BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JANE DE GROOT, Appellant, v. EMPLOYMENT SECURITY DEPARTMENT, Respondent.	Case No. RULE-04-0009 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; BUSSE NUTLEY, Vice Chair; and GERALD L. MORGEN, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on October 6, 2005.

1.2 **Appearances.** Appellant Jane De Groot appeared *pro se*. Carol Rembaugh, Human Resource Consultant, represented Respondent Employment Security Department.

1.3 **Nature of Appeal.** This is an appeal alleging a violation stemming from Appellant's reduction in force during her probationary employment period.

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II. FINDINGS OF FACT

2.1 Effective December 1, 2003, Appellant began serving a probationary period of six months as an Unemployment Insurance (UI) Specialist 3 for Respondent Employment Security Department.

2.2 On April 21, 2004, Dr. Sylvia P. Mundy, Employment Security Department Commissioner, notified Appellant that, due to a lack of funds, her position as a UI Specialist 3 was reduced in force (RIFd), effective at 5 p.m. on May 13, 2004. At the time of the RIF, Appellant had not completed her six-month probationary period, and she had not attained permanent status in any other classified positions. Therefore, the department was unable to provide Appellant with any employment options in lieu of layoff.

2.3 On May 7, 2004, Appellant filed a timely rule violation appeal against the Department of Employment Security alleging numerous violations of the merit system rules related to her reduction in force during her probationary period. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC.

2.4 Appellant asserts that the department hired her despite knowing that there were budgetary problems. Appellant asserts that the department gave her and others false hope by hiring them even though there was a budget shortfall. Appellant argues that the department should have waited a full month to implement the layoff along with the layoff of other permanent employees, and then she would have had RIF rights, including the right to be placed on a RIF register. Appellant also asserts that under WAC 356-20-280, the department could have transferred her in lieu of layoff. Appellant asserts that there were no performance issues and that it was inappropriate for the department to pre-plan the RIF just short of completion her probationary period. Appellant asserts that as a remedy, she should be rehired over other applicants once the hiring freeze is lifted.

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2.5 Respondent argues the department did not terminate Appellant's employment, as permitted under WAC 356-30-230, because it was unfair to dismiss her and have a negative employment action reflected in her personnel file. Respondent asserts that the agency complied with the merit systems rules by eliminating Appellant's position due to a lack of funds but, because Appellant never gained permanent civil service status, her name could not be placed on any RIF registers. Respondent further asserts that a transfer under WAC 356-30-280 was not an option because the agency was also undergoing a hiring freeze as a result of a lack of funds.

III. CONCLUSIONS OF LAW

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

3.2 In an appeal of an alleged rule violation, Appellant has the burden of proof. (WAC 358-30-170).

3.3 WAC 356-30-270 provides:

> (1) An employee may be dismissed during a probationary period after being given written notice indicating the reasons for the dismissal five working days prior to the effective date of dismissal. . . .
>
> (2) An employee dismissed during a probationary period shall not have the right to appeal the dismissal. When proper advance notice of the dismissal is not given, the employee may enter an appeal for payment of salary for up to five days which the employee would have worked had proper notice been given. If such a claim is sustained, the employee will be entitled to the appropriate payment of salary but will not be entitled to reinstatement.

3.5 An appointing authority can terminate a probationary employee's employment as allowed by WAC 356-30-270. WAC 356-30-270 does not limit terminating a probationary employee solely for performance or disciplinary reasons and the only requirement under the rule is that the employee

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receives proper notice. Here, however, the agency wanted to avoid placing a probationary period termination letter in Appellant's personnel record, which carries the stigma of a negative employment action when, as in this case, there were no performance issues. Rather, Employment Security chose to implement a layoff of Appellant's position due to lack of funds.

3.3 WAC 356-30-330, reasons, regulations and procedures for reduction in force, indicates as follows:

> (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, ineligibility to continue in a position which has been reallocated, or when there are fewer positions than there are employees entitled to such positions either by statute or within other provisions of merit system rules.
>
> (2) When employees have statutory and merit system rule rights to return to the classified service, such employees first shall be returned to the classification selected. ...
>
> ....

3.6 We are sympathetic to Appellant's disappointment over the termination of her employment with the Employment Security Department. We realize that the department's decision to RIF Appellant during her probationary period clearly caused a great deal of confusion because Appellant had no RIF rights. However, Appellant has failed to support her burden of proving the department violated the provisions of WAC 356-30-330 by separating her due to a lack of funds.

3.7 Appellant further argues that Respondent could have transferred her in lieu of a reduction in force. Although WAC 356-30-280 allows an employer to transfer a probationary period employee in lieu of a reduction in force, Appellant provided no evidence to support there were any funded positions available to which the department could have transferred her to in lieu of layoff.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Jane De Groot is denied.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Busse Nutley, Vice Chair

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Gerald L. Morgen, Member

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