BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

LARA PHILLIPS, Appellant, vs. OFFICE OF THE SECRETARY OF STATE, Respondent.	CASE NO. R-LO-10-002 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** Pursuant to WAC 357-52-100, this appeal came on for hearing before the Personnel Resources Board, JOSEPH PINZONE, Member. The hearing was held on July 29, 2010, in the Personnel Resources Board hearing room in Olympia, Washington. LAURA ANDERSON, Chair, reviewed the record including the file, exhibits and the recorded proceeding, and participated in the decision in this matter.

1.2 **Appearances.** Appellant Lara Phillips was present and represented herself. Janetta Sheehan, Assistant Attorney General, represented Respondent Office of the Secretary of State.

1.3 **Nature of Appeal.** This is an appeal of a layoff due to a lack of funds. Appellant disputes the layoff process.

II. PRELIMINARY MOTION

2.1 At the outset of the hearing, Respondent orally presented a Motion in Limine. Respondent argued that Appellant's layoff was effective February 22, 2010, and asked the Board to disallow any evidence occurring after that date.

2.2 Appellant argued that some of the evidence she wished to introduce showed the results of decisions made in the layoff.

2.3 The Board listened to the arguments of the parties and denied the motion. The Board ruled that Respondent could raise objections when the evidence was introduced.

III. FINDINGS OF FACT

3.1 Appellant Lara Phillips was a permanent employee for Respondent Office of the Secretary of State (OSOS). 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 March 19, 2010.

3.2 Appellant was employed as a Library and Archival Professional 3 for the Washington Talking Book and Braille Library within the Washington State Library Division of the Office of the Secretary of State. She began her permanent employment with OSOS on July 21, 2008. Her layoff was effective February 22, 2010.

3.3 In November 2009, the Office of Financial Management informed Respondent to expect $1.2 million budget cut during the upcoming legislative session and encouraged them to begin making cuts right away to avoid increased cuts at a later date. As a result, the library system completed a review of all the state libraries and identified 30 people for layoff. The goal of the layoff was to maintain direct services to customers by keeping all libraries open without reduced hours of operation.

3.4 Herrick Heitman was one of the people identified for layoff. He was a Library and Archival Professional 3 in the Public Services Division. Hr. Heitman's seniority date was May 7, 1984.

3.5 Appellant was not one of the people initially identified for layoff. Her seniority date was July 21, 2008. And, she was the least senior Library and Archival Professional 3 in the layoff unit.

3.6 OSOS's Policy on Layoff states: "[t]he purpose of this layoff policy is to ensure that a layoff is administered without prejudice, is equitable to our employees, and disruption to employees and the business function of the Office of the Secretary of State (the Agency) is minimized." The policy provides that the agency is a single layoff unit to keep from unduly restricting employees during a layoff.

3.7 OSOS's Layoff Procedure provides that an employee's seniority date is the basis for the employee's employment retention rating. The procedure also provides, in relevant part, that a permanent employee scheduled for layoff must be offered the option to take a position that meets the following criteria:

- the position is allocated to the class in which the employee holds permanent status at the time of the layoff
- the position is comparable to the employee's current position
- the employee satisfies the competencies and other position requirements
- the position is funded and occupied by the employee with the lowest employment retention rating.

3.8 WAC 357-46-035(1) provides:

> 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.

3.9 WAC 357-46-045 provides:

> In establishing competency and other position requirements, employers may use any of the following documented criteria:
>
> (1) Licensing/certification requirements;
>
> (2) Position description;
>
> (3) Class specification;
>
> (4) Skills/competencies listed on the position's most recent recruitment announcement or the last announcement used to fill the position;
>
> (5) Bona fide occupational requirement(s) approved by the Washington human rights commission; or
>
> (6) Additional documented competencies or requirements not reflected in the position description.
>
> (Emphasis added.)

3.10 WAC 357-46-050 discusses how employee employment retention ratings are set. The rule provides, in relevant part:

> The employer determines an employee's employment retention rating using seniority as calculated in WAC 357-46-055 for general government employees . . . Employers with performance management confirmation may consider properly documented performance in addition to seniority. If performance is not considered, an employee's employment retention rating is equal to the employee's seniority.

3.11 Each of the people identified for layoff were given an opportunity to submit new applications to the Human Resources Division (HRD). In addition, HRD staff used the position descriptions that were on file with the HRD office to determine layoff options. HRD staff compared the position descriptions for the unaffected positions held by the least senior employee to the applications submitted by the affected employees. Relevant to this case, HRD staff compared Mr. Heitman's application to the position description, including the general

qualifications, for Appellant's position because Appellant was the least senior Library and Archival Professional 3 in the layoff unit.

3.12 HRD determined that Mr. Heitman met the qualifications for Appellant's position and he had work experience providing library services to people who use libraries in different ways. He was offered Appellant's position as his layoff option. Mr. Heitman accepted the option and as a result, Appellant was bumped out of the position.

3.13 After determining that Appellant would be bumped from her position, HRD staff did an analysis of the layoff options available for Appellant. In light of Appellant's seniority and the classifications she had held, Appellant was offered a part-time Library and Archival Professional 2 position as her formal option.

3.14 By letter dated February 8, 2010, Appellant was notified of her layoff and her formal layoff option. Appellant chose not to accept her formal layoff option and therefore, she was separated from state service effective February 22, 2010.

IV. ARGUMENTS OF THE PARTIES

4.1 Respondent argues that it complied with its approved 2005 layoff policy and procedure which assured that the layoffs were administered without prejudice, equitably and with minimal disruption to library functions. Respondent explains that seniority has long been a focus of the state system and is an important factor in layoff. Respondent argues that in a layoff, permanent employees have statutory rights and that if the employee being laid off meets the qualifications of a position held by the least senior employee, then the most senior employee has the right to be placed into that position. Respondent asserts that Mr. Heitman met the qualifications for the position held by Appellant, he also had experience doing the type of work performed in the Washington Talking Book and Braille Library, and he had more seniority than Appellant. Therefore, Respondent contends that the position was an appropriate layoff option for Mr. Heitman, and because he

chose to accept that option, Appellant was bumped from the position which necessitated her layoff. Respondent explains that it then went through the appropriate process to identify a layoff option for Appellant. That option was offered to Appellant, she did not accept the option, and therefore, Respondent contends that her separation from employment was appropriate.

4.2 Appellant explains that she is not disputing that the layoffs were necessary but she is disputing the way the bumping was carried out. Appellant contends that in implementing the layoff and subsequent bumping, Respondent may have complied with the letter of the law but they did not comply with the spirit of the law. Appellant argues that the library exists to provide service to the public, not to preserve the seniority of its employees. Appellant asserts that by bumping experienced and knowledgeable employees from their positions, Respondent did a disservice to the public. Appellant explains that Respondent did not consider performance when determining bumping options and suggests that by looking only at the job qualifications for positions and not performance, the interests of the citizens who use the library were not served. Appellant argues that just because Mr. Heitman met the qualifications for her Library and Archival Professional 3 position does mean that he was the right person for the job.

V. CONCLUSIONS OF LAW

5.1 The Personnel Resources Board has jurisdiction over the parties and the subject matter.

5.2 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.

5.3 In instituting a RIF for lack of funds, agencies have discretion to determine in good faith which positions to eliminate. Van Jepmond v. Employment Security Dep't, PAB No. L86-15 (1988), aff'd Thurston Co. Super. Ct. No. 88-2-00274-3 (1989). The position to be eliminated and those to be retained when the budget is reduced is left to the good faith judgment of management. University of Washington v. Harris, 24 Wn.App., 228, 230, 600 P.2d 653 (1979)

rev. denied 93 Wn.2d 1013 (1980). Respondent was within its right to review its existing programs and reduce staff as it deemed appropriate. Sinclair v. Dep't of General Administration, PAB No. L93-023 (1995).

5.4 Respondent has established that budget cuts necessitated the need for a reduction in staff and that Mr. Heitman was one of the staff identified for layoff. Respondent has proven that Mr. Heitman had more seniority than Appellant, that he had experience and knowledge in working with people who use libraries in a different way, and that he met the qualifications for the Library and Archival Professional 3 position held by Appellant. Respondent has also proven that Appellant was the least senior Library and Archival Professional 3 in the layoff unit. Respondent followed its layoff policy and procedures and complied with the applicable rules when it implemented the layoff that resulted in Appellant's separation.

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

VI. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Lara Phillips is denied.

DATED this _____ day of _____, 2010.

WASHINGTON PERSONNEL RESOURCES BOARD

_____
LAURA ANDERSON, Chair

_____
JOSEPH PINZONE, Member