BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

DON DESHAZER, Appellant, vs. DEPARTMENT OF CORRECTIONS, Respondent.	)))))))))	CASE NO. R-LO-10-011 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, on December 15, 2010, for hearing. Subsequent to the hearing, the parties submitted affidavits and written closing arguments. Closing arguments were submitted on April 8, 2011.

1.2 **Appearances.** Donna Stambaugh, Assistant Attorney General, represented Respondent Department of Corrections (DOC). William Powell, Attorney at Law, represented Appellant Don DeShazer.

1.3 **Nature of Appeal.** This appeal challenges the results of the layoff process that caused Appellant to be bumped from his position and the option that was offered to Appellant as a result of his layoff.

II. BACKGROUND

2.1 On December 15, 2010, the Board convened a hearing on Appellant's appeal. At the conclusion of the parties' cases in chief and Respondent's rebuttal witness, the Board considered the information provided. Before adjourning the hearing, the Board continued the hearing on its own motion and ordered Respondent to reconvene its layoff process.

2.2 Because of information provided during Appellant's testimony, namely that he had over four years of experience developing and managing the monthly and annual training plans for the marksman/spotter team, the Board instructed Respondent to properly consider Appellant's past experience including his marksman/spotter team responsibilities. Specifically, the Board directed Respondent to consider Appellant's responsibility for and experience in developing and managing the monthly and annual training plans for the marksman/spotter team since 2006 and make a determination of whether the Training Manager position should have been offered to Appellant as his layoff option.

2.3 The Board provided oral instructions to the parties and by order dated December 29, 2010, confirmed its oral ruling.

2.4 On January 27, 2011, Respondent provided Appellant written documentation containing its assessment and determination regarding Appellant's experience and skills in developing and managing monthly and annual training plans. Respondent determined that Appellant did not possess the skills and experience required to perform the essential functions of position 2393, the Training Manager position.

2.5 On March 14, 2011, Appellant filed his affidavit in response to Respondent's review of his qualifications. On March 23, 2011, Respondent filed the affidavit of Maggie Miller-Stout in reply to Appellant's response.

2.6 On April 8, 2011, the parties filled written closing arguments.

III. FINDINGS OF FACT

3.1 Appellant Don DeShazer 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 June 21, 2010.

3.2 Appellant is employed at Airway Heights Corrections Center. By letter dated May 14, 2010, Maggie Miller-Stout, Superintendent for Airway Heights, notified Appellant of his layoff effective May 29, 2010. Appellant's layoff was the result of him being bumped from his position by a more senior employee. The more senior employee was laid off due the closure of the Pine Lodge Corrections Center for Women. Appellant appealed his layoff asserting, first, that he should not have been bumped from his position, and second, that he should have been afford a layoff option to the training manager for the facility.

3.3 At the time of his layoff, Appellant was a Corrections Specialist 3 and was responsible for directing the offender disciplinary hearings program at Airway Heights. Appellant's layoff seniority date is March 26, 1994. Donna Byrnes, the employee who bumped Appellant from his position, has a seniority date of June 15, 1988.

3.4 In order to manage the volume of layoffs that were occurring, DOC created a statewide layoff team to oversee the process for all impacted employees. Max Carrera, Layoff Project Manager, was a member of the team that managed the layoffs resulting from the closure of Pine Lodge. Employees who were at risk of layoff were asked to submit a Skills, Abilities and Experience Worksheet and any other information, such as a resume, which was then used by the layoff team and the appointing authority to determine whether the employees had the skills and abilities for any potential layoff options.

3.5 Ms. Byrnes signed her Skills, Abilities and Experience Worksheet on January 4, 2010. She also provided her resume which discussed her experience, including her experience providing training. On her form, she indicated that she had 121 months of training, but her resume includes limited experience for training and on the job coaching.

3.6 When Ms. Byrnes was laid off, the layoff team looked for options for her in the layoff unit of Spokane County. The least senior Corrections Specialist 3 position was the position held by the Airway Heights Training Manager. As the Superintendent for Airway Heights, Ms. Miller-Stout, is the Appointing Authority for the institution, including the Training Manager position. Ms. Miller-Stout credibly testified that the Training Department performs a critical function for the institution and that she was concerned about the possibility of having 100% turnover in the department. Therefore, she was very careful in looking at the requirements of the Training Manager position when considering as a layoff option.

3.7 WAC 357-46-045 describes how agencies establish position competencies and requirements when instituting a layoff. The rule states:

> In establishing competency and other position requirements, employers may use any of the following documented criteria:
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> (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;
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> (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.

3.8 The position description for the Training Manager position describes the essential functions of the position. The essential functions include, in part:

> Managing, planning, organizing, coordinate [sp], directing and evaluating the training program for all staff that work at [Airway Heights]. . . .
>
> This position develops the annual training program, ensures staff attendance, coordinates to develop instructors, and assesses the quality of training programs. Assists all staff to receive any and all required mandatory training.
>
> . . . .

3.9 The preferred education, training, skills and competencies for the position provide further clarification and state that for recruiting purposes, the person appointed to the position should have "[o]ne year of specialized experience dealing with the training of staff and coordinating a training plan."

3.10 Ms. Miller-Stout reviewed the skills, experience and abilities of Ms. Byrnes in comparison to the requirements of the Training Manager position. She determined that while Ms. Byrnes had some experience as a trainer, she did not possess the experience required to manage and coordinate an institution-wide training plan as described in the position's essential functions and required for the Training Manager position. Therefore, the Training Manager position was not offered to Ms. Byrnes.

3.11 Appellant was the next least senior Correctional Specialist 3 and Ms. Miller-Stout considered whether Ms. Byrnes met the requirements for Appellant's position. One of the Competencies and Special Requirements of Appellant's position was "[o]ne year of administrative experience in a correctional hearing unit to include processing offenders for a hearing, scheduling hearings, recording hearings, and disposition of documents after hearings." In her Skills, Abilities and Experience Worksheet, Ms. Byrnes indicated that she had 41 months of experience as a back-up hearing officer. Ms. Miller-Stout determined that Ms. Byrnes possessed the requirements for Appellant's position.

3.12 Appellant's position was offered to Ms. Byrnes as her layoff option. She accepted the option and as a result, Appellant was bumped from the position.

3.13 The layoff team then identified possible options for Appellant. Because the incumbent in the Training Manager position was less senior than Appellant, this position was considered as a possible option. Ms. Miller-Stout reviewed Appellant's work history, skills, and abilities and determined that he did not meet the skills and abilities for the position.

3.14 At the direction of the Board, Ms. Miller-Stout reconsidered Appellant's past experience including his marksman/spotter team responsibilities and confirmed her assessment of Appellant's qualifications for the Training Manager position. Ms. Miller-Stout acknowledged that Appellant coordinated the training for the two-member marksman/spotter team but determined that the team's training was static and essentially unchanged from year to year. Ms. Miller-Stout determined that Appellant's limited experience coordinating training for a two-person team did not qualify him to coordinate the wide array of training components for an entire institution consisting of 700 employees and 50 contract employees which is the focus of the Training Manager position. Ms. Miller-Stout concluded that Appellant did not have the breadth and depth of experience needed to carry out the functions of the Training Manager position and manage the institution's Training Department. Therefore, this position was not offered to Appellant as a layoff option.

3.15 The team then searched for another possible option for Appellant and identified a Classification Counselor 3 position. This position was considered a viable option. In the May 14, 2010, layoff letter, Ms. Miller-Stout formally notified Appellant of his layoff and of his formal layoff option to a Classification Counselor 3 position. Appellant accepted the option and as a result, bumped the incumbent from the position.

IV. ARGUMENTS OF THE PARTIES

4.1 In summary, Respondent argues that Ms. Byrnes did not meet the skills and abilities of the Training Manager position because she did not have experience managing, planning, organizing, coordinating, directing and evaluating an institution-wide training program. Respondent further argues that Appellant did not possess the breadth and depth of experience needed to carry out the functions of the Training Manager position. Respondent recognizes that Appellant had experience coordinating the training for the two-person marksman/spotter team but asserts that he did not possess the wide range of skills and abilities needed for the institution-wide Training Manager

position. Respondent contends that Ms. Byrnes possessed the skills and abilities for Appellant's position because she had performed the role of a back-up hearings officer for 41 months and met the required competencies for the position. Respondent argues that the appropriate rules and procedures were followed in carrying out Appellant's layoff and asks that the layoff be affirmed.

4.2 In summary, Appellant argues that Ms. Byrnes was qualified for the Training Manager position and that she was inappropriately disqualified based on a preferred or desirable element, rather than a requirement, for the position. Appellant contends that Ms. Byrnes had 121 months of experience in training and that she should have been offered the Training Manager position as her layoff option. Appellant also argues that Ms. Byrnes did not possess the qualification for Appellant's hearing officer position. Appellant contends that Ms. Byrnes did not have one year of experience in a hearing unit as described in the special requirements for the position and should not have been placed in the position because she did not meet the required competencies described in the position description. Additionally, Appellant argues that he was qualified for the Training Manager position because he had developed training plans since 2006, had completed 2069 hours of training, and had the necessary qualifications to bump into the position. Appellant suggests that Ms. Miller-Stout wanted to retain the current Training Manager and therefore, declined to bump either Ms. Byrnes or Appellant into the position. Appellant asserts that Respondent violated the WACs and agency policy in handling the layoffs by skipping over the least senior employee and bumping Appellant from his position.

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 Appellant suggests that Ms. Miller-Stout wanted to retain the current Training Manager and protected that employee from being bumped. However, Appellant provided no persuasive evidence to support his claim. To the contrary, Ms. Miller-Stout expressed concern about the possibility of 100% turnover in the training department but she did not express a desire to protect the position from the bumping process. Rather, she indicated that she seriously considered the skills, abilities and experience of laid off employees to assure that they possessed the competencies needed for the position.

5.4 Further, WAC 357-46-020 specifies what must be included in an agency's layoff procedure. Section 7 allows an agency to:

> Identify the employer's legitimate business requirements if the employer is going to consider those requirements in determining layoff options under WAC 357-46-035;
>
> - Legitimate business requirements may include requirements such as circumstances or characteristics that render a position uniquely sensitive to disruption in continuity such as meeting critical deadlines, continuity in patient care, or research progress.

If the agency had legitimate business reasons to "protect" specific positions from the bumping or layoff process, the WAC provides a mechanism in which this could have been accomplished.

5.5 Respondent met its burden of proof that Appellant's layoff was accomplished in compliance with the rules and DOC policy. Respondent followed its layoff policy and complied with the applicable rules when it implemented the layoff that resulted in Appellant being "bumped" from his position and being offered the Classification Counselor 3 position as his layoff option.

5.6 Respondent established that the Training Manager position was not a viable layoff option for Ms. Byrnes or for Appellant. While both Ms. Byrnes and Appellant possessed limited training experience neither possessed the scope or breadth of experience, skills, and knowledge needed for the Training Manager position. Respondent met its burden of proof that the Training Manager position was not a viable layoff option for Ms. Byrnes or for Appellant.

5.7 This is consistent with the Board's decision in Warner v. Dep't. of Social and Health Services, R-LO-10-013 (2010). In Warner, we 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 but she did not have the scope or breadth of experience, skills, and knowledge required for the position in its entirety.

5.8 Respondent established that Ms. Byrnes was a back-up hearing officer and in that capacity, she conducted hearings and performed the functions of a hearing officer as Appellant's backup for 41 months. Respondent met its burden of proof that Ms. Byrnes met the qualifications for Appellant's position, that the position was a viable layoff option for her, and that because Appellant was the least senior Correctional Specialist 3 in the layoff unit, Ms. Byrnes appropriately bumped Appellant from the position.

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 merit system rules and DOC policy. Therefore, the appeal should be denied.

VI. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Don DeShazer is denied.

DATED this _____ day of _____, 2011.

WASHINGTON PERSONNEL RESOURCES BOARD

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LAURA ANDERSON, Chair

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DJ MARK, Vice Chair