is an appeal of the layoff options and salary determination provided to Appellant following her layoff from her Corrections Specialist 4 position.

II. FINDINGS OF FACT

2.1 Appellant Kathleen Arnold 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 February 10, 2006.

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2 2.2 Appellant began her employment with DOC in May 2000. At the time of her layoff,
3 Appellant was employed as a Corrections Specialist 4 in the Chemical Dependency Unit. When
4 she began her employment, her position was a Corrections Specialist. Her position was then
5 placed in the Washington Management Service. In January 2003, her position was removed
6 from the Washington Management Service and allocated to the Correctional Program Manager
7 classification. As a result of revisions to the statewide classification plan, effective June 1, 2005,
8 Appellant's position was reallocated to the Corrections Specialist 4 classification.
9

10 2.3 In March 2005, Governor Christine Gregoire directed state agencies to reduce the number of
11 middle management positions. To comply with the Governor's directive, DOC was required to
12 eliminate 103 positions by June 30, 2007.
13

14 2.4 Prior to determining which positions to eliminate, each DOC department was asked to
15 review their programs, determine which positions were most critical, and make a recommendation of
16 which positions to eliminate. The departments were not given a directive to eliminate any certain
17 number of positions, but rather were asked to review the duties performed within the programs and
18 make a recommendation based on program requirements.
19

20 2.5 The Chemical Dependency Unit is part of the Office of Correctional Operations Health
21 Services Unit. Within the Health Services Unit, two positions were eliminated.
22

23 2.6 DOC Policy Directive 810.810 sets forth the process to be followed by DOC when
24 implementing a layoff and identifying options for affected employees. Todd Dowler, Human
25 Resource Manager, oversaw the statewide implementation of the layoff which included Appellant's
26 position. Mr. Dowler consulted with management, assured that the layoff policy and applicable
27 rules were followed, and assured that the options offered to affected employees were correct.
28
29

2.7 At the time of layoff, DOC did not have an approved salary determination policy. Therefore the department relied on the merit system rules in determining the salaries for employees affected by the layoff.

2.8 WAC 357-28-135 states in relevant part:

The base salary of an employee appointed to a position due to a layoff action must be determined as follows:

(1) An employee who accepts a layoff option to a different position with the same salary range keeps the same base salary.

(2) An employee who accepts a demotion in lieu of layoff or accepts a layoff option to a position with a lower salary range maximum must be placed within the new range at a salary equal to the employee's previous base salary. If the previous base salary exceeds the new range, the employee's base salary must be set equal to the new range maximum. The employee's base salary may be set higher than the range maximum, but not exceeding the previous base salary, if allowed by the employer's salary determination policy. (Emphasis added.)

2.9 Prior to implementation of the layoff, Mr. Dowler meet with DOC's Executive Leadership Team about whether the department would approve setting the salaries for laid off employees higher than the range maximum (Y-rating) as allowed by WAC 357-28-135(2). The Executive Leadership Team determined that no Y-rates would be given to employees affected by the layoff. Therefore, the salaries for employees who accepted lower positions as a result of the layoff were placed equal to their previous salary, if that salary was within the range for the lower position, or placed at the top step of the range for the lower position, if their previous salary was above the range of the lower position.

2.10 DOC's layoff policy requires that seniority be used as the basis for granting layoff options provided the employee being laid off possesses the required skills and abilities for the position being considered as an option. When it was determined which positions were going to be eliminated, the employees were notified and asked to complete a layoff questionnaire which provided additional information about their skills and abilities.

1 2.11 DOC's layoff policy provides in Section III A that "[w]hen an option has been determined,
2 no further options will be identified." Section III A2 of the policy states that "[a]n option will be
3 determined in descending order of salary range and one progressively lower level at a time. A
4 vacant position will be offered before a filled position."

5
6 2.12 In determining options for Appellant, Mr. Dowler considered her seniority, work history, and
7 layoff questionnaire. In addition, when he identified a possible option for Appellant, he met with her
8 to determine whether she met the qualifications for the position. Mr. Dowler credibly testified that
9 the layoff process was an interactive process that relied not only on the seniority, work history, and
10 documentation provided by affected employees, but on information gained through discussions with
11 the employees.

12
13 2.13 In seeking a layoff option for Appellant, Mr. Dowler found that there were no Correctional
14 Specialist 4 positions that were vacant or being held by less senior employees. He then looked for
15 vacant Correctional Specialist 3 positions within the county, then within the county group and then
16 statewide. His search found a vacant Correctional Specialist 3 position at the statewide level located
17 at the Washington Corrections Center for Women (WCCW). Mr. Dowler met with Appellant and
18 confirmed that she met the skills and requirements for this position so the position became her
19 formal layoff option.

20
21 2.14 Appellant accepted her layoff option to the vacant Correctional Specialist 3 position.
22 Because her salary was higher than the top step of the Correctional Specialist 3 salary range, her
23 salary was placed at the top step of the range.

24
25 2.15 During the hearing before the Board, Mr. Dowler explained that the Correctional Specialist
26 classifications are generic and encompass a broad range of positions performing unique duties that
27 require unique skills and abilities. Mr. Dowler reviewed the three Correctional Specialist 3 and 4
28 positions that appeared to be held by less senior employees and explained why they were not offered
29

1 to Appellant as options. Position S196 was a grievance coordinator position and Appellant did not
2 have experience in this area. In addition, the position was not vacant but was being held by a
3 permanent employee. Position 2642 was within the Spokane performance unit and was being held
4 by a permanent employee. Position CL25 was occupied by an acting employee, but the permanent
5 incumbent in that position had more seniority than Appellant.

6 7 **III. ARGUMENTS OF THE PARTIES**

8 3.1 Respondent argues that DOC implemented the layoff appropriately and in compliance with
9 DOC policy and the merit system rules. Respondent contends that the layoff was a result of the
10 Governor's directive. Respondent asserts that the policy was followed in determining Appellant's
11 layoff option and that Appellant's seniority, her work history, and the information she provided in
12 her layoff questionnaire were considered in identifying positions as possible layoff options.
13 Appellant's formal option was determined after Mr. Dowler talked to Appellant to determine
14 whether she had the skills and abilities for the position. Respondent further argues that Appellant's
15 salary was set in accordance with Policy 810.810 and the applicable rules. Respondent asserts that
16 Appellant's layoff option and salary determination were appropriate and correct and that the layoff
17 action should be upheld.

18
19 3.2 Appellant does not refute the need for the layoff. However, she does not believe that DOC
20 offered her all the available layoff options. Appellant asserts that she has many years of experience
21 as a supervisor and manager and believes that her experience and education was not taken into
22 consideration when she was offered her layoff option. Appellant argues that the layoff and
23 additional commute to the position at WCCW resulted in a \$700 per month loss in income. She
24 argues that this caused her a lot of stress and other problems. She contends that she would like proof
25 that there were no other options available and an opportunity to request that her salary be Y-rated.
26 In addition, Appellant asked the Board to make note of Respondent's untimely response to her
27 request for discovery. Appellant suggests that it would have been to her benefit if she had more time
28 to review the documents.
29

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. WAC 357-52-110.

4.3 Respondent has met its burden of proof. Respondent has shown that DOC Policy 810.810 and the applicable merit system rules were followed and that the appropriate layoff option was identified and offered to Appellant.

4.4 During her questioning of Mr. Dowler, Appellant commented that she had never held status in a Corrections Specialist 3 position. The Board takes note of the Department of Personnel Correctional Specialist Occupational Category. The category provides guidance in determining which former classifications would be considered similar to current classifications. The category provides that the Corrections Specialist 4 specification replaced the Correctional Program Manager classification and that the Corrections Specialist 3 specification replaced the Corrections Specialist classification. Appellant's exhibit A-3, Article III, page 1 establishes that she held status as a Corrections Specialist. Therefore, after exhausting the search for a viable Corrections Specialist 4 position, it was appropriate for DOC to look for a Corrections Specialist 3 position as possible layoff option for Appellant. Upon locating a vacant Corrections Specialist 3 position, in accordance with DOC Policy 810.810, no further options needed to be identified. Respondent has shown that Appellant was offered the appropriate layoff option.

4.5 In regard to Appellant's request that she maintain her Corrections Specialist 4 salary, the merit system rules grant employers the discretion of whether to set salaries higher than the maximum step of a lower level class as a result of a layoff. This provision is permissive. Respondent chose not to implement this provision. Respondent indicated that this decision was consistently applied to

1 all the employees impacted by the layoff. Respondent's actions were in compliance with the merit
2 system rules.

3
4 4.6 Respondent has met its burden of proof that Appellant was provided with the appropriate
5 layoff option and that her salary was set in compliance with merit system rules. Therefore, the
6 appeal should be denied.

7
8 **V. ORDER**

9 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Kathleen Arnold is denied.

10
11 DATED this ____ day of _____, 2006.

12 WASHINGTON PERSONNEL RESOURCES BOARD

13
14 _____
LARRY GOODMAN, Vice Chair

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16 _____
LAURA ANDERSON, Member