BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

WARREN STEPHENSON, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. RIF-05-0003 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this appeal came on for hearing before the Personnel Appeals Board, BUSSE NUTLEY, Vice Chair. The hearing was held at the Liquor Control Board Distribution Center, 4401 East Marginal Way South, Seattle, Washington, on April 21, 2006. GERALD L. MORGEN, Member, listened to the recorded proceedings, reviewed the file and exhibits and participated in this decision.

1.2 **Appearances.** Appellant Warren Stephenson was present and was represented by Kirk Hanson, Senior Field Representative for the Washington Federation of State Employees. Franklin Plaistowe, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a reduction in force due to curtailment of work.

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II. FINDINGS OF FACT

2.1 Appellant Warren Stephenson is a permanent employee for Respondent Department of Social and Health Services. 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 13, 2005.

2.2 Appellant began his employment with DSHS as a Custodian in November 1997. In February 1999, Appellant began working as a Laborer for the Division of Children and Family Services (DCFS). Prior to June 2004, DCFS leased the Lanes Building in Seattle, Washington. As the only tenant in the building, DCFS was required to provide its own maintenance and custodial services. As a Laborer, Appellant performed a variety of maintenance, grounds-keeping and custodial services in the 62,000 square foot Lanes Building, including:

> 55%: Repairs to building fixtures, interior/exterior paint touch-ups, reconfiguring work cubicles, installing keyboard trays, tearing down and setting up modular panels;
>
> 15%: Cleaning, vacuuming, dusting and emptying trash bins, restocking bathrooms, removing debris from the parking lot and the landscaped areas surrounding the Lands Building;
>
> 10% Moving furnishings, office materials and supplies between various locations in the building, loading and unloading material, supplies and equipment used in the building;
>
> 10% Cleaning and maintaining state cars and driving the cars to the state motor pool for regular maintenance and repairs;
>
> 10% Other duties as necessary.

2.3 A number of years ago, DCFS learned that it would have to vacate the Lanes Building because it was being demolished to make room for a Sound Transit route. DCFS management

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worked with Department of General Administration (GA) to develop specifications for the type of facilities necessary to house its programs and employees. Based on those specifications, which included geographical location of clients served by DCFS, GA placed bids on a variety of buildings in the Seattle/King County area, and the resulting options were provided to DSHS management. Jacquelyn Buchanan, Regional Administrator, credibly testified that all building lease options provided to DCFS management by GA included maintenance and custodial services as a part of the lease agreements. GA did not provide DCFS with a facility that could house all its programs in one central location. Subsequently, the department entered into various lease agreement that resulted in the decentralization of DCFS's various programs and the transfer of employees to a number of different buildings throughout the Seattle area.

2.4 By mid-year 2004, the Lanes Building was completely vacated. As a result of the move, Appellant was extremely busy moving furniture, setting up cubicle stations, installing new keyboard trays, readjusting desk heights, and providing general assistance to staff setting up their new workstations. Appellant's work location also varied from building to building.

2.5 After the move was completed and work stations became established, the work available for Appellant to perform severely diminished, and he was no longer performing routine maintenance or custodial work to the buildings. To provide Appellant with work, the department assigned him to act as a "courier" between the various buildings delivering payments, which comprised about 50 percent of his work time. However, that was a temporary measure while social workers became accustomed to using the interoffice mail system to deliver their payment requests. Mail delivery was not included in Appellant's job class or in his classification questionnaire and there was never any plan to make that a permanent part of his position.

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2.6 Other changes that occurred after the decentralization of DCFS to various building included appointing Administrative Assistant Evelyn Carter to function as a "building management coordinator." In that capacity, Ms. Carter was the central point of contact for employees requesting any maintenance requests that were the responsibility of the building owners to perform. These type of requests included light bulb replacements, phone jack installations, or unexpected custodial cleanups.

2.7 Paula Williams, Acting Business Manager/Regional Contract Manager, estimated that less than 25 percent of Appellant's laborer work existed a year after the move from the Lanes Building.

2.8 By letter dated January 20, 2005, Randi Burk, Manager of Administrative Services, notified Greg Devereaux, Executive Director of the Washington Federation of State Employees, that DSHS was going to undertake a reduction in force of Appellant's position due to a curtailment of work.

2.9 By letter dated February 28, 2005, Ms. Buchanan, the appointing authority, notified Appellant that his Laborer position had been eliminated due to a curtailment of work effective at the close of his work shift on March 15, 2005. Based on Appellant's employment history and positions available, the department offered Appellant a formal RIF option to a vacant Custodian position as an option in lieu of layoff. On March 3, 2005, Appellant accepted the Custodian position.

2.10 Appellant disputes that a lack of work existed, and he presented testimony from Clerical Supervisor Greg Berry and Office Assistant 2 James Kirkwood, who both testified the department used Labor Ready services on a few occasions to perform manual labor around the office since Appellant's layoff. Mr. Berry also testified that at times he is asked by other staff to help with lifting heavy items.

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2.11 Ms. Williams acknowledges that the need for someone to perform manual labor continues to arise occasionally and that at times she and other staff may move or rearrange office furniture on their own. Ms. Williams further testified that the department now asks staff to submit e-mail requests for manual labor tasks, such as moving heavy items, and when a minimum of eight hours of work is accumulated, the department makes arrangements with the Millionaire's Club, a company that provides temporary staffing for manual labor. Ms. Williams further testified that the department has not contracted with Labor Ready and has only used the Millionaire's Club twice since Appellant's layoff to clear out a storage facility and move some office furniture. On one of those occasions, the department paid $11 per hour for a total of eight hours and on the second occasion, two workers were hired for a total of eight hours. Ms. Williams also testified that due to a mandatory state contract, the department purchases all new office furniture from Correctional Industries. In those cases, the furniture is delivered and setup by two inmates and a supervisor. In addition, keyboard tray installations are now included with the new trays.

2.12 The evidence in the records shows that some laborer-type work existed after the Lanes Building was closed and the DCFS programs were distributed to different buildings. However, after reviewing the exhibits and testimony, we find that the work was infrequent and insufficient to maintain a fulltime, or, even a part-time, laborer position.

2.13 WAC 356-30-330, Reduction in force-Reasons, regulations-Procedure, states in relevant part:

> (1) Employees may be separated in accordance with the statutes and the agencies' approved reduction in force procedures after at least fifteen calendar days' notice in writing, without prejudice, because of lack of funds or curtailment of work, or good faith reorganization for efficiency purposes . . .
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> . . . .

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III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that as of the decentralization of DCFS to various buildings with leases that included maintenance, Appellant's work significantly diminished and resulted in there being insufficient work to support the Laborer position. Respondent argues that although Appellant was allowed to deliver interoffice mail, that specific duty was only a temporary measure to occupy his work time and was appropriately removed once employees started using the interoffice mail system to deliver mail to the other buildings. Respondent asserts that a legitimate curtailment of work led to the elimination of the Laborer position and Appellant's reduction in force. Respondent further asserts there is no dispute that the option offered to Appellant was appropriate in accordance with the WACs and argues that the layoff should be affirmed.

3.2 Appellant disputes that a lack of work existed and contends a great majority of the work he previously to performed is frequently done by other employees and by contractors. Appellant asserts that while the Lanes Building no longer exists, DCFS employees who change working stations or newly hired employees continue to require cubicle reconfigurations and keyboard tray installations. Appellant further asserts that his mail duties were not included in his classification questionnaire, which was extremely outdated when the layoff occurred. Appellant argues the department failed to follow the merit system rules and that the Board should find the curtailment of work did not exist and that he should be fully reinstated.

IV. CONCLUSIONS OF LAW

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

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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 Respondent was within its right to review its existing programs and reduce staff as it deemed appropriate. Sinclair v. Dep't of General Administration, PAB No. L93-023 (1995).

4.4 The evidence in this case establishes that a year after the various DCFS programs were relocated to other buildings with leases that included maintenance and custodial services, the work assigned to the Laborer position was severely curtailed and there was insufficient manual and grounds keeping work to support retaining the position. We are not persuaded, as Appellant contends, that the curtailment of work was the direct result of the department hiring temporary laborers to perform unskilled work, which in this case only amounted to a total of 24 hours on two occasions. This evidence, in fact, further supports the department's position that a shortage of work existed. Therefore, Respondent has met its burden of proving that Appellant's layoff was the result of a lack of work. We conclude, therefore, that there was a legitimate and significant decline in work that resulted in the elimination of the Laborer position held by Appellant.

4.5 Respondent has met its burden of proof that Appellant's layoff was the result of a curtailment of work, and that the reduction in force was carried out in compliance with the requirements of WAC 356-30-330. Therefore, the appeal of Warren Stephenson should be denied.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Warren Stephenson is denied.

DATED this _____ day of _____, 2006.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Busse Nutley, Vice Chair

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Gerald L. Morgen, Member

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