BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

DANIEL MASDEN, Appellant, vs. DEPARTMENT OF PERSONNEL, Respondent.	CASE NO. R-LO-10-003 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 October 14, 2010, in the Personnel Resources Board hearing room in Olympia, Washington.

1.2 **Appearances.** Appellant Daniel Masden was present and represented himself. Stewart Johnston, Assistant Attorney General, represented Respondent Department of Personnel.

1.3 **Nature of Appeal.** This is an appeal of a layoff due to a lack of funds. Appellant disputes the lack of layoff options offered to him by Respondent.

II. FINDINGS OF FACT

2.1 Appellant Daniel Masden was a permanent employee for Respondent Department of Personnel (DOP). 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 30, 2010.

2.2 At the time of his layoff, Appellant was a WMS Band 1 manager in the Assessment Unit within DOP's Personnel Services Division (PSD). Appellant worked as the Assessment Unit manager from February 1, 2005 through February 28, 2010, effective date of his layoff. During his employment at DOP, Appellant held no other positions.

2.3 In the fall of 2009, state revenue forecasts indicated a decrease in state revenues and prompted DOP's Director and Senior Management Team to begin discussions on reductions to services and DOP programs. In November 2009, the Office of Financial Management (OFM) notified DOP that its budget would be cut by $3.5 million. In addition, DOP was tasked with carrying out the Governor's shared services directive.

2.4 In response to the budget cuts and the Governor's directive, DOP prioritized service reductions and developed a reorganization plan that would provide core services, streamline operations and implement a shared services plan. DOP eliminated a number of lines of service, including the Assessment Unit in PSD. Within PSD the reorganization also included eliminating the Executive Recruitment program, expanding services for small agencies, and implementing a hosted recruitment tool.

2.5 DOP began sharing information with employees about the budget cuts, the impending reorganization, and the need to eliminate positions in December 2009. Agency Director Eva Santos and Katie Gerard, the Human Resources Director, provided numerous communications to staff throughout the layoff process to assure that the process was transparent and that staff knew what was expected of them.

2.6 The budget reductions and reorganization resulted in 41 employees being at risk of layoff. Although positions were eliminated, new positions were created to meet the business needs of the new organization. Where possible, employees in the positions being laid off were placed in the newly created positions. In the end, however, some employees were separated from employment.

2.7 By letter dated December 22, 2009, DOP notified each employee in an impacted position that the employee was "at risk" of layoff. Appellant received an at risk letter because his position was being eliminated. The impacted employees were told that their seniority, knowledge and

skills would be considered in identifying layoff options. Employees were asked to provide a resume, state application, or E-recruiting profile including all relevant work experience to be used in determining the options the employee may have. This information was due to the Human Resource (HR) office no later than January 11, 2010.

2.8 By email dated December 30, 2009, DOP asked all employees to verify their seniority date. On January 8, 2010, Appellant confirmed that his seniority date was October 7, 2002.

2.9 By email dated January 11, 2010, DOP's HR office reminded Appellant to submit a resume. By email response dated January 12, 2010, Appellant told HR to use the materials they had on file. These were the materials that Appellant provided when he applied for the Assessment Unit manager position. Appellant did not provide updated information that included his work experience at DOP.

2.10 Prior to the reorganization, DOP had three WMS Band 1 positions. Appellant's position and one other WMS Band 1 position were eliminated. The remaining WMS Band 1 position was the agency's Contracts Administrator. At the time of the layoff, Appellant had less seniority than the incumbent in the Contracts Administrator position. However, before Appellant's layoff became effective, the Contracts Administrator announced she was taking a position in another agency. The Contracts Administrator position became vacant the day after Appellant's layoff became effective. The position was not vacant when Appellant was laid off. Nonetheless, DOP's HR staff compared the material provided by Appellant to the position description for the Contracts Administrator. HR determined that Appellant did not meet the competencies for that position. In part, HR determined that Appellant did not possess three years of recent professional level experience with the state of Washington acquisition and contracting regulations.

2.11 As manager of the Assessment Unit, Appellant was a member of the team that helped develop, review and evaluate Requests for Proposals (RFPs). But he did not manage the contracting process and did not have agency-wide responsibility for administering contracts.

2.12 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) 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) <u>The position being offered as the option is funded and vacant.</u> 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.)

2.13 DOP's Washington Management Service Layoff Policy 6.08, provides, in relevant part:

> Within the layoff unit, a permanent employee scheduled for layoff from a WMS position must be offered the option to take a position that meets the following criteria:
>
> (a) The employee must meet the required competencies for the position.
>
> (b) The WMS position has equal evaluation points as rated through the JVAC. If no option to a position with the same evaluation points is available, DOP will consider other WMS positions with lower evaluation points or general service positions in classes in which the employee has held permanent status, or lower classes in those same class series, in descending salary order. The employee does not have to have held permanent status in the lower class, just within the class series, in order to be offered the option to take a position in the class.
>
> (c) <u>The position being offered as the option is funded and vacant.</u> If no vacant position is available, the position being offered as the option must be occupied by the employee with the lowest retention rating.
>
> If a permanent employee has no option available, DOP must determine if there is an acting position in the layoff unit for which the employee is qualified.

> In some cases, the agency may consider offering an option to a vacant position with a higher JVAC rating.
>
> (Emphasis added.)

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that the agency followed a fair, uniform, and consistent process in implementing the layoff which included notifying employees of the reorganization and impending layoffs, notifying employees of program reductions, and notifying employees of what was expected of them. Respondent asserts that it took steps to assure that the layoff process was transparent, that different messages were not being sent out to different employees, and that employees were aware of the importance of submitting updated resumes or applications containing detailed, current information. Respondent explains that the Contracts Administrator position was not vacant at the time of the layoffs and was not an available layoff option at that time. But HR still reviewed Appellant's qualifications for the position and determined, based on the documents provided by Appellant, that he did not meet the position's qualifications. Respondent argues that throughout the layoff process, many positions were at stake and they had to treat everyone the same. Respondent contends that the agency was invested in outcomes and how employees faired throughout the process. And therefore, the agency was careful not to modify the process or to confer unfair benefits on any of the affect employees. Respondent asks the Board to uphold the layoff and find that the layoff was consistent with the rules and policy and that the layoff option process as it was applied to Appellant was consistent with how options were identified for other employees.

3.2 Appellant argues that HR was on constructive notice that he had contract experience and was interested in the Contracts Administrator position. Therefore, Appellant contends that they should have talked to him about his qualifications for the position. Appellant further argues that his resume indicated that he evaluated grant applications and mentioned his work in the contracting area prior to his employment at DOP. In addition, Appellant argues that DOP was aware that he had worked on DOP's contract for the human resources management system and for the on-line recruiting system. Appellant asserts that he had property rights to continued employment with the

state of Washington and that DOP inappropriately handled the layoff. Appellant contends that Respondent played favorites in the way they created positions and identified layoff options, that they failed to use a consistent process, and that they failed to conduct a job analysis before developing position descriptions for the new positions. Appellant asks that his appeal be granted and that he be offered employment in the next available 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 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.

4.3 On the effective date of Appellant's layoff, the Contracts Administrator position was occupied by an employee with more seniority than Appellant. Therefore, as required by the civil service rules and consistent with DOP's policy, this position was not available as a layoff option for Appellant.

4.4 Appellant argues that Respondent had a responsibility to talk to him and confirm his experience, knowledge and skills before implementing the layoff. Neither the rules nor DOP policy requires this step in the process. However, DOP provided all affected employees, including Appellant, with fair and ample opportunity to provide updated information for consideration in identifying layoff options.

4.5 In Dettling v. Dept. of Social and Health Services, PRB Case No. R-LO-05-002 (2007), the appellant was aware that her application and resume would be used to identify layoff options and that the information she provided needed to be complete. After reviewing the information the appellant provided to the agency, the Board found that the appellant did not completely describe her duties and responsibilities prior to her employment with the Department of Social and Health

Services and that based on the minimal information the appellant provided, the agency correctly determined that she did not meet the qualifications of the position she felt should have been offered to her as layoff option. Here, as in Dettling, even if the Contracts Administrator position had been vacant at the time of Appellant's layoff, based on the information he provided, Respondent correctly determined that Appellant did not meet the qualifications of the position. Respondent had no legal obligation to meet with Appellant prior to making this determination.

4.6 Respondent has established that severe budget reductions and the Governor's shared services directive necessitated the need for an agency reorganization and reduction in positions. Respondent has also established that the agency complied with the applicable rules, regulations and DOP policy in implementing the layoff, including identifying layoff options for Appellant.

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

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Daniel Masden 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