BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

PAGE BLANTON, Appellant, vs. DEPARTMENT OF CORRECTIONS, Respondent.	CASE NO. R-LO-10-021 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, JOSEPH PINZONE, Vice Chair, and LAURA ANDERSON, Member. The hearing was held on July 7, 2011, in the Personnel Resources Board hearing room at 600 South Franklin in Olympia, Washington.

1.2 **Appearances.** Appellant Page Blanton was present and appeared *pro se*. Andrew Scott, 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. PRELIMINARY MATTERS

2.1 At the outset of the hearing, the parties discussed Appellant's objection to the admission of Respondent's exhibits. Appellant based his objection on Respondent's failure to file an exhibit list prior to the hearing as ordered in the Statement of Results of Prehearing Conference. Appellant argued that Respondent should not be allowed to bypass timeliness requirements and circumvent the process. Respondent acknowledged that a list had not been filed but argued that the actual exhibits were provided to Appellant by FedEx prior to the hearing at the address that Appellant provided. Appellant acknowledged that he had received notice of a package being delivered to his

post office box but argued that he had not had an opportunity retrieve the package and did not know what the package contained.

2.2 Appellant further objected because he had not had an opportunity to review Respondent's exhibits in preparation for the hearing. Respondent argued that none of the exhibits were documents that Appellant had not previously seen, that all were public records and could be verified through witness testimony, and that Appellant had not utilized the discovery process to request documents prior to the hearing. Respondent explained that they offered to share the exhibits with Appellant on the morning of the hearing and that Appellant indicated that he did not want to look at them. Respondent stated that they were prepared to proceed with the hearing without admission of the exhibits.

2.3 In response to the Board's question of whether Appellant was requesting to review the exhibits prior to the hearing, Appellant answered that he was asking that the exhibits not be allowed because an exhibit list was not timely filed. In answer to further questions from the Board, Appellant said that he felt he needed to see the documents if the hearing proceeded.

2.4 The Board took a break and considered the arguments of the parties. In addition, the Board reviewed Respondent's exhibits.

2.5 The Statement of Results of Prehearing Conference states, in relevant part:

> This statement is issued to establish dates to control the subsequent course of these proceedings:
>
> **1.** Discovery is to be completed by June 7, 2011. Requests for discovery must be served not later than May 6, 2011, to provide sufficient time for responses to be completed by June 7, 2011.
>
> . . . .
>
> **2.** Witness lists and exhibit lists are to be exchanged on or before June 29, 2011. The parties reserve the right to supplement the lists.
>
> . . . .

> The parties shall arrive at the hearing location thirty (30) minutes prior to the hearing time <u>for the purpose of exchanging copies of exhibits</u> and, if possible, stipulating to admission of exhibits.
>
> (Emphasis added).

2.6 WAC 357-52-235(2) provides, in relevant part, "The parties must arrive at the hearing location at least thirty minutes before the scheduled hearing for the purpose of exchanging exhibits. . . ."

2.7 The Board reconvened the hearing and issued an oral ruling. The Board stated that after reviewing Respondent's list of proposed exhibits, the exhibits contained nothing that would be a surprise to Appellant or that he had not had exposure to through the layoff process.

2.8 At this point in the hearing, Respondent provided a copy of the exhibit notebook to Appellant. Appellant refused to accept the notebook. Rather, he gathered his documents and prepared to leave the hearing. Before he left the hearing room, the Board advised him that they would proceed with the hearing and asked him if he understood that by leaving the hearing he was foregoing his opportunity to present his case. Appellant acknowledge that he understood. Appellant left the hearing and did not return.

2.9 Before presenting their case, Respondent asked the Board to enter a default order and argued that Appellant had abandoned his appeal. The Board considered Respondent's request, denied the request, and proceeded with the hearing.

III. FINDINGS OF FACT

3.1 Appellant Page Blanton 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 28, 2010.

3.2 During his employment with DOC, Appellant has worked as a Correctional Officer, a Correctional Sergeant, and Corrections Specialist 3 and a Human Resource Consultant 3. At the time of his layoff, Appellant was a Human Resource Consultant 3 (HRC3) training specialist for the on-the-job training program, including the COACH program. His position had been allocated to the HRC3 classification since June 16, 2010.

3.3 Prior to allocation to the HRC3 class, Appellant was a Corrections Specialist 3 and was assigned training specialist responsibilities for the on-the-job training program, including the COACH program, in his assigned facilities. Kevin Bovenkamp was Appellant's supervisor and Appointing Authority. Mr. Bovenkamp credibly testified that Appellant's position was reallocated so that his training responsibilities could be expanded to include human resource related topics.

3.4 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 program cuts. One of the determinations they made was to eliminate the COACH program.

3.5 Mr. Bovenkamp met with Appellant and informed him that his position was at risk of layoff. DOC's human resources staff coordinated the gathering of information to be used in determining options for staff at risk of layoff. Appellant provided his information to human resources (HR) staff at Clallam Bay Corrections Center (CBCC). Appellant provided his resume, including a summary of his experience inside and outside the DOC Academies, and a Skills, Abilities, and Experience Worksheet. CBCC's HR staff forwarded Appellant's information to DOC headquarters. CBCC staff did not include any recommendations in regard to Appellant's qualifications or layoff options.

3.6 WAC 357-46-015 states: "The employer must have a layoff procedure. When the employer determines a layoff is necessary, the procedure must be followed. The layoff procedure must be available either electronically or in writing to employees subject to layoff."

3.7 DOC Policy 810.810, Layoff-Washington General Service, is the layoff procedure for the agency's general service employees. The policy identifies the county in which an employee's permanent workstation is located as the first layoff unit. The policy further provides, in relevant part:

> II. Seniority
>
> A. Seniority is the basis for granting layoff options subject to the employee possessing the required skills and abilities for the position . . .
>
> . . . .
>
> III. Options
>
> A. The permanent employee involved in a layoff action has rights to another position as provided for by this policy. If a formal option exists within the appropriate layoff unit, it will be provided to the employee being laid off. When an option has been determined, no further options will be identified.
>
> 1. The laid off employee must have the skills and abilities to perform the duties of the position that is provided as a formal option. A formal option is determined in the following order:
>
> a. A funded vacant position within the employee's current job classification.
>
> b. A funded filled position within the employee's current job classification held by a least senior employee.
>
> c. A funded vacant position or a position filled with the least senior employee at the same or lower salary range as the laid off employee's current permanent position, within a job classification in which the laid off employee has held permanent status.
>
> 2. An option will be determined in descending order of salary range and one progressively lower level at a time. A vacant position will be offered before a filled position.
>
> . . . .
>
> 6. The employee must have the required skills and abilities of the position that is being offered as an option to exercise the option.

a. Skills and abilities needed for a position are documented criteria found in the following:

. . . .

3) Position descriptions,

. . . .

3.8 In determining the options for Appellant, DOC considered the information he provided as well as the position descriptions and job classifications for the positions he had previously held at DOC. DOC also considered Appellant's work history with the agency and clarifying information provided by Appellant's supervisor.

3.9 Donna Haley, was Human Resources Director for DOC. Ms. Haley credibly testified that the HRC classifications encompass positions that function as HR generalists as well as positions that function as HR specialists.

3.10 Within his layoff unit, Appellant had more seniority than two of incumbents in HRC3 positions. Ms. Haley considered Appellant's skills and abilities and the requirements of both less senior HRC3 positions. The less senior HRC3 positions were generalists while Appellant was a training specialist.

3.11 The requirements for the HRC3 generalist positions included one year of broad-based human resource experience that included at least four or more functional areas such as interpretation and/or explanation of civil service rules and human resource related policies; corrective and disciplinary actions; classification; labor relations; developing or presenting training or orientation in human resource-related topics; employee recruitment and selection; representing the agency in grievances or appeals; workers compensation; and consulting and advising management on human resources issues.

3.12 Ms. Haley concluded that while Appellant had experience as a training specialist for the on-the-job training program, his experience did not include training on human resource-related topics and he did not have broad-based human resources experience that included at least four HR functional areas. Ms. Haley determined that Appellant did not possess the skills and abilities required for the less senior HRC3 positions within his layoff unit and therefore, neither position was an appropriate layoff option for Appellant.

3.13 The DOC layoff team then looked for less senior Corrections Specialist 3 positions in Appellant's layoff unit as possible layoff options. Within the layoff unit, Appellant had more seniority than the incumbents in two Corrections Specialist 3 positions. Appellant met the skills and abilities for both positions. By letter dated October 26, 2010, Mr. Bovenkamp notified Appellant that he would be laid off effective November 30, 2010. Mr. Bovenkamp informed Appellant that layoff options would be awarded based on seniority and that Appellant's layoff option was to one of the two Corrections Specialist 3 positions.

3.14 Appellant ranked his preference for each position and was subsequently appointed to a Corrections Specialist 3 position at CBCC.

IV. ARGUMENTS OF THE PARTIES

4.1 Respondent argues that the elimination of the COACH on the job training program resulted in the layoff of Appellant and the other Human Resource Consultant specialists assigned to the program. Respondent asserts that DOC implemented the layoffs appropriately and in compliance with DOC policy and the civil service rules. Respondent contends that Appellant did not possess the skills and abilities required for the HRC3 generalist positions held by less senior employees. Respondent contends that in compliance with the policy the agency next considered Corrections Specialist 3 positions held by less senior employees. Because Appellant met the requirements for two positions, Respondent explains that the agency looked no further and offered those positions to Appellant on the basis of seniority. Respondent asserts that the agency followed the rules and policy

in implementing Appellant's layoff, that he was offered the appropriate layoff options, and that the layoff action should be affirmed.

4.2 During the presentation of preliminary matters, Appellant chose to leave the hearing and did not participate further in the hearing process.

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. WAC 357-52-110.

5.3 Respondent met its burden of proof. Respondent showed that DOC Policy 810.810 and the applicable civil service rules were followed and that the appropriate layoff option was identified and offered to Appellant.

5.4 In his letter of appeal, Appellant suggests irregularities in the reallocation of his position to the HRC3 classification and the updating of position descriptions for the HRCs. However, Appellant provided no evidence to support his claim. Further, issues arising from the reallocation of his position in July 2010 appear to be untimely.

5.5 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).

5.6 In Warner v. Dep't. of Social and Health Services, R-LO-10-013 (2010), the Board concluded that the appellant should not have been offered a specific position as a layoff option because, while she had some experience in some of the competencies and possessed some of the skills required for a position, she did not have the scope or breadth of experience, skills, and knowledge required for the position in its entirety. In this case, while Appellant had experience, skills and knowledge in developing, coordinating, and providing on the job training programs, he did not have the scope or breadth of experience, skills and knowledge required for the HRC3 generalist positions.

5.7 Further, in Eliasson v. Employment Security Dep't., PRB Case No. R-LO-05-001 (2006), the Board stated "[a]n employee can only be placed in a position if he/she meets the required competencies of the position." See also, Hagen v. Dep't. of General Administration, PRB Case No. R-LO-10-004 (2010). In the present case, Appellant can only be placed in a HRC3 position if he meets the requirements of the position.

5.8 Respondent proved that the process used to identify Appellant's formal layoff option complied with the provisions of the layoff policy and applicable rules. Respondent searched within the applicable layoff unit for formal options in descending order as outlined in the rules and policy. Respondent proved that Appellant lacked the experience, skills, and competencies required for the HRC3 generalist positions. Respondent also proved that the next highest level class held by Appellant was the Corrections Specialist 3 and that an appropriate layoff option was identified within this classification.

5.9 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 civil service rules and DOC policy. Therefore, the appeal should be denied.

VI. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Page Blanton is denied.

DATED this _____ day of _____, 2011.

WASHINGTON PERSONNEL RESOURCES BOARD

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JOSEPH PINZONE, Vice Chair

_____
LAURA ANDERSON, Member