BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

ROCHELLE WARNER, Appellant, vs. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	CASE NO. R-LO-10-006 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, LAURA ANDERSON, Chair, and DJ MARK, Vice Chair. The hearing was held on September 30, 2010, in the Personnel Resources Board hearing room in Olympia, Washington.

1.2 **Appearances.** Appellant Rochelle Warner was present and was represented by Christopher Coker, Attorney at Law. Alicia Young, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal of the formal layoff option offered to Appellant as a result of her layoff from a Washington Management Service position.

II. FINDINGS OF FACT

3.1 At the outset of hearing on this matter, the parties presented the following statement of the issue:

> Did the department violate WAC 357-58-465 or DSHS Administrative Policy 18.58 when it did not offer the GW 51 position as a formal layoff option to Appellant? And, if so, what is the appropriate remedy?

3.2 Also at the outset of the hearing, the parties presented the following stipulation of facts:

- Appellant Rochelle Warner is a permanent employee for Respondent Department of Social and Health Services (DSHS). 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 April 13, 2010.

- The 2009-11 budget for the Economic Services Administration (ESA) within DSHS, passed by the Legislature in the 2009 legislative session, included an administrative reduction of 237.5 FTEs and $51 million.
- In the summer of 2009, the Office of Financial Management informed Respondent to expect at least an additional 2% budget reduction during the upcoming legislative session and encouraged them to begin making cuts right away to avoid increased cuts at a later date. ESA alone expected to lose 87 additional positions with this additional 2% reduction.
- To help realize the cuts Respondent was required to achieve, Troy Hutson, Assistant Secretary for the Economic Services Administration (ESA) within DSHS, decided to eliminate the Tribal Program Administrator position QY 09, occupied at the time by Appellant. The basis for Ms. Warner's layoff was a undisputed lack of funds.
- Prior to holding the Tribal Relations Program Administrator position, Appellant held permanent status within the Department of Corrections in Washington General Service (WGS) as a Classification Counselor 3, Classification Counselor 2, Community Corrections Specialist, Correctional Records Specialist, and Office Assistant 3. Of those classifications, DSHS utilizes only the Office Assistant 3 classification.
- Position GW 51, WorkFirst Program Manager, was vacant at the time DSHS conducted the search.
- Because GW 51 was actually vacant at the time, it should have been one of the potential WMS options reviewed to determine whether Ms. Warner met the required competencies. At the time of the layoff decision, DSHS failed to consider the GW 51 position as a formal layoff option for Ms. Warner.
- After no WMS option was found, DSHS searched for WGS options, and located an Office Assistant 3 position as Ms. Warner's formal option.
- Upon Ms. Warner's request, DSHS searched for informal options and located a Financial Services Specialist 1 in training to a Financial Services Specialist 3 position. Ms. Warner accepted this as the informal option.
- Ms Warner asserted in her appeal to the Board that GW 51 was vacant at the time of her layoff, and that it should have been provided to her as a formal layoff option.
- Upon reviewing Ms. Warner's appeal, DSHS confirmed GW 51 was vacant and should have been considered as a potential option for Ms. Warner.

3.3 After learning that position GW 51 was vacant, DSHS reviewed the position and determined that Appellant did not meet the required competencies for the position. Position GW 51 was a WorkFirst Program Manager and was responsible administering the Temporary Assistance for Needy Families (TANF) program, developing and implementing statewide policies and policy changes, and facilitating coordination of program operations. The competencies for the position included knowledge of

- federal TANF rules
- state TANF plans
- WorkFirst philosophy, policies, processes and partner agencies
- Community Services Office (CSO) operations
- approval process for WACS
- Data Share Agreements
- contract monitoring
- protective payee process and policy
- exception to rule process at state headquarters
- WORD, EXCEL, ACES, ACES-on-line, JAS, e-JAS, barcode, and PPTS.

3.4 Based on a preponderance of the credible testimony, we find that Appellant did not have the breadth of experience or knowledge encompassed in a majority of the critical competencies for position GW 51. Appellant testified that she worked with the tribal TANF rules and that she worked with the federal and state rules as well. However, Appellant did not have work experience in a WorkFirst office or in a CSO or with the approval process for WACS. She testified that she visited CSO offices to watch the way the Financial Services Specialists functioned and she was working with the tribes regarding a tribal TANF WAC. She also testified that her office was responsible for Data Share Agreements and contract monitoring. She admitted that she did not have experience with the protective payee process and policy and the exception to rule process. Appellant testified that she was proficient in Word and Excel and that she had recently learned how to use ACES, ACES-on-Line, Barcode. She admitted that she was not familiar with EJas and she was not familiar the PPTS acronym.

3.5 In addition, the competencies for position GW 51 included, in part, skill in developing and maintaining program policies, handbooks and manuals, working with the legislative and

rulemaking process, working with the WorkFirst's automated case management systems, contributing to WorkFirst training curriculum, and developing business requirements for computer programs such as JAS and eJAS. Appellant testified that during her previous employment with the Department of Corrections, her office was responsible for creating and implementing policies. She provided no evidence of experience in developing and maintaining program handbooks and manuals. She further testified that she had experience in all of the skills required for the GW 51 position.

3.6 A preponderance of the credible testimony establishes, in part, that prior to her layoff, Appellant's work history did not include experience in administering a TANF program, working in a CSO, or working with WorkFirst's automated systems. In her position as the Tribal Relations Program Administrator, Appellant's role was limited to working with tribes who administered their own TANF programs. For the tribes, DSHS acts as the liaison between the tribes and federal government in order for the tribes to get funding. DSHS's does not administer the tribal TANF programs.

3.7 WAC 357-58-465(1) provides:

> 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) <u>The employee has the required competencies for the position</u>.
>
> (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.
>
> (Emphasis added).

3.8 DSHS Administrative Policy 18.58 contains the DSHS WMS Operating Procedures. Section 93 of the policy is consistent with WAC 357-58-465 and provides:

> 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:
>
> 1. The employee has the required competencies for the position.
> 2. 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) if the employee has held permanent status in a WGS classification, in descending salary order. At the agency's discretion, the employee may be offered a vacant position at higher evaluation points.
> 3. 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.
> 4. 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
>
> (Emphasis added).

IV. ARGUMENTS OF THE PARTIES

4.1 Respondent argues that the agency followed the rules and DSHS policy in implementing the layoff. Respondent admits that it initially erred by not considering whether Appellant met the competencies for position GW 51 but argues that the error was harmless since she did not have the required competencies for the position. Respondent contends that an employee being laid off must meet the competencies of a position in order for that position to be considered as a layoff option. Respondent asserts that knowledge of the state TANF program is critical to being a WorkFirst Program Manager and argues that Appellant did not have that knowledge or experience. Respondent contends that the state's role in tribal TANF programs is very different than its role in administering the state's TANF program. Respondent asserts that Appellant did not meet the

competencies required for WorkFirst Program Manager position number GW 51 because, in part, she lacked experience in the state's TANF program.

4.2 Appellant argues that at the time of her layoff, position GW 51 was vacant and funded and it should have been offered to her as a layoff option. Appellant contends that by not offering her the position, DSHS violated Chapter 357-58 WAC and DSHS policy. Appellant asserts that DSHS determined that she did not meet the knowledge and experience listed as desired competencies for position GW 51, not those listed as required. Appellant contends that she possesses the required competencies for position GW 51. Appellant asserts that Respondent failed to make a good faith analysis of position GW 51 and her qualifications. Appellant argues that employees are rarely an exact fit to a position's requirements, and argues that she should have been given the same chance to perform in position GW 51 as the person who was appointed to the position subsequent to Appellant's layoff. Appellant argues that an employee being laid off should not be treated differently than a person newly hired by the agency. Appellant contends that position GW 51 should have been offered to her as a layoff option.

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 A preponderance of the credible testimony establishes that Appellant did not have the breadth of experience, knowledge or skills needed to meet the competencies of position GW 51. Respondent did not violate WAC 357-58-465 or DSHS Administrative Policy 18.58 when it failed to offer the GW 51 position as a formal layoff option to Appellant.

5.4 We acknowledge that Appellant had some experience in some of the competencies listed for position GW 51 and possessed some of the skills required for the position. However, we conclude that she did not have the scope or breadth of experience, skills, and knowledge required for the position in its entirety.

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 Rochelle Warner is denied.

DATED this _____ day of _____, 2010.

WASHINGTON PERSONNEL RESOURCES BOARD

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LAURA ANDERSON, Chair

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DJ MARK, Vice Chair