BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

FRED VALDEZ, Appellant, v. EMPLOYMENT SECURITY DEPARTMENT, Respondent.	Case No. RIF-05-0012 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, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member. The hearing was held at the Department of Social and Health Services, Region 2 in Yakima, Washington, on April 18, 2006.

1.2 **Appearances.** Appellant Fred Valdez was present and represented himself *pro se*. Cathleen Carpenter, Assistant Attorney General, represented Respondent Employment Security Department.

1.3 **Nature of Appeal.** This is an appeal from a reduction in force due to lack of funds and good faith reorganization.

II. FINDINGS OF FACT

2.1 Appellant was a permanent employee for Respondent Employment Security Department. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated

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Olympia, Washington 98504

thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on June 30, 2005.

2.2 Appellant began his employment with the Employment Security Department (ESD) as a WorkSource Specialist 3 on December 1, 1992. Appellant was a WorkSource Specialist 4 at the time he was notified of his reduction in force.

2.3 On April 19, 2005, the ESD "Morning News" alerted employees that an upcoming reduction in force was expected to involve approximately 180 positions as a result of a reduction in WorkFirst job search funding. The WorkFirst program incurred a ten million dollar program cut that affected WorkSource Specialist positions statewide.

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2.4 Appellant worked in the Yakima WorkSource/WorkFirst Office; however, Appellant's layoff unit was all of Yakima County. In June 2005, Regional Administrator Larry Sanchez was responsible for overseeing the WorkSource Centers of 21 counties in Eastern Washington, including Yakima County. Mr. Sanchez reviewed the caseloads assigned to each of the WorkFirst Offices in his region to determine where cuts would have the least impact to the program. In Yakima County, Mr. Sanchez determined that two of the thirteen positions in the Yakima office could be cut but that all three positions in the Sunnyside office were necessary to handle the caseload in that area.

2.5 In the Yakima County layoff unit, there were two less senior employees than Appellant in his job classification. For demonstrative purposes we have identified the positions as follows:

Appellant: Position Y12

The least senior employee physically working in Yakima: Position Y13

The employee less senior than Appellant physically working in Sunnyside but designated to Yakima: Position S3/Y14

2.6 Based on the evidence presented, we find that fourteen positions were actually assigned to the Yakima office and two positions to the Sunnyside office, despite the physical work locations of the employees in those positions.

2.7 When the department implemented the reduction-in-force action and determined that two positions within Appellant's classification (Y12 and Y13) could be eliminated from the Yakima office, it failed to recognize that the position (S3) of an employee working in the Sunnyside office, who was less senior than Appellant, was actually assigned to the Yakima office (Y14). However, when employees affected by the reduction in force were given bump options, management and

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human resources staff became aware that the WorkSource Specialist 4 position listed in Yakima (Y14) was, in fact, held by an employee physically working in Sunnyside.

2.8 Because employees who had been affected by the statewide reduction in force were already notified that the WorkSource Specialist 4 position in Yakima (Y14) was a bump option, management decided to honor that bump option to the Yakima office. Although the additional position was needed in Sunnyside, management knew that another Yakima employee was nearing retirement and decided to keep the position (Y14) in Yakima and then move the newly vacated position to Sunnyside after the Yakima employee retired.

2.9 WAC 356-30-330(3) provides, in part, that agency reduction-in-force procedures be consistent with the following:

> (b) Clearly defined layoff units, either geographically or by administrative units or both, so as to limit the disruption of an agency's total operation; but not to unduly restrict the options available to employees with greater seniority. . . .
>
> (c) Options in lieu of separation by reduction in force shall be offered by an agency only when such options are in accordance with the agency's reduction in force procedure which has been approved by the director of personnel.
>
> (d) Agency reduction in force procedures shall specify the rights and obligations for employees to accept or reject options offered in lieu of separation due to reduction in force.

2.10 The Employment Security Department Reduction-In-Force Policy states, in part:

> When a reduction is necessary because of lack of funds, the least senior employee(s) within a class funded by the program area in which funding is reduced in a Job Service Center/Office, will be designated first for reduction-in-force, whenever possible.

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2.11 By letter dated June 1, 2005, ESD Commissioner Karen Lee notified Appellant that due to a lack of funds and good faith reorganization for efficiency purposes, his WorkSource Specialist 4 position was going to be affected by a reduction in force, effective June, 30, 2005. Commissioner Lee also enclosed a list of bump options available to Appellant, based on seniority.

2.12 In the Options Section of ESD's reduction-in-force policy, subsection IV(B) states, "[w]hen multiple layoffs occur, . . . option rights will be exercised according to seniority of those desiring the same option." Appellant was provided with a reduction-in-force option form and selected three items in Part A, denoting positions held by permanent employees with less seniority, and one non-permanent option listed in Part B. Appellant's first two options were claimed by employees with more seniority. Appellant was offered and accepted his third bump option, a WorkSource Specialist 3 position in Sunnyside.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues the reduction-in-force action resulted from a lack of funds and good faith reorganization. Respondent asserts the decision to reduce two positions in the Yakima office was a business decision and not personal to Appellant. Respondent further asserts that when faced with the difficult decision of implementing a reduction in force, management has the discretion to determine which positions to cut based on the program needs. As a result, Respondent contends management made the decision to reduce positions in Yakima rather than Sunnyside because the Sunnyside office needed all three positions to meet the specific needs of the clientele in that area. Respondent further argues that Appellant received one of the bump options he selected and asserts the department offered him that option in accordance with the agency's reduction-in-force policy.

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3.2 Appellant argues the department did not follow the proper reduction-in-force procedures because it did not consider the entire layoff unit of Yakima County when it determined which employees to layoff based on seniority. Appellant asserts that had the department considered the seniority of all the employees with positions in his job classification within the layoff unit, his position would not have been subject to the reduction-in-force action. Instead, Appellant contends the employee in Sunnyside with less seniority would have received the reduction-in-force action, especially since the position was designated to the Yakima office "on the books." Appellant asserts the department kept the Sunnyside employee's position, which had been designated to Yakima, in the Yakima office as a bump option and, therefore, argues the reduction-in-force action as implemented in the Yakima County layoff unit should be redone.

IV. CONCLUSIONS OF LAW

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

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); Sinclair v. Dep't of General Administration, PAB No. L93-023 (1995).

Personnel Appeals Board
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4.4 We agree with Board precedent that management has discretion when deciding which positions to retain or eliminate. In this case, management decided it was necessary to retain three positions in Sunnyside. However, we conclude the department erred in determining the seniority of the employees holding those positions because there were two less senior employees in Appellant's layoff unit. Although one of those employees physically worked in the Sunnyside office, the position held by that incumbent was designated to the Yakima office, as evidenced by the list of bump options offered to employees. The department's reduction-in-force policy emphasizes that "the least senior employee(s) within a class funded by the program area . . . will be designated first for reduction-in-force, whenever possible."

4.5 While we commend the department for honoring the bump options given to all affected employees, it created an unfair situation for Appellant when management failed to adjust the seniority list and reissue reduction-in-force letters. Because this was a statewide reduction-in-force effort, we acknowledge that Appellant might have been affected some other way by the reduction-in-force process. Nonetheless, Respondent has failed to prove that WAC 356-30-330 and the agency's reduction-in-force policy were properly followed.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Fred Valdez is granted. The Employment Security Department shall review Mr. Valdez's status and seniority, consistent with the findings and conclusions above, to remedy the improper reduction-in-force action.

DATED this _____ day of _____, 2006.

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