BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

JUDITH ELIASSON, Appellant, vs. EMPLOYMENT SECURITY DEPARTMENT, Respondent.	)	CASE NO. R-LO-05-001 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, MARSHA TADANO LONG, Vice-Chair, and LARRY GOODMAN, Member. The hearing was held on May 3, 2006, at the Personnel Appeals Board office in Olympia, Washington.

1.2 **Appearances.** Appellant Judith Eliasson was present and was represented by Michael Hanbey, Attorney at Law. Cathleen Carpenter, Assistant Attorney General, represented Respondent Employment Security Department.

1.3 **Nature of Appeal.** This is an appeal from a layoff due to lack of funds and organizational change.

II. FINDINGS OF FACT

2.1 Appellant Judith Eliasson was a permanent Washington Management Service (WMS) employee for Respondent Employment Security Department (ESD). 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 October 25, 2005.

2.2 Appellant began her employment with ESD in March 1998. Prior to her layoff, Appellant worked in the information services division. She was responsible for providing legislative analysis, enterprise architecture communications, and annual information technology portfolio compilation assistance.

2.3 In the late spring of 2005, Appellant's supervisor, Thomas Bynum, Assistant Commissioner for the Architecture and Technology Services Division (AS&T), became aware of reductions in the federal funding received by ESD. The reductions in federal funds caused a ripple affect throughout the agency which resulted in a 10 percent reduction across agency programs.

2.4 On June 30, 2005, the ESD Commissioner sent an email message to all ESD staff informing them of a new organizational structure. The Commissioner also informed staff that additional layoffs would occur in the Fall and that ongoing organizational adjustments could occur within each division.

2.5 Prior to determining the best alternatives for addressing the reduction in funds, each division developed proposed scenarios for consideration by the Senior Leadership Team. AS&T sent nine proposals to the Senior Leadership Team. In developing the proposals, Mr. Bynum first considered how to generate savings and shift costs without affecting positions. However, Mr. Bynum was unable to address the budgetary reductions without recommending elimination of four positions. Three of the positions were vacant. Two were located in the Pierce County Telecenter and one was located in Olympia. The fourth position was the position occupied by Appellant.

2.6 Elimination of Appellant's position was discussed in AS&T's Divisional Decision Package Priority 8. In the decision package, Mr. Bynum listed the disadvantages and the impacts to the agency if the position was eliminated. The only advantage to the agency was a savings of $60,209.

2.7 After reviewing all of AS&T's decision packages, the Senior Leadership Team agreed that Appellant's position should be eliminated. Prior to implementing the reductions, the Senior Leadership Team forwarded their recommendations to the Commission for final approval.

2.8 On August 23, 2005, ESD's Human Resource Services Division provided information and resources to all employees who would be affected by the reductions. In addition, beginning September 9, 2005, the Human Resource Services Division presented informational sessions for affected employees. On September 14, 2005, an informational session was held specifically for WMS employees. Because Appellant was a WMS employee, Respondent was required to implement the layoff in accordance with the WMS Layoff Procedure and the applicable WMS rules and regulations.

2.9 By letter dated September 13, 2005, Karen T. Lee, Commissioner, informed Appellant that she was being laid off from her WMS Band 2 position effective at 5:00 p.m. on September 30, 2005. Appellant's layoff options form was included with the letter.

2.10 Layoff options were identified by ESD's Human Resource Services Division. Coleen Blake, ESD's Human Resource Assistant Manager was responsible for reviewing the list of employees being reduced and determining their rights and options. Ms. Blake and the Human Resource Layoff Team gathered all the position reduction information from the divisions, validated the information, put the affected employees in seniority order and then determined

their options. Appellant's seniority date was December 30, 1992. Appellant was not the most senior employee being laid off. Ms. Blake credibly testified that the options offered to employees can change throughout the process as other positions become known or available due to employees leaving the agency and positions becoming vacant.

2.11 Appellant's layoff option form stated, in part:

> Please keep in mind that when you have more than one bump option listed, in most cases, it is because the bumps were also offered to more senior employees. We will not know which bump option, if any, you will be eligible to receive until the more senior employee's bump options have been determined.

2.12 Two WMS Band 2 positions were identified as bump options for Appellant. The layoff option form instructed Appellant to sequentially prioritize the options that she chose. Appellant identified the two WMS Band 2 positions as her priority 1 and 2 options. However, both of the positions were chosen by more senior employees as their layoff options.

2.13 On September 19, 2005, Appellant was provided with two additional options to vacant Information Technology Specialist 5 positions. One of the positions listed a selective for the position and Appellant chose not to prioritize this position as an option. The other position was missing the selective information and Appellant identified it as her third priority. From the original layoff options list, Appellant identified an Information Technology Specialist (ITS) 4 position in the Information Technology Services (ITS) Division as her fourth priority.

2.14 The approved selective for ITS 5 position the Appellant picked as her third choice required one year of experience working in unemployment insurance (UI) and one year of experience working with UI program service delivery applications. The selective information was not provided to Appellant when the position was offered to her as an option.

2.15 The layoff option form provided, in part:

> The options to which you may Bump, Transfer or Voluntarily Demote are attached. Please note that you must meet the competencies and other position requirements (minimum qualifications and documented selective criteria for Washington General Service positions), for any option you wish to exercise. You must complete the enclosed application or provide a copy of an application and return it with your option form. The application will be used to determine if you have the competencies and other position requirements so it is important to provide thorough information.

2.16 Appellant completed an application form as instructed. After reviewing her application, ESD human resource staff determined that Appellant did not meet the selective for the ITS 5 position in UI because she did not have experience in that area or with the UI programs.

2.17 By letter dated September 26, 2005, Appellant was informed that she would receive the ITS 4 position in the ITS Division. Appellant had identified this position as her fourth choice of the options offered to her.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that there was a lack of funds that adversely impacted ESD agency wide, including the information services division. Respondent asserts that all applicable WMS policies and procedures were followed in the implementation of the layoff. Respondent contends that Appellant was offered the appropriate options and that based on seniority, position selectives, and the options prioritized by Appellant, she received highest level option available to her.

3.2 Appellant argues that there was no lack of funds, that options were available that were not offered to her, and that her seniority was not appropriately applied in consideration of the options offered.

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. It is undisputed that ESD suffered a significant budget shortfall due to a reduction in federal funding. Respondent has shown that based on seniority, layoff options were identified and offered to Appellant. Respondent has complied with ESD's WMS Layoff Procedure and with the applicable WMS rules and regulations. Due to the options chosen by more senior employees, Appellant's first and second layoff options were not available to her. Due to her lack of experience in UI and with UI programs, Appellant's third layoff option was not available to her. While Appellant alleges that other positions should have been offered to her, she offered no persuasive evidence to support her allegation.

4.4 Appellant was appropriately offered bump options to positions at the same WMS Band 2 salary level and evaluation points that were held by less senior employees. She was then offered options to all vacant positions at that same or lower salary levels. An employee can only be placed in a position if he/she meets the required competencies of the position. It is unfortunate that Appellant was offered an ITS 5 position when she did not meet the selectives of the position. However, this administrative error by ESD does not justify overturning the layoff or placing Appellant in a position for which she is not qualified.

4.5 Respondent has met it s burden of proof, and the appeal should be denied.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Judith Eliasson is denied.

DATED this _____ day of _____, 2006.

WASHINGTON PERSONNEL RESOURCES BOARD

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MARSHA TADANO LONG, Vice-Chair

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LARRY GOODMAN, Member