BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

MARGARET GOLLNICK, Appellant, vs. WASHINGTON STATE UNIVERSITY, Respondent.	CASE NO. R-LO-10-001 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, LAURA ANDERSON, Chair. The hearing was held at the Office of the Attorney General in Spokane, Washington, on July 22, 2010. JOSEPH PINZONE, Member, reviewed the record including the file, exhibits and the recorded proceeding, and participated in the decision in this matter.

1.2 **Appearances.** Appellant Margaret Gollnick was present and represented herself. Donna J. Stambaugh, Assistant Attorney General, represented Respondent Washington State University.

1.3 **Nature of Appeal.** This is an appeal of a layoff due to good faith reorganization.

II. FINDINGS OF FACT

2.1 Appellant Margaret Gollnick was a permanent employee for Respondent Washington State University (WSU). 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 10, 2010.

2.2 Appellant was employed as a 75% Research Technician Supervisor for the winter wheat breeding and genetics program. She began her permanent employment with WSU in December 1999. Her layoff was effective February 8, 2010. At the time of her layoff, Appellant was supervised by Dr. Arron Carter.

2.3 In March 2007, WSU requested an external review of the WSU Wheat Breeding Program. Such reviews are common and are conducted by external members of the wheat industry. The March 2007 review was conduct by individuals from the states of Texas, Kansas and California. Dr. Richard Koenig, Department Chair for WSU's Crop and Soil Sciences, was given a copy of the report in October 2008 when he became chair of the department. The report made a number of recommendations including that the winter wheat program needed to refocus on the quality of winter wheat. Dr. Koenig credibly testified that the focus of the program had been on producing high yielding varieties of wheat rather than on the quality of the wheat. During this time, Dr. Jones was the winter wheat breeder and Appellant's supervisor.

2.4 In spring of 2009, Dr. Jones took a position in Mount Vernon, Washington. Dr. Koenig explained that when Dr. Jones moved to the Mount Vernon program, it was an opportunity to move both the winter and the spring wheat programs based in Pullman forward in a new direction. Following a nationwide search, in July 2009, Dr. Arron Carter was hired as the winter wheat breeder and Associate Professor for WSU's Crop and Soil Sciences.

2.5 Dr. Carter was on a tenure track and as such, was given broad latitude in determining the direction and structure of the program, including the staffing he believed was needed to accomplish program goals. Shortly after taking over the winter wheat program, Dr. Carter redrafted the position description for Appellant's position as well as the descriptions for other staff.

2.6 Beginning in August 2009, Dr. Carter did a more in-depth review of the program to determine the direction in which he needed to take the program in order to meet the expectations of his supervisors. He discussed his objectives for the program with Dr. Koenig. Dr. Koenig felt that Dr. Carter's objectives were consistent with the recommendations of the external review committee's report.

2.7 Dr. Carter credibly testified that his objectives shifted the program in a new direction by building the research focus of the program while maintaining a field component. Dr. Carter reviewed the work performed by Appellant's position, as well as the other classified positions in the program, and determined that he needed positions that were more advanced and that were able to develop hypotheses, gather and analyze data, draw conclusions, developed grant proposals, and conduct marker assisted selection and early generation end use quality assessment. In addition, Dr. Carter felt that as the administrator of the program, he should be performing some of the duties that had been assigned to Appellant's position such as managing the program budgets and finalizing reports, grants and presentations. And, he felt that the faculty should be responsible for purchasing and managing the time slip employees which had been responsibilities of Appellant's position.

2.8 After identifying the needs of the program and determining how it should be restructured, Dr. Carter reviewed his plan with Dr. Koenig. Dr. Koenig discussed the plan with his supervisor, Dr. Ralph Cavalieri, Associate Dean for the College of Agriculture, Human and Natural Resource Sciences and Director of the Agricultural Research Center. Drs. Koenig and Cavalieri supported Dr. Carter's reorganization plan. Dr. Carter worked with WSU's Human Resource Services staff to determine the appropriate allocation of the positions needed to advance the program. It was determined that Appellant's classified position would be focused on planning research methods and protocols rather than on carrying out research, and therefore, it should be exempt. As a result, Appellant's classified position was abolished.

2.9 By memorandum dated January 21, 2010, Dr. Cavalieri notified Appellant of her layoff. In the memo, Dr. Cavalieri indicated that due to a good faith reorganization, Appellant's position was being abolished. By letter dated February 2, 2010, Suzette Yaezenko, Human Resource Consultant, confirmed Appellant's layoff effective February 8, 2010. Ms. Yaezenko conducted a search for layoff options for Appellant and found that no options were available. As requested by Appellant, her name was placed on the layoff lists for the classifications of Research Technologist Supervisor and the Research Technologist 3 at 75% FTE.

2.10 Through her questioning of witnesses, Appellant suggests there was an ulterior motive for the abolishment of her position. For example, she made reference to an issue she raised about overtime being worked by an employee who was younger than 18 years of age; she wondered about a delay in the paperwork moving her position from 75% to 100%; she expressed her concerns about Dr. Carter's inexperience because he was hired right out of graduate school; and she alluded to Dr. Carter having ulterior motives for using her computer and the computer used by other staff. However, a preponderance of the credible evidence supports the finding that Dr. Carter conducted a thorough review of the needs of the program and developed a restructuring plan. The plan was approved by Dr. Carter's superiors and he sought the assistance of Human Resource Services to properly allocate the restructured positions. Further, the need for a restructured program was supported by the independent, external review report that was conducted prior to Dr. Carter's hire as the winter wheat breeder.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that in order to move the program forward, Dr. Carter looked at the mix of staff and the duties he needed them to perform, reviewed his restructuring plan with his supervisors and human resources staff who agreed with the plan, and as a result, the program was restructured. Respondent contends that due to the organizational change, Appellant's position was excess. Consequently, she was notified of the layoff of her position and that there were no available options for her. Respondent asserts that the reorganization was forthright, fair, and based on sound business reasons and external pressures. Respondent further asserts that the reorganization was necessary and that appropriate layoff procedures were followed. Therefore, Respondent asks that Appellant's layoff be affirmed.

3.2 Appellant argues that within a month of becoming her supervisor, Dr. Carter rewrote her position description assigning her new duties and tasks which she believes constituted reorganization. Appellant further argues that six months after her position description was rewritten, she was told that her position was abolished due to a good faith reorganization. Appellant asserts that an injustice was done under the illusion of a good faith reorganization. Appellant

explains that she dedicated her entire professional career to WSU. She further explains that she is a loyal, hard working employee, and that it is a great loss to no longer be a part of the WSU community.

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 Respondent has established that Dr. Carter followed a deliberative process to reorganize and refocus the efforts of the winter wheat program. Respondent has shown that Dr. Carter, with the approval of his superiors and the assistance of Human Resource Services, determined that to accomplish the goals of the program, Appellant's position could be better used if it was exempt. Respondent has proven that the restructuring of the winter wheat program was a good faith reorganization.

4.4 In Talbott and Hobson v. Dep't of Social and Health Services, PAB Case Nos. L81-2 & L81-3 (Murphy, Hrgs, Exam.)(1981), the hearings examiner found that the reorganization was effected after consideration of many factors affecting the efficiency of the overall unit, and not designed to inconvenience the two appellants whose positions were transferred as a result of the reorganization and consolidation.

4.5 It is not our function to determine whether the reorganization proposal itself was right or wrong, but only to determine if the reorganization was done in good faith. George v. Dep't of Agriculture, PAB No L94-026 (1996).

4.6 In Amundsen v. Dep't of Labor and Industries, PAB Case No. L85-1 (1985), aff'd (Thurston Co. Super. Ct. No. 85-2-02185-9 (1987), the appointing authority determined, upon the recommendation of an assistant, that to accomplish the revised goals of his administration, a

position could be better used if it was reallocated to another class. The Personnel Appeals Board, predecessor to this Board, held that it is not the board's function to probe the mental processes by which the decision was reached, or to substitute its judgment for that of the agency when there is a showing of reasonable basis for such decision. Here as in Amundsen, we will not substitute our judgment for that of the employer in regard to which positions to eliminate.

4.7 We find no credible evidence of an ulterior motive for Appellant's layoff. To the contrary, we find that Appellant was a hardworking, dedicated, conscientious employee and that her work and contributions to the wheat program were appreciated. In Van Jepmond v. Employment Security Dept., PAB No. L96-15 (1988), aff'd Thurston Co. Super. Ct. No. 88-2-00274-3 (1989), the Personnel Appeals Board determined that when a lack of funds is demonstrated, a reduction in force may be upheld even when there is a showing of the possibility of another motive, such as personal animosity, for abolishing a position. In this case, following the reasoning used in Van Jepmond, when a showing of a reasonable basis for reorganization is demonstrated, a layoff may be upheld even when there is a showing of the possibility of another motive for abolishing a position.

4.8 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 Margaret Gollnick is denied.

DATED this _____ day of _____, 2010.

WASHINGTON PERSONNEL RESOURCES BOARD

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LAURA ANDERSON, Chair

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JOSEPH PINZONE, Member