BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

BECKY JASPER, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. RIF-02-0005 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at the office of the Attorney General, Evergreen Conference Room, Spokane, Washington, on March 11, 2003.

1.2 **Appearances.** Becky Jasper appeared *pro se*. Donna Stambaugh, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal of a reduction in force due to a lack of funds.

1.4 **Citations Discussed.** WAC 358-30-170; 356-56-550; O'Gorman v. Central Washington University, PAB No. L93-018 (1995); Van Jepmond v. Employment Security Dep't, PAB No. L86-15 (1988), aff'd Thurston Co. Super. Ct. No. 88-2-00274-3 (1989); Wilkes v. Centralia

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College, PAB No. 3678-L2 (1994); Cowden v. University of Washington, PAB No. L93-038 (1994) (Condon, Hrgs, Exam.).

II. FINDINGS OF FACT

2.1 Appellant Becky Jasper was a part-time Regional HRD Trainer (Washington Management Service position) and permanent employee for Respondent Department of Social and Health Services in the Community Services Division Region 1 Office. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on April 4, 2002.

2.2 Appellant has been employed by the state of Washington for approximately 21 years. Appellant began her state employment as a Caseworker 3. She also held permanent status as a Social Worker 2 and 3. Appellant later became employed as a part-time Trainer for Region 1 (WMS position). In approximately November 2000, Appellant began to perform work as a Childcare Coordinator, however, remained classified as a Trainer.

2.3 Region 1 consists of nine major offices, including Spokane Southwest/Central, Spokane Valley, Spokane North, Omak, Colville, Wenatchee, Clarkston/Colfax, Moses Lake/Othello and Okanogan. During the timeframe pertinent to this appeal, Kathleen Shober was the Regional Administrator for Region 1 Community Services Division. Ms. Shober was the appointing authority. Ms. Shober is currently retired, and she did not testify during this hearing.

2.4 John Tyson is the Business Manager for Region 1. Mr. Tyson transferred from DSHS Headquarters to Region 1 on April 1, 2001. Ms. Shober and Mr. Tyson were "attempting to wipe

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out the deficit" which existed in Region 1's budget for FY 01. When FY 01 ended, Region 1 was still in a deficit, however, the deficit was greatly reduced from the original projection.

2.5 On September 18, 2001, Kathleen Brockman, Director of the Division of Management and Operations Support, sent a memorandum to Regional Administrators, Regional Business Managers, and Economic Services Administration outlining the Fiscal Year 2002 (FY02) operating budgets for the regions. The total FY 02 budget for Region 1 was decreased by $724,667 from FY 01 actuals. Region 1 also suffered an 18.25 decrease in FTEs from the FY 01 actuals (which was a 26 FTE reduction from the 555 FTEs allotted for FY 01). At that point in time, Region 1 Budget Summary Sheets reflected the following monthly variances (dollars overspent):

July 2001:	($147,669)
August 2001:	($255,677)
September 2001:	($128,410)

(Note: data for a given month is usually not reported until the middle of the following month; for example, the January 2002 spreadsheet is prepared in mid February 2002).

2.6 To implement the new budget, Mr. Tyson helped identify where Region 1 could make cuts, which included offering employees leave without pay in lieu of layoff. Mr. Tyson proposed to Ms. Shober that she eliminate a number of positions.

2.7 On November 30, 2001, Ms. Shober wrote to Michael Masten, Director of the Community Services Division (CSD), to request approval to RIF staff from the Region 1 CSD. Six of the staff held Washington Management positions and two held Washington General Service positions. The necessity of these RIFs was based on November 01 budget projections that showed Region 1 would be overspent by $171,960 by the end of FY 02.

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2.8 In late December 2001, Mr. Tyson provided Ms. Shober with Budget Status and Projections using budget data available from June 30, 2001 through December 2001. Regarding Salaries and Benefits, Mr. Tyson wrote:

> FRS will show us $24,000 overspent; however, when the recoveries from FQHC outstations are collected, we will actually be $70,000 to the "good" and the bottom line will then be $27,000 overspent by the end of the year if the pattern holds.
>
> The Region has allotted only 509 FTEs internally, against a headquarters allotment of 529; we did this for several reasons. We knew that we did not receive ample funding for the staff months and we knew that telecommunications and copy machine rentals would be higher than we were provided in allotments. In order to get to "zero" we have offered LWOP in lieu of RIF (resulting in staffing of approximately 501 in November and December, contributing to our recovery) and will be separating six staff when Personnel runs its course. We expect these people will be off our payroll by the end of March, which means we will recover an additional 18 staff months at about $5,000 per staff month (all region office higher-paid staff), or $90,000.

2.9 In a letter dated December 28, 2001, from Ms. Shober to Phil Wozniak, Acting Director for the Human Resources Division, she identified the WMS positions she intended to eliminate effective February 28, 2002. Ms. Shober named the incumbents in the six positions, which included Appellant.

2.10 Budget summary sheets for the months of October, November and December 2001 reflect the following negative variances:

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	Current month:	Projected Variance as of June 2002
October 2001:	($110,598)	($432,382)
November 2001:	($141,889)	($171,960)
December 2001:	($108,551)	($144,083)

2.11 By late December 2001, Appellant was aware that her position was targeted for elimination. Appellant began to update her employment application and her classification questionnaire listing her duties as a Childcare Coordinator.

2.12 On January 4, 2002, Lisa Kelling, Ms. Shober's assistant, notified several staff, including Appellant, that the department had received the final approval to process the RIF requests. Ms. Kelling requested that the employees submit current state job applications, resumes and updated position descriptions to the agency's RIF coordinator.

2.13 Randi Burk is the DSHS RIF Coordinator. Ms. Burk reviewed Appellant's employment history to determine what layoff options were available to Appellant. Based on Appellant's education, work history and experience, Ms. Burk reviewed occupational codes 350 (education management), 400 (employment programs/services management) and 600 (social services program management). Appellant's Childcare Coordinator duties were covered under occupational code 600. Ms. Burk issued a memo to all DSHS Assistant Secretaries informing them of the need to RIF a WMS employee. Attached to the memo was a list of potential position options identified within each of the administrations, Appellant's job application, and a job description of the WMS Trainer position held by Appellant. The Assistant Secretaries were asked to review the options listed and determine whether Appellant qualified for any of the positions identified based on the information provided. However, Ms. Burk was unable to identify any part-time WMS positions. Ms. Burk eventually identified an option part-time Social Worker 3 position (general service position).

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2.14 Budget projections through the end of January 2002 showed the monthly variance for Region 1 at $56,325 under spent for the month and a surplus of $283,368 projected through June 2002.

2.15 Ms. Shober had the January 31, 2002 budget sheet available for her review by February 20, 2002. Mr. Tyson did not advise Ms. Shober to "back off on the rifs." Mr. Tyson did not believe the $56,000 was "safe" because historically, DSHS headquarters "took money" from Region 1 to "bail out" other regions that were overspent.

2.16 By letter dated February 25, 2002, Kathleen Shober, Regional Administrator for Region 1 Community Services Division, informed Appellant that her position as a part-time Regional HRD Trainer (Washington Management Service position) was "being reduced in force." Ms. Shober wrote that the action was necessary due to a lack of funds and would become effective at the close of the work shift on March 12, 2002. Ms. Shober offered Appellant a part-time Social Worker 3 position as her formal RIF option. Appellant subsequently accepted the option.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent asserts that a preponderance of the evidence established that the RIF occurred as a result of a lack of funds. Respondent argues that the appointing authority used her discretion to prioritize and determine what positions would be eliminated and that Ms. Shober chose to eliminate positions that did not provide direct services to clients. Respondent also asserts that Appellant had no RIF options to another WMS position but that she was offered and accepted a part-time social worker position. Respondent argues that it complied with the rules and that the RIF should be upheld.

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3.2 Appellant argues that the agency's budget for FY 02 did not demonstrate a lack of funds. Appellant asserts that the FTEs planned for in the FY 02 budget remained constant and were funded, and there was not a decrease in FTE allotments in the FY 02 year as argued by Respondent. Appellant also argues that her duties changed drastically while she was performing work as the Childcare Coordinator but that Ms. Shober refused to acknowledge her new duties and failed to accept an updated classification questionnaire.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In an appeal of a reduction-in-force, Respondent has the burden of proof. WAC 358-30-170. Respondent has the burden of proving by a preponderance of the credible evidence that it laid the employee off for the reason stated in the RIF letter. O'Gorman v. Central Washington University, PAB No. L93-018 (1995).

4.3 This Board continues to hold that management has discretion in determining which positions to eliminate and which budgets to reduce when faced with a demonstrated lack of funds. 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). In Wilkes v. Centralia College, PAB No. 3678-L2 (1994), the Board reversed the hearings examiner and held that Respondent had sustained that there was a lack of funds and that the decision as to where to make budget cuts was the

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responsibility of the Respondent. In Cowden v. University of Washington, PAB No. L93-038 (1994) (Condon, Hrgs, Exam.), the Board held that it could not second-guess management decisions with respect to a layoff when there is a documented lack of funds.

4.4 The issue here is whether Respondent complied with WAC 356-56-550(1) when it laid off Appellant because of a lack of funds. WAC 356-56-550, which governs reduction in force procedures for WMS employees, indicates as follows:

> (1) Washington management service employees may be separated due to reduction in force in accordance with the statutes and the agency's reduction in force procedures after at least fifteen calendar days' notice in writing, without prejudice, because of lack of funds. . .

4.5 After reviewing the budget summary sheets admitted into evidence, we conclude that Respondent has failed to provide a preponderance of persuasive evidence to support that a lack of funds existed and that Appellant's reduction in force was necessitated because of a lack of funds. The evidence presented supports that Region 1 was in a deficit when Ms. Shober identified the need for layoffs on December 28, 2001. However, when Appellant's position was eliminated, Region 1 had a projected variance of $283,368 through June 2002 and a monthly surplus of $56,325. Respondent provided no testimony from the appointing authority as to what, if any, impact these new numbers had on the impending layoffs. Respondent has not met its burden of proof that the elimination of Appellant's position complied with the requirements of WAC 356-56-550.

4.6 Respondent has not met its burden of proof that a lack of funds existed and the appeal of Becky Jasper should be granted.

V. ORDER

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NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Becky Jasper is granted.

DATED this _____ day of _____, 2003.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

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