

BEFORE THE PERSONNEL RESOURCES BOARD
STATE OF WASHINGTON

TANYA NOZAWA,

Appellant,

vs.

DEPARTMENT OF CORRECTIONS,

Respondent.

CASE NO. R-LO-10-015

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, DJ MARK, Chair, and JOSEPH PINZONE, Vice Chair. The hearing was held on September 15, 2011, in Olympia, Washington.

1.2 **Appearances.** Appellant Tanya Nozawa was present and was represented by Michael Hanbey, Attorney at Law. David Slown, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal of a layoff due to a lack of funds. Appellant disputes the basis for the layoff.

II. FINDINGS OF FACT

2.1 Appellant Tanya Nozawa was 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 November 15, 2010.

2.2 Appellant was employed as a Graphic Designer Senior in the Communications Unit within the Government, Community Relations and Regulatory Compliance Division at DOC's headquarters office. She began her employment with DOC in January 1987.

1
2 2.3 Rowlanda Cawthon joined the Communications Unit on October 1, 2009 in a temporary
3 appointment. Ms. Cawthon was hired as a Communications Consultant 5. Appellant testified that
4 Ms. Cawthon was hired during a DOC hiring freeze. J. Scott Blonien, the Assistant Secretary of
5 the Government, Community Relations and Regulatory Compliance Division which included the
6 Communications Unit, recalled that there was a hiring freeze when Ms. Cawthon was hired but
7 testified that he granted a request for exemption to fill the position. Mr. Blonien credibly testified
8 that the Communications Consultant 5 position was needed to support the core function of the
9 agency and to support DOC Secretary Eldon Vail's direction that open communications
10 regarding events occurring within DOC such as an execution, budget cuts, and amendments in
11 the rules for interstate transfers, were critical to the agency.

12
13 2.4 Marcos Rodriguez, Human Resources Operations Manager for DOC, credibly testified
14 that there is a difference between a temporary position and temporary appointment. Mr.
15 Rodriguez explained that the Communications Consultant 5 position was a permanent funded
16 position that was filled with a non-permanent appointment. Mr. Rodriguez further explained that
17 a non-permanent appointment can be used for a number of reasons such as to fill a gap when a
18 position becomes vacant, during the recruitment process for a vacant position, or during a
19 workload peak. Mr. Rodriguez testified that a temporary appointment is a permanent position
20 that can last for 12 to 24 months.

21
22 2.5 In 2010, the Governor directed across-the-board spending reductions of 6.3 percent for all
23 general-fund state agencies which included DOC. By memorandum dated September 30, 2010,
24 Eldon Vail, Secretary of DOC, informed staff of the reduction and of some of the steps that DOC
25 was taking to address the reduction. In his memo, Secretary Vail indicated that he had met with
26 his Executive Staff in making the reduction decisions.

27
28 2.6 The Government, Community Relations and Regulatory Compliance Division contained
29 nine units. Mr. Blonien credibly testified that he met with the unit leads within the division to

1 identify which functions they performed that fed into the core functions of the agency. They
2 discussed the impacts of the cuts on the division and determined which functions could be
3 reduced or eliminated with the least impact to the agency mission. As a result of these
4 discussions, Mr. Blonien eliminated Appellant's Graphic Designer Senior position as well as a
5 videographer position. In addition, there were a number of vacant positions within the division
6 that were not filled.

7
8 2.7 When the layoff process began, Appellant's direct supervisor was Belinda Stewart. Ms.
9 Stewart met with Appellant in September 2010 and informed her that her position was going to
10 be eliminated. Subsequently, Appellant provided information to the human resources layoff team
11 including a Skills, Abilities, and Experience Worksheet. In determining options for Appellant,
12 layoff team considered the information Appellant provided as well as her work history with the
13 agency and her seniority date to determine, in descending order, her formal layoff option.
14 Appellant was offered a formal layoff option to a Correctional Specialist position.

15
16 2.8 WAC 357-46-015 states: "The employer must have a layoff procedure. When the
17 employer determines a layoff is necessary, the procedure must be followed. The layoff procedure
18 must be available either electronically or in writing to employees subject to layoff."

19
20 2.9 DOC Policy 810.810, Layoff-Washington General Service, is the layoff procedure for the
21 agency's general service employees. The policy identifies the county in which an employee's
22 permanent workstation is located as the first layoff unit. The policy further provides, in relevant
23 part:

24 I. General Requirements

25 . . .

26 C. Non-permanent employees will be separated from employment before
27 probationary employees. A permanent state employee will not be separated
28 from state service through a layoff action without being offered positions s/he
29 had the skills and abilities to perform within his/her current job classification
within the layoff unit currently held by non-permanent and probationary
employees.

...

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.

....

2.10 By letter dated October 25, 2010, Appellant was notified that her position was being eliminated as part of the 6.3 percent across-the-board spending reduction. Her layoff was effective November 30, 2010. In addition, the letter notified Appellant that her formal layoff option was to a Corrections Specialist 1 position at Cedar Creek Corrections Center. Cedar Creek Corrections Center is within Thurston County.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent asserts that DOC implemented Appellant's layoff appropriately and in compliance with DOC policy and the civil service rules and that she was offered the appropriate

1 layoff option. Respondent argues that the agency engaged in a thoughtful process in considering
2 which functions to eliminate without harming core services and that while graphic design was nice
3 to have, it was not an essential or core function. Respondent contends that the layoff was
4 necessitated by the 6.3 percent budget reduction, that the layoff process and rules were followed,
5 that Appellant was provided the correct formal layoff option, and that the layoff action should be
6 affirmed.

7
8 3.2 Appellant argues that there was no lack of funds and asserts that individuals in non-
9 permanent positions should have been considered first in the layoff. Appellant contends that
10 Respondent failed to prove that the Communications Division was subject to the 6.3 percent
11 reduction. Appellant asserts that her layoff was premised on the appearance of a reduction rather
12 than on an actual reduction in division funds. Appellant further asserts that hiring Ms. Cawthon
13 into a non-permanent appointment on October 1, 2009, resulted in a greater expense in salary
14 than if she had been let go and Appellant's position had been retained. Appellant argues that her
15 appeal should be granted and that she should be reinstated to a position with all back pay and
16 benefits.

17 **IV. CONCLUSIONS OF LAW**

18 4.1 The Personnel Resources Board has jurisdiction over the parties and the subject matter.
19

20 4.2 In a hearing on appeal from a layoff action, Respondent has the burden of proof of
21 supporting both the basis for the action taken and compliance with the civil service laws or rules
22 governing the action. WAC 357-52-110.
23

24 4.3 Respondent met its burden of proof that the 6.3 percent across-the-board reduction
25 necessitated agency-wide layoffs including the elimination of Appellant's position. Respondent
26 further established that DOC Policy 810.810 and the applicable civil service rules were followed
27 and that the appropriate layoff option was identified and offered to Appellant. Neither the DOC
28 policy nor the civil service rules require that employees in non-permanent appointments be laid off
29

1 before those in permanent appointments. Rather, the policy requires that non-permanent employees
2 be separated before probationary employees. There is no evidence in the record that Ms. Cawthon
3 was a non-permanent or a probationary employee at the time of Appellant's layoff. Further, because
4 an exemption was approved to fill the Communications Consultant 5 position, there is no evidence
5 that Ms. Cawthon's appointment was invalid due to the DOC hiring freeze.

6
7 4.4 In instituting a RIF for lack of funds, agencies have discretion to determine in good faith
8 which positions to eliminate. Van Jepmond v. Employment Security Dep't, PAB No. L86-15
9 (1988), aff'd Thurston Co. Super. Ct. No. 88-2-00274-3 (1989). The position to be eliminated
10 and those to be retained when the budget is reduced is left to the good faith judgment of
11 management. University of Washington v. Harris, 24 Wn.App., 228, 230, 600 P.2d 653 (1979)
12 rev. denied 93 Wn.2d 1013 (1980). Respondent was within its right to review its existing
13 programs and reduce staff as it deemed appropriate. Sinclair v. Dep't of General Administration,
14 PAB No. L93-023 (1995).

15
16 4.5 Respondent has met its burden of proof and the appeal should be denied.

17
18 **V. ORDER**

19 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Tanya Nozawa is denied.

20
21 DATED this ____ day of _____, 2011.

22 WASHINGTON PERSONNEL RESOURCES BOARD

23
24 _____
DJ MARK, Chair

25
26 _____
JOSEPH PINZONE, Vice Chair