BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

RANDALL UNRUH, Appellant, vs. PUBLIC DISCLOSURE COMMISSION, Respondent.	CASE NO. R-LO-12-003 FINDINGS, CONCLUSIONS AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, DJ MARK, Chair; JOSEPH PINZONE, Vice Chair; and NANCY HOLLAND YOUNG, Member. The hearing was held on December 20, 2012, in the Personnel Resources Board hearing room in Olympia, Washington. Written closing arguments were submitted on January 2, 2013.

1.2 **Appearances.** Appellant Randall Unruh was present and was represented by Trevor Osborne, Attorney at Law with Davies Pearson P.C. Andrew Logerwell, Assistant Attorney General, represented Respondent Public Disclosure Commission.

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

II. PRELIMINARY MATTER

2.1 At the outset of the hearing, Respondent requested dismissal of the appeal arguing that the appeal was untimely filed. Respondent argued that the appeal was not filed within thirty days of the effective date of the layoff.

2.2 Appellant was notified of his layoff by letter dated May 23, 2012. His layoff was effective September 1, 2012. He filed his appeal on May 31, 2012.

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2.3 RCW 41.06.170(2) provides, in relevant part:

> Any employee who is reduced, dismissed, suspended, or demoted, after completing his or her probationary period of service as provided by the rules of the director, or any employee who is adversely affected by a violation of the state civil service law, chapter 41.06 RCW, or rules adopted under it, shall have the right to appeal, either individually or through his or her authorized representative, not later than thirty days after the effective date of such action to the Washington personnel resources board. The employee shall be furnished with specified charges in writing when a reduction, dismissal, suspension, or demotion action is taken. Such appeal shall be in writing. Decisions of the Washington personnel resources board on appeals filed after June 30, 2005, shall be final and not subject to further appeal.

2.4 The RCW provides that an appeal must be filed "not later than thirty days after the effective date." (Emphasis added). The RCW does not prohibit an appeal being filed after notice but prior to the effective of the action being appealed. Respondent's motion is denied.

III. FINDINGS OF FACT

3.1 Appellant Randall Unruh was a permanent employee for Respondent Public Disclosure Commission (PDC). 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 May 31, 2012.

3.2 During his employment with PDC, Appellant gained permanent status in the Political Financial Specialist 2 (PFS2) classification. At the time of his layoff, Appellant's position was a PFS2-Compliance Analyst/Investigator. Appellant primarily worked on routine matters with limited issues in the group enforcement process.

3.3 PDC is a small agency consisting of less than thirty employees. At the time of Appellant's layoff, PDC had four Political Financial Specialist 2 positions. One incumbent, Kristin Murphy, had less seniority than Appellant. However, unlike Appellant's position, Ms. Murphy's position was a Compliance Assistance Specialist and she primarily worked on complex files and projects, including reporting modifications and making presentations to the Commission.

3.4 Appellant credibly testified that he had not made presentations to the Commission and had not done reporting modifications. Appellant clarified that he had watched others perform reporting modifications and had talked to them about the process. Appellant explained that he primarily worked in group enforcement but some of the cases he worked on became more complicated. Appellant testified that he thought he could learn to do the duties involved in reporting modifications.

3.5 Andrea McNamara Doyle became the Executive Director of the PDC in October 2011. She used her first few months at the agency to gain an understanding of the work of the agency. As part of this process, she asked for the Position Description Forms (PDFs) for all the positions within the agency. She initiated updates to the PDFs beginning with positions in the information technology and data division. She updated the PDFs for Appellant's position and Ms. Murphy's position in May 2012. A preponderance of the credible testimony establishes that the former PDFs for Appellant's position and the position held by Ms. Murphy were out-of-date and did not reflect the work that they were performing. Ms. Doyle did not seek Appellant's input when drafting the new PDF for his position, but she did ask him to review it to see if it accurately reflected his job duties. Appellant signed the PDF on May 3, 2012.

3.6 Prior to Ms. Doyle's employment at PDC, the agency had undergone a number of budget reductions. In the fall of 2011, agencies were asked to provide the Governor's budget office with budget reduction scenarios representing 5 percent and 10 percent reductions. In the spring of 2012, agencies' budgets were reduced. The PDC experienced a 6.6% reduction in their budget.

3.7 Ms. Doyle credibly testified that the agency had already implemented so many reductions that they had nowhere left to reduce other than to reduce positions. Ms. Doyle considered the business needs and mission of the agency and determined that the tasks related to the investigation of routine complaints by the compliance division could be scaled back and the PFS2 position held by Appellant could be eliminated. The remainder of Appellant's work could be absorbed by other PFS2 positions.

3.8 By letter dated May 15, 2012, Ms. Doyle informed Appellant that his position was at risk for layoff. The letter also instructed Appellant to provide an updated resume "to assure the accuracy of your options." Appellant was also asked to complete a General Government Transition Pool (GGTP) application. Appellant completed the GGTP form and provided a copy of his resume as requested.

3.9 At the time of Appellant's layoff, Cherie Willhide was the Small Agency Human Resource Consultant for PDC. Ms. Willhide reviewed Appellant's work history and resume and the PDFs for his position and the position held by Ms. Murphy. Ms. Willhide determined that Appellant did not have the skills and experience needed to perform the duties of Ms. Murphy's position and that the position was not a viable layoff option for Appellant. There were no other options available.

3.10 During the hearing, Philip Stutzman, Appellant's supervisor at PDC, credibly testified that in his opinion, Appellant had not demonstrated that he possessed the skills and abilities to perform the duties assigned to Ms. Murphy's position. Specifically, the duties and skills required to perform report modifications and complex investigations.

3.11 Ms. Doyle concurred with Ms. Willhide's assessment that Appellant lacked the experience to perform the duties of Ms. Murphy's position. By letter dated May 23, 2012, Ms. Doyle notified Appellant that his position was being eliminated effective September 1, 2012. The letter also informed Appellant that he had no layoff option and would be separated from state service.

IV. ARGUMENTS OF THE PARTIES

4.1 Respondent asserts that PDC complied with the civil service rules and their internal layoff policy in implementing Appellant's layoff. Respondent contends that the layoff was unavoidable due to the budget reduction and that updating position descriptions to assure their accuracy was appropriate. Respondent notes that Appellant signed his updated position description and did not dispute its accuracy. In determining Appellant's layoff options, Respondent explains that it

analyzed Appellant's skills and abilities versus the skills and abilities needed to perform the duties of the position held by Ms. Murphy and determined that Appellant did not have the skills and abilities needed to perform the majority of the essential functions of the position, namely performing complex investigations and reporting modification requests. Because Appellant lacked the skills and abilities to perform Ms. Murphy's position, Respondent asserts the position was not a viable layoff option for Appellant.

4.2 Appellant suggests that Respondent's revision of the position descriptions is suspect in light of the pending reductions. Appellant asserts that he was not notified that his resume would be used in evaluating his layoff options. He further asserts that Respondent failed to consider the information in his resume including his work history with the Washington State Patrol. Appellant argues that Respondent failed to consider his skills and abilities in determining his layoff options. Appellant asserts that he had experience performing the majority of the work of Ms. Murphy's position including handling moderately complex cases and assisting with complex cases and that Respondent relied on preference rather than the layoff policy in determining his layoff options. Appellant contends that Respondent erroneously determined that he lacked the experience, skills and abilities needed to perform the duties of Ms. Murphy's position and failed to meet its burden. Therefore, Appellant argues that he should be reinstated in the position held by Ms. Murphy.

V. CONCLUSIONS OF LAW

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

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

5.3 Respondent met its burden of proof. Respondent proved that Appellant did not possess the skills, abilities, or experience required for to perform the duties and responsibilities of the PFS2 Compliance Assistance Specialist position.

5.4 In Warner v. Dep't. of Social and Health Services, R-LO-10-013 (2010), the Board concluded that the appellant should not have been offered a specific position as a layoff option because, while she had some experience in some of the competencies and possessed some of the skills required for a position, she did not have the scope or breadth of experience, skills, and knowledge required for the position in its entirety. In this case, during his testimony, Appellant verified his lack of experience in the area of reporting modifications. Through his testimony, Appellant confirmed that he did not have the scope or breadth of experience required for the Compliance Assistance Specialist.

5.5 Further, in Eliasson v. Employment Security Dep't., PRB Case No. R-LO-05-001 (2006), the Board stated "[a]n employee can only be placed in a position if he/she meets the required competencies of the position." See also, Perkins v. Dep't. of Corrections PRB Case No. R-LO-10-020 (2012); Hagen v. Dep't. of General Administration, PRB Case No. R-LO-10-004 (2010); and Blanton v. Dep't. of Corrections, PRB Case No. R-LO-10-021 (2011).

5.6 Appellant argued that he did not understand that his resume would be used to determine his layoff options. However, we conclude that Respondent's May 15, 2012, letter informing Appellant that his position was at risk for layoff clearly informed him that his resume would be used "to assure the accuracy of your options."

5.7 In Dettling v. Dept. of Social and Health Services, PRB Case No. R-LO-05-002 (2007), the appellant was aware that her application and resume would be used to identify layoff options and that the information she provided needed to be complete. After reviewing the information the appellant provided to the agency, the Board found that the appellant did not completely describe her duties and responsibilities prior to her employment with the Department of Social and Health Services and that based on the minimal information the appellant provided, the agency correctly determined that she did not meet the qualifications of the position she felt should have been offered to her as layoff option. Here, as in Dettling, based on the information Appellant provided, Respondent correctly determined that the Compliance Assistance Specialist position was not an

appropriate layoff option for Appellant. See also Masden v. Dep't. of Personnel, PRB Case No. R-LO-10-003 (2010).

5.8 In answer to Appellant's allegations regarding PDC updating the position description forms, WAC 357-13-030 requires employers "to maintain a current position description for each position." And, WAC 357-13-040 provides that "[t]he manager of the position is responsible for completing the position description form. If the position is filled, input from the incumbent is recommended." Respondent complied with its responsibility to maintain accurate PDFs and Appellant was provided an opportunity to review the PDF for accuracy. We find no evidence of bad faith in Respondent's decision to update the PDFs.

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

VI. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Randall Unruh is denied.

DATED this _____ day of _____, 2013.

WASHINGTON PERSONNEL RESOURCES BOARD

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DJ MARK, Chair

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JOSEPH PINZONE, Vice Chair

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NANCY HOLLAND YOUNG, Member