BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

HENRY H. BROWN, Appellant, v. DEPARTMENT OF HEALTH, Respondent.	)))))))))	Case No. RIF-98-0021 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF BOARD

I. INTRODUCTION

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this matter came on for hearing before the Personnel Appeals Board, NATHAN S. FORD JR., Member. The hearing was held in the Personnel Appeals Board hearing room in Olympia, Washington, on September 23, 1999. WALTER T. HUBBARD, Chair, reviewed the record, including the file, exhibits, and the entire taped proceedings, and participated in the decision in this matter. GERALD L. MORGEN, Vice Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Henry H. Brown was present and was represented by Michael Hanbey, Attorney at law of Ditlevson, Rodgers, Hanbey & Dixon. Respondent Department of Health was represented by Valerie B. Petrie, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a reduction-in-force (RIF) action based on a good faith reorganization for efficiency purposes.

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); Talbott and Hobson v. Dep't of Social

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and Health Services, PAB Case Nos. L81-2 & L81-3 (Murphy, Hrgs, Exam.)(1981); 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); George v. Dep't of Agriculture, PAB No L94-026 (1996).

II. FINDINGS OF FACT

2.1 Appellant Henry H. Brown was a Washington Management Service (WMS) Band 2 employee in the Epidemiology, Health Statistics and Public Health Laboratories division and a permanent employee for Respondent Department of Health (DOH). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on December 29, 1998.

2.2 By letter dated November 10, 1998, Elizabeth Ward, Assistant Secretary, informed Appellant that due to a good faith reorganization for efficiency purposes, his position would be abolished at the close of business on November 30, 1998. Ms. Ward was Appellant's appointing authority.

2.3 Appellant was the Director of Hospital and Patient Data Systems (HPDS) within the Epidemiology, Health Statistics and Public Health Laboratories division. The division also included the Public Health Laboratories, the Seattle Campus Team, the Center for Health Statistics (CHS), and Epidemiology.

2.4 In 1989, 20 employees worked in HPDS. By 1998, the number of employees working in HPDS had been reduced to 11. The primary function of HPDS was to ensure the quality of hospital financial and clinical data gather from patient discharge forms by an outside vendor. HPDS then analyzed the data and distributed it to hospitals, business consultants, public health

departments and insurance companies. The sole funding source for HPDS was a statutory fee paid by hospitals.

2.5 CHS was a larger unit than HPDS and it too was headed by a director. CHS gathered birth, death, abortion, marriage and divorce data and produced basic population data for the state and for the National Center for Health Statistics. The birth data came from a hospital based system. CHS was funded by state, federal and local funds. CHS did not receive fees from hospitals.

2.6 HPDS and CHS utilized separate data systems to collect, analyze and distribute information.

2.7 Because of proposed Newborn Screening legislation, DOH felt it was necessary to go to the Legislature to request a fee increase to hospitals. DOH sought the support of the Washington State Hospital Association (WSHA) for the increase. WSHA protested the fee increase. Ms. Ward met with WSHA and agreed to look at options to reduce the cost of the division so that the fee increase could be lessened.

2.8 Appellant was aware of the situation with WHSA as early as July 1998. He wrote an information paper for Patty Hayes addressing WSHA's complaints about the fee increase on July 2, 1998. Elizabeth Ward was also provided a copy of Appellant's information paper. In summary, Appellant felt that WSHA's complaints were self-serving.

2.9 Ms. Ward determined that DOH needed to proceed with considering proposals to reduce the cost to hospitals.

2.10 Ms. Ward began considering restructuring the division in 1993, however, it was not necessary to do so at that time. The 1995 Health Reform Act resulted in decreased funding for the division and Ms. Ward continued to consider restructuring the division. In approximately early 1998, Ms. Ward again considered restructuring the division. Ms. Ward looked at systems in other states and determined that the model utilized by the Missouri Health Department would work for the Epidemiology, Health Statistics and Public Health Laboratories division.

2.11 As a result, Ms. Ward determined that merging the smaller HPDS into the larger CHS would increase efficiency, improve customer and related field services, and would better serve the goal of integrating the data system. In addition, the merger would help to address the funding concerns raised by WSHA.

2.12 On October 27, 1998, Ms. Ward and Todd Bacon, Personnel Officer, met with Appellant and informed him of the plan to reorganize the division by merging HPDS into CHS. This merger would result in the elimination of Appellant's position.

2.13 The department's WMS RIF policy provides, in part, that "[a] manager who anticipates a reduction-in-force (RIF) shall discuss the circumstances with the appropriate appointing authority and the Human Resources Office. The appointing authority shall submit a request in writing to the Human Resources office explaining the reasons for the reduction-in-force action."

2.14 Ms. Ward was the appointing authority and on October 29, 1998, she notified Tim Schoth, Human Resources Manager, of the reorganization plan, the reasons for the merger and the need to eliminate Appellant's position. By letter dated November 10, 1998, Appellant was given formal notification of his RIF and his RIF options.

2.15 The department's WMS RIF policy sets forth the reasons for reduction-in-force actions and provides, in part, that RIF actions may be taken as a result of good faith reorganization for efficiency purposes. In addition, WAC 356-56-550 provides, in part, for RIF actions to be taken as a result of a good faith reorganization for efficiency purposes.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant's RIF was done in good faith and that the decision to RIF Appellant's position was within the discretion of the agency. Respondent contends that the merger of the smaller HPDS into the larger CHS was sufficient justification for the RIF. Respondent asserts that prior to the merger, each office collected, analyzed and distributed data, dealt with the WSHA, and served the same customers. Respondent asserts that it did not make sense to have two stand alone offices when they could be integrated. While Respondent admits that budget concerns were a consideration of the RIF, Respondent contends that from a business sense and for the purposes of increased efficiency and the future goals for the division, the merger was appropriate. Respondent argues that Appellant's RIF was a result of the merger. Therefore, Respondent contends that because Appellant's reduction-in-force was the result of a good faith reorganization, his appeal should be denied.

3.2 Appellant argues that Respondent failed to comply with the provisions of the department's WMS RIF policy. Appellant contends that Ms. Ward was being pressured by the WSHA to save money and that Appellant's RIF was a result of that pressure, not the result of a good faith reorganization. Appellant contends that Ms. Ward's decision to reorganize the division came "out of the blue" and resulted in a change to the administrative structure only. Appellant further contends that Respondent did not undergo a systematic review and did not develop a plan for the

restructuring. Appellant asserts that thinking that a reorganization is a good idea does not satisfy the requirement that the agency act in good faith in developing a plan and implementing a reorganization. Appellant claims that in this case, Respondent failed to act in good faith and that his appeal should granted.

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 met its burden of proof that Appellant's reduction in force was the result of a good faith reorganization for efficiency purposes.

4.4 In Talbott and Hobson v. Dep't of Social and Health Services, PAB Case Nos. L81-2 & L81-3 (Murphy, Hrgs, Exam.)(1981), the hearings examiner found that the reorganization was effected after consideration of many factors affecting the efficiency of the overall unit, and not designed to inconvenience the two appellants whose positions were transferred as a result of the reorganization and consolidation.

4.5 It is not our function to determine whether the reorganization proposal itself was right or wrong, but only to determine if the reorganization was done in good faith. George v. Dep't of Agriculture, PAB No L94-026 (1996).

4.7 In 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), the appointing authority determined, upon the recommendation of an assistant, that to accomplish the revised goals of his administration, a position could be better used if it was reallocated to another class. The Board held that it is not the Board's function to probe the mental processes by which the decision was reached, nor to substitute its judgment for that of the agency when there is a showing of reasonable basis for such decision.

4.6 Here, Ms. Ward contemplated the reorganization over a period of time, she compared the structure of HPDS to systems utilized in other states, and she discussed the reorganization with personnel. After a thorough review of the structure of HPDS, Ms. Ward determined that the reorganization was in the best interest of the agency and its customers. The evidence and testimony presented support that Ms. Ward's decision to reorganize HPDS and that Appellant's subsequent reduction-in-force were the result of a good faith reorganization for efficiency purposes.

4.8 In this case, Respondent has shown a reasonable basis for the reorganization. There is nothing in the record to support Appellant's contention that the reorganization was a result of pressure from the WSHA. Furthermore, there is nothing in the record to support Appellant's contention that Respondent's actions violated the department's WMS RIF policy.

4.9 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 Henry H. Brown is denied.

DATED this _____ day of _____, 1999.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

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Nathan S. Ford Jr., Member

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