BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

MARK HAGEN, Appellant, vs. DEPARTMENT OF GENERAL ADMINISTRATION, Respondent.	CASE NO. R-LO-10-004 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, LAURA ANDERSON, Chair, and DJ MARK, Vice Chair. The hearing was held on October 13, 2010, in the Personnel Resources Board hearing room in Olympia, Washington.

1.2 **Appearances.** Appellant Mark Hagen was present and represented himself. Andrew Scott, Assistant Attorney General, represented Respondent Department of General Administration.

1.3 **Nature of Appeal.** This is an appeal of a layoff due to a lack of funds. Appellant disputes the layoff options offered to him by Respondent.

II. FINDINGS OF FACT

2.1 Appellant Mark Hagen was a permanent employee for Respondent Department of General Administration (GA). 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 April 12, 2010.

2.2 At the time of his layoff, Appellant was employed as a Construction and Maintenance Superintendent 3 in the Facilities Division for GA. He began his employment with GA in 1997

as a Painter. During his employment at GA, Appellant held permanent status as a Painter, Construction and Maintenance Superintendent (CMS) 1, CMS2, and CMS3.

2.3 In November 2006 all of GA's Painter positions were reallocated to the Maintenance Mechanic 2 classification. Dawn Chillers, Human Resource Consultant, testified that Appellant promoted to a CMS position prior to the reallocation of the Painters. Thomas Henderson, Assistant Director of the Facilities Division, explained that the Maintenance Mechanic classification encompassed a broad scope of work and allowed the incumbents in those positions to work in many areas of the organization. Although GA's Painter positions were reallocated, the Painter classification was not abolished by the Department of Personnel. Appellant never held status as a Maintenance Mechanic 2.

2.4 In the spring of 2010, GA was subject to significant budget shortfalls as a result of GA's inability to generate revenue on reimbursable work and as a result of a direct reduction in revenue from the supplemental budget. The supplemental budget reductions were 3.5 million dollars for buildings and grounds maintenance.

2.5 To address the shortfall, Mr. Henderson, went through a process of determining where cuts could be made to reduce operating costs without affecting the work that needed to be done. In order to meet the budget reduction, Mr. Henderson determined, in part, that several CMS positions, as well several WMS positions, gardener positions, environmental specialist positions, and others needed to be eliminated. As a result, of Mr. Henderson's recommendations 25 positions were laid off in the Facilities Division. These positions included the CMS3 position held by Appellant as well as three other CMS positions.

2.6 Ms. Chillers assisted Mr. Henderson with the layoff. She testified that prior to the layoff the Facilities Division had nine CMS3 positions. Eight of the CMS3s were building managers and four of them were laid off. The other CMS3, position number 0886, had specific duties in

Heating, Ventilation and Air Condition (HVAC) and required an ELO6 electrical license. Position 0886 was not laid off.

2.7 Management has the discretion to assign work and determine the requirements of specific positions. (See WAC 357-13-040 and WAC 357-13-045).

2.8 Mr. Henderson credibly testified that there was a legitimate business need for position 0886 to have an ELO6 license because this position oversees the work of HVAC technicians. Position ELO6 supervises and monitors HVAC work and advises and assists the HVAC technicians performing the work. Mr. Henderson credibly testified that every HVAC technician and the person managing their work must have an ELO6 license.

2.9 Appellant had more seniority than the incumbent in position 0886, but he did not have the required ELO6 license. Ms. Chillers testified that of the remaining CMS3 building managers, Appellant was the fifth less senior.

2.10 GA determined that Appellant had less seniority than the incumbents in the four remaining CMS3 building manager positions and he did not have the required license for position 0886. Therefore, Appellant had no option to a CMS3 position. GA also determined that while Appellant had held status as a Painter, he had not held status as a Maintenance Mechanic 2. Therefore, Appellant had no option to a Maintenance Mechanic 2 position. Ms. Chillers credibly testified that GA had no CMS2 positions and that the incumbents in the CMS1 positions had more seniority than Appellant. Therefore, Appellant had no option to a CMS1 or CMS2 position. Ms. Chillers also testified that GA had no Painter positions. Therefore, Appellant had no option to a Painter position.

2.11 By letter dated, April 8, 2010, Appellant was notified of his layoff and his layoff options. Appellant's options were to a temporary Customer Service Specialist 2 position, an on-call Truck

Driver position, three on-call Mail Carrier Driver positions, or three permanent Custodian 1 positions. Appellant's layoff effective May 10, 2010.

2.12 WAC 357-46-035 provides:

(1) **What option does a permanent employee have to take a position when the employee is scheduled for layoff?**

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

(a) The position is allocated to the class in which the employee holds permanent status at the time of the layoff. If no option to a position in the current class is available, the employee's option is to a position in a class in which the employee has held permanent status that is at the same salary range. If the employee has no option to take a position at the same salary range, the employee must be given an opportunity to take a position in a lower class in a class series in which the employee has held permanent status, in descending salary order. The employee does not have to have held permanent status in the lower class in order to be offered the option to take a position in the class.

(b) The position is comparable to the employee's current position as defined by the employer's layoff procedure.

(c) The employee satisfies the competencies and other position requirements.

(d) The position is funded and vacant, or if no vacant funded position is available, the position is occupied by the employee with the lowest employment retention rating.

(2) **What if the employee has no option under subsection 1?**

(a) If a permanent employee has no option available under subsection (1) of this section, the employer must determine if there is an available position in the layoff unit to offer the employee in lieu of separation that meets the following criteria:

(i) The position is at the same or lower salary range maximum as the position the employee is being laid off from;

(ii) The position is vacant or held by a probationary employee or an employee in a nonpermanent appointment;

(iii) The position is comparable or less than comparable; and

(iv) The position is one for which the employee meets the competencies and other position requirements.

(b) If more than one qualifying position is available, the position with the highest salary range maximum is the one that must be offered.

(3) **What happens when a class in which the employee previously held permanent status has been revised or abolished?**

If a class in which an employee has previously held permanent status has been revised or abolished, the employer shall determine the closest matching class to offer as a layoff option. The closest matching class must be at the same or lower salary range maximum as the class from which the employee is being laid off.

(4) **Does an employee have layoff option rights as provided in subsection (1) of this section to classifications the employee held permanent status in prior to any breaks in state service?**

General government employees have layoff option rights as provided in subsection (1) of this section to classifications the employee has held permanent status in regardless of any breaks in state service.

Higher education employers must address in their layoff procedure whether or not employees will be given layoff options to classes they held permanent status in prior to any breaks in state service.

(NOTE: This is the version of the WAC that was in effect on the date of Appellant's layoff. The WAC has subsequently been revised.)

2.13 GA's Layoff Policy is consistent with WAC 357-47-035 and provides, in relevant part:

5. GA will offer layoff options to employees in the following sequence:

<u>For Washington General Service Employees</u>

Within the layoff unit, an employee scheduled for layoff must be offered the option to take a position, if available, that meets the following criteria:

a. The position is allocated to the class in which the employee holds permanent status at the time of the layoff. If no option to a position in the current class is available, the employee will be offered an option is to a position in which the employee has held permanent status that is at the same salary range. If the employee has no option to take a position at the same salary range, the employee will be given an opportunity to take a position in a lower class in a class series in which the employee has held permanent status, in descending salary order. The employee does not have to have held permanent status in the lower class in order to be offered the option to take a position in the class;

b. The position is comparable to the employee's current position;

c. The employee satisfies the competencies and other position requirements;

d. The position is funded and vacant. If a vacant funded position is not available, the position is occupied by the employee with the lowest employment retention rating (seniority).

. . .

6. Where there is no option under section 5, the employer will determine whether an option is available to offer the employee in lieu of separation that meets the following criteria:

For Washington General Service Employees

Within the layoff unit, an employee scheduled for layoff from a Washington General Service position must be offered the option to take a position, if available, that meets the following criteria:

a. The position is at the same or lower salary range maximum as the position from which the employee is being laid off;

b. The position is vacant and less than comparable or held by a probationary employee or an employee in a nonpermanent appointment;

c. The position is one for which the employee meets the competencies and other position requirements.

If more than one qualifying position is available, the position with the highest salary range maximum is the one that must be offered.

. . . .

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that the budget crisis resulted in a number of layoffs and asserts that the decision of which positions to layoff requires an objective application of the rules and processes. Respondent asserts that the agency relied on very technical and strictly applied rules in implementing the layoffs. While Respondent acknowledges that Appellant's layoff was regrettable, it contends that the layoff was carried out in strict compliance with the rules and policy. Respondent argues that because the Painter classification was not abolished or revised, Appellant could not have been offered one of the MM2 positions. Respondent further argues that the agency has the authority to require a license for position 0886 and that because Appellant did not have the required license, he could not bump into that position. Respondent asserts that Appellant's layoff, including the identification of his layoff options, were carried out in accordance with the applicable rules and policy.

3.2 Appellant asserts that the MM2 positions that were formerly Painters continue to perform the same duties. Appellant acknowledges that he has not held status as an MM2, but argues that he

performed the same duties that they perform and that he possesses more than enough skills and abilities to perform in an MM2 position. Therefore, Appellant contends that he should have been offered an MM2 position as a layoff option. Appellant also asserts that an ELO6 license should not be required for position 0886. Appellant argues that 0886 is a supervisory position and that the position does not and should not, according to the collective bargaining agreement, perform hands-on HVAC work. Because the licensing requirement should not be placed on the position 0886 and because he had more seniority than the incumbent in that position, Appellant asserts that the position should have been offered to him as a layoff option.

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.

4.3 Prior to the personnel system reform act of 2002, the Washington State Personnel Resources Board had the authority to adopt civil service rules. Under the rules adopted by the Board, employers had the ability to request a selective certification of eligibles who had specialized qualifications needed for a position. Such requests were considered on a position by position basis and were reviewed and approved by the director of the Department of Personnel or designee before the selective could be placed on a position. (See former WAC 356-26-130)

4.4 As part of the personnel system reform act of 2002, effective July 1, 2004, the authority to adopt civil service rules was transferred from the Board to the director of the Department of Personnel. The rules adopted by the director include WAC 357-13-040 which requires a position description for each position. The WAC provides that the position description must, in part, "[l]ist the required competencies as determined by the employer." The director also adopted WAC 357-13-045 which indicates that "[t]he manager of the position is responsible for completing the

position description form . . . .” The rules do not require the director to review or approve the required competencies an employer places on a position.

4.5 The position description form for position 0886 included the required competency of an ELO6 electrical license. WAC 357-46-035 requires, in part, that an employee must satisfy the competencies and other position requirements of a position before that position can be offered as a layoff option. This is consistent with the Board’s conclusion in Eliasson v. Employment Security Dept., PRB Case No. R-LO-05-001 (2006), which stated “[a]n employee can only be placed in a position if he/she meets the required competencies of the position.”

4.6 Respondent has established the following:

- Severe budget reductions and decreased revenues necessitated the need for a reduction in positions.
- Appellant’s position was one of the positions identified for layoff.
- Appellant had less seniority than the incumbents in the four CMS3 building manager positions that were not laid off and less seniority than the incumbents in the CMS1 positions.
- GA had no CMS2 positions at the time of Appellant’s layoff
- CMS3 position 0886 required an ELO6 license.
- At the time of his layoff Appellant did not possess an ELO6 license.
- At the time of Appellant’s layoff, GA had no Painter positions.
- Appellant never held permanent status in a Maintenance Mechanic 2 position.

Respondent has proven that the layoff was necessary and that Appellant had no available layoff options to a CMS3, CMS2, CMS1, Painter, or Maintenance Mechanic 2 position.

4.7 Respondent has also established that GA followed the applicable layoff rules and GA policy in implementing Appellant’s layoff and in identifying his layoff options.

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

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Mark Hagen is denied.

DATED this _____ day of _____, 2010.

WASHINGTON PERSONNEL RESOURCES BOARD

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LAURA ANDERSON, Chair

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DJ MARK, Vice Chair