BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

SCOTT HOLDER, Appellant, vs. DEPARTMENT OF CORRECTIONS, Respondent.	CASE NO. R-LO-10-023 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, DJ MARK, Chair, and JOSEPH PINZONE, Vice Chair. The hearing was held on July 27, 2011, in Olympia, Washington.

1.2 **Appearances.** Appellant Scott Holder was present and appeared *pro se*. David Slown, Assistant Attorney General, represented Respondent Department of Corrections.

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

II. FINDINGS OF FACT

2.1 Appellant Scott Holder is a permanent employee for Respondent Department of Corrections (DOC). 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 December 29, 2010.

2.2 Appellant has been employed by the State of Washington Department of Corrections since 1989. During his employment with DOC, he has worked in Correctional Officer, Correctional Officer 2, Correctional Sergeant, Corrections Specialist, Washington Management Service Band 1 and Washington Management Service (WMS) Band 2 positions. At the time of

his layoff, Appellant was a Program Manager in the Organizational Development Department. His position was assigned to WMS Band 2.

2.3 In 2010, the Governor directed across-the-board spending reductions of 6.3 percent for all general-fund state agencies which included DOC. Eldon Vail, Secretary of the DOC, and his Executive Staff determined where to make programs cuts. One of the determinations they made was the elimination of the COACH program. The COACH program was a structured on-the-job training program for new DOC staff. Appellant was the Program Manager for the COACH program. By memorandum dated September 30, 2010, Secretary Vail shared his plan for addressing the spending reductions with all DOC staff.

2.4 Prior to the September 30, 2010 memorandum, Mr. Bovenkamp met with Appellant and told him that the COACH program was being eliminated and informed him that his position was at risk of layoff.

2.5 DOC's WMS layoff policy, Policy 810-815, sets forth the process to be followed when layoffs occur. The policy states, in relevant part:

> I. General Requirement
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> A. If unable to avoid layoffs, the appropriate Appointing Authority will determine which positions, by location, are to be abolished . . .
>
> 1. Employees will be notified of the need for a layoff prior to implementation of a layoff action.
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> 2. The Department will assist each employee with employment opportunities in lieu of separation due to layoff.
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> . . . .
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> II. Seniority
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> A. An employee's retention rating, hereafter referred to as the employee's seniority date, is the employee's most recent date of hire into state service, as adjusted for qualified military service . . .
>
> B. The computation of seniority is the responsibility of Human Resources.

C. Seniority is the basis for determining layoff options subject to the employee possessing the required job skills for the position.

. . . .

III. Option

A. A formal option, the position that the employee has a right to, if one exists, will be provided to a Washington Management Service employee in descending order with the appropriate layoff unit:

1. A funded vacant Washington Management Service position that has the same point value as the employee's current position for which the employee has the required job skills.

2. A filled Washington Management Service position at the same point value held by the least senior employee. <u>The employee being laid off must have the required job skills for the position.</u>

3. A funded Washington General Service position, which is vacant or filled by the least senior incumbent at the same or similar salary in a classification for which the employee has held permanent status. A vacant position will be offered before a filled position. To determine same or similar salary, the employee's current salary must be within the salary range of the Washington General Service classification.

4. A funded Washington Management Service position that is vacant or filled at a lower point value in descending order in conjunction with Washington General Service positions which the employee has held status and are at lower salary ranges. A vacant position will be offered before a filled position. The employee must have greater seniority than the employee occupying a position and must have the required job skills for Washington Management Service positions.

. . . .

(Emphasis added).

2.6 WAC 357-58-465 provides:

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

(a) The employee has the required competencies for the position.

(b) The WMS position is at the same salary standard and/or evaluation points. If no option to a position with the same salary standard and/or evaluation points is available, the employer must consider other WMS positions with a lower salary standard and/or evaluation points, or general service positions in accordance with WAC 357-46-035(1) in descending salary order if the

employee has held permanent status in a WGS classification. At the agency's discretion, the employee may be offered a vacant position at higher evaluation points.

(c) The position being offered as the option is funded and vacant. If no vacant position is available, the position being offered as the option must be occupied by the employee with the lowest retention rating.

(2) If a permanent employee has no option available under subsection (1) of this section, the employer must determine if there is an acting position in the layoff unit for which the employee is qualified.

2.7 To implement the layoff, DOC's human resources staff gathered information from impacted employees. The information was used in determining options for the employees at risk of layoff. Appellant provided an updated resume and a Skills, Abilities, and Experience Worksheet. In determining the options for Appellant, DOC considered the information he provided and his work history and compared those to the requirements of the positions that were identified as possible layoff options.

2.8 DOC determined that there were nine WMS Band 2 positions within Thurston County that were possible options for Appellant. After reviewing the position descriptions, DOC determined that Appellant either did not meet the specific competencies of the position and/or he did not possess the required educational degree as stated in the positions' description forms.

2.9 Appellant testified that the educational degree requirements were put in place to protect the incumbents in the positions. However, we find that a preponderance of the credible evidence establishes that the degree requirements were in place well before Appellant's layoff. For example, within the Organizational Development Department, WMS Band 2 position C179 required a Master's degree in Organizational Development, Public Administration or closely related field of study. This requirement had been in place since November 2009. Prior to that date, C170 required a Bachelor's degree. (Appellant's exhibit A). Also within the department was WMS Band 2 position CQ80 which required a Bachelor degree in education. This requirement had been in place since at least September 2009 (Appellant's exhibit B). The

department also included WMS Band 2 position NE04 which required a Bachelor's degree in Criminal Justice, Organizational Development, Public Administration or closely related field. This requirement had been in place since at least October 2009. (Appellant's exhibit C). At the time of his layoff, Appellant did not possess a Bachelor's or a Master's degree.

2.10 When the search for a WMS Band 2 position was exhausted, DOC searched for a WMS Band 1 position within Thurston County. One position was identified as being held by a less senior employee. This position required education and experience in accounting which Appellant did not possess.

2.11 DOC then searched for general service positions in the Correctional Specialist 4 classification which was the highest general service position that Appellant had held. This search found a vacant Correctional Specialist 4 position within Thurston County. DOC determined that Appellant met the requirements for the position and the position was offered to Appellant as his layoff option.

2.12 By letter dated October 22, 2010, Appellant was provided official notice of his layoff and of his option to Corrections Specialist 4, position number CM85. Appellant accepted this option and by letter October 26, 2010, was notified that his appointment to the position was effective December 1, 2010.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that DOC implemented the layoff appropriately and with strict adherence to the layoff policy. Respondent contends that the agency searched for Appellant's layoff options by looking first for vacant WMS Band 2 positions but there were none. They then looked for positions held by less senior employees. Respondent asserts that several of the less senior WMS positions had specific requirements that Appellant did not meet and the others required degrees which Appellant did not possess. Respondent argues that the requirements had been in place for

years and asserts that it is not appropriate to question the written qualifications of positions during the layoff process. Respondent explains that when the search of WMS Band 2 and Band 1 positions was exhausted, they continued in descending order to look for positions in the general service. Respondent further explains that the search found a vacant Correctional Specialist 4 position, Appellant meet the required qualifications of the position, and the position was offered to him as his formal layoff option. Respondent asserts that the layoff process was carried out fairly, appropriately, and in adherence with the policy, and that the appeal should be denied.

3.2 Appellant contends that DOC built the position descriptions around the person who occupied the position rather than around the qualifications needed to perform the duties of the position. Appellant argues that he believes the agency did not do the right thing and that the qualifications were put in place to protect the incumbents in those positions and to circumvent the layoff process. Appellant asserts that he has the experience and skills to perform the duties of the less senior WMS positions, that the programs within his department were interchangeable, and that he had supervised more programs than other managers within the Organizational Development Department. Appellant argues that the degree requirements are not defensible and that he should be offered an appropriate layoff option to a WMS Band 2 position.

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 met its burden of proof. Respondent showed that DOC Policy 810.815 and the applicable merit system rules were followed and that the appropriate layoff option was identified and offered to Appellant.

4.4 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).

4.5 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 357-58-027 which requires that "[a]gencies must maintain a current position description for each WMS position," and WAC 357-58-028 which provides that "[a] standard form developed by the director, or an alternate form approved by the director, must be used for each WMS position description." Consistent with the standard form developed by the director of the Department of Personnel, the form used by DOC includes a section for the general qualifications. Because qualifications are included in the position description forms, maintenance of position descriptions includes the maintenance of the general qualifications for each position. The current rules do not require the director or the Board to review or approve the qualifications an employer places on a position.

4.6 In Hagen v. Dept. of General Administration, Case No. R-LO-10-004 (2010), the Board concluded that "an employee must satisfy the competencies and other position requirements of a position before that position can be offered as a layoff option." The Board commented that its decision in Hagen was consistent with its 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." Following the guidance provided in Hagen and Eliasson, Appellant can only be placed in a position if he meets the required qualifications of the position. In the present case, the qualifications were in place long before the decision was made to

eliminate the COACH program. There is no evidence to support Appellant's claim that the qualifications were put in place to protect incumbents and circumvent the layoff process.

4.7 Respondent has met its burden of proof that the actions leading to Appellant's layoff and identification of his formal layoff option complied with the applicable merit system rules and DOC policy. Therefore, the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Scott Holder is denied.

DATED this _____ day of _____, 2011.

WASHINGTON PERSONNEL RESOURCES BOARD

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DJ MARK, Chair

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JOSEPH PINZONE, Vice Chair