BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

DOROTHY BURGESS, Appellant, v. EASTERN WASHINGTON UNIVERSITY, Respondent.	)))))))))	Case No. RIF-99-0006 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Vice Chair, and LEANA D. LAMB, Member. The hearing was held in the Room 263 of the Pence Union Building on the campus of Eastern Washington University in Cheney, Washington, on May 9, 2000. WALTER T. HUBBARD, Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Dorothy Burgess was present and was represented by Edward E. Younglove III, Attorney at Law of Parr and Younglove, P.L.L.C. Respondent Eastern Washington University was represented by Patricia A. Thompson, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a layoff action based on a lack of work.

1.4 **Citations Discussed.** WAC 356-30-330; WAC 356-14-075; WAC 358-30-170; O'Gorman v. Central Washington University, PAB No. L93-018 (1995); Amundsen v. Dep't of Labor and Industries, PAB Case No. L85-1 (1985), aff'd (Thurston Co. Super. Ct. No. 85-2-02185-9 (1987).

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II. FINDINGS OF FACT

2.1 Appellant Dorothy Burgess was a Library Technician I and a permanent employee for Respondent Eastern Washington University (EWU). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on May 7, 1999.

2.2 By letter dated April 1, 1999, Niel Zimmerman, Provost and Vice President for Academic Affairs, informed Appellant that due to a lack of work, her position would be abolished effective April 23, 1999.

2.3 Appellant worked in the Kennedy Library at EWU. Over a three to four year period, the library underwent significant expansion. The expansion was completed in June 1998 and resulted in increased use and expanded hours of operation for the library. Library management determined that to better serve the needs of the library, Appellant's Library Technician I position should be reallocated to the Library Technician (LT) II classification.

2.4 On August 13, 1998, EWU informed Appellant that her position was being reallocated and she was told of the options available to her, which included applying and competing for the LT II position. Appellant applied for the position, however, she was not selected. Appellant was given her layoff options on March 29, 1999, but she declined her options and was laid off for lack of work.

2.5 Prior to Appellant's layoff, student employees in the library performed work similar and/or identical to some of the work performed by Appellant. After Appellant's layoff, some of the work she performed was assumed by supervisory positions and by the LT II position and some of the

work she performed continued to be performed by student employees. Subsequent to Appellant's layoff, the majority of the work that had been assigned to her LT I position continued to be performed.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that after Appellant's LT I position was reallocated, the position no longer existed and there was a lack of work. Respondent argues that the library needed an LT II position that was more versatile and that independently performed routine support to the overall library functions rather than the LT I position that performed elementary library functions. Respondent contends that the library received no funding for additional positions and that due to the increase in the minimum wage, the library actually decreased its use of student employees following the library expansion. Respondent asserts that it determined how best to allocate existing positions to provide services to the library within its limited resources. Respondent argues that the reallocation of Appellant's LT I position was necessary and in compliance with the provisions of Title 251 WAC. Therefore, Respondent contends that Appellant's layoff should be upheld.

3.2 Appellant argues that with the expansion of the library, there was more work to be done. Appellant further argues that after her layoff, students continued to perform work that she had previously performed. Appellant contends that there was no lack of work and that the basis for her layoff is not supported by the evidence.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In an appeal of a reduction-in-force, Respondent has the burden of proof. WAC 358-30-170. Respondent has the burden of proving by a preponderance of the credible evidence that it laid the employee off for the reason stated in the RIF letter. O'Gorman v. Central Washington University, PAB No. L93-018 (1995).

4.3 Respondent has failed to meet its burden of proof that Appellant's layoff was the result of a lack of work. The evidence in this case establishes that following the library expansion, there was more work and that the majority of work formerly performed by Appellant continued to be performed by other staff and students. Therefore, Respondent has failed to prove that a lack of work existed.

4.4 The appeal of Dorothy Burgess should be granted and she should be reinstated to an LT I position with full back pay and benefits.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Dorothy Burgess is granted and she is reinstated to an LT I position with full back pay and benefits.

DATED this _____ day of _____ 2000.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Gerald L. Morgen, Vice Chair

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Leana D. Lamb, Member

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