BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

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| PAT DETTLING,<br><br>Appellant,<br><br>vs.<br><br>DEPARTMENT OF SOCIAL AND HEALTH SERVICES,<br><br>Respondent. | CASE NO. R-LO-05-002<br><br>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 Resources Board, LARRY GOODMAN, Member. The hearing was held at the office of the Personnel Resources Board in Olympia, Washington, on August 17, 2006. MARSHA TADANO LONG, Vice Chair, reviewed the record, including the file, exhibits, and the entire recorded proceedings, and participated in the decision in this matter. Subsequent to this hearing but prior to issuing this decision, the Board's titles change. The signatures on this document reflect the Board's current titles.

1.2 **Closing Arguments.** Written closing arguments were due September 1, 2006. Respondent submitted written closing on August 31, 2006, and Appellant submitted written closing on September 1, 2006.

1.2 **Appearances.** Appellant Pat Dettling was present and was represented by Michael Hanbey, Attorney at Law. Ronald Marshall, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal of the layoff options provided to Appellant following her layoff from her Child Protective Service Program Manager position due to lack of funds.

## II. FINDINGS OF FACT

2.1 Appellant Pat Dettling was a permanent employee for Respondent Department of Social and Health Services (DSHS). 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 December 7, 2005.

2.2 Appellant began her employment with DSHS in March 1999. Prior to working for DSHS, Appellant had 15 years of experience working with non-profit organizations in social services areas including early childhood development, child abuse and neglect, and domestic violence. Many of the clients with whom Appellant worked were also clients of DSHS's Child Protective Services.

2.3 At the time of her layoff, Appellant was employed as a Child Protective Service Program Manager within DSHS's Children's Administration (CA). Appellant's position was within the Washington Management Service (WMS). During her employment with DSHS, her assigned duties changed, but she was always in a WMS Program Manager position. Appellant did not hold status in a Washington General Service (classified) position.

2.4 Prior to the start of fiscal year 2006, CA was required to reduce its headquarters full-time equivalents (FTE) positions. In addition, Governor Christine Gregoire mandated agencies to cut middle management positions. The budget cuts and the position cuts necessitated the reorganization of CA staff and led to the elimination of number of positions, including Appellant's position.

2.5 In determining which positions to eliminate, each division was asked to examine the essential functions of the division, determine where the division structure could be flattened, identify positions that could be eliminated, and make a recommendation to the CA Headquarters' Management Team. Prior to deciding which positions to eliminate, the Management Team examined the essential functions of the organization, determined where the organizational structure could be flattened and considered the recommendations made by the divisions.

2.6 When positions were identified for elimination, the incumbents in the positions were asked to submit resumes and applications for state employment. These were to be used in conjunction with current position descriptions in identifying possible layoff options for affected employees. In response to a question by the Board during the hearing, Appellant testified that she was aware that her resume and application would be used to identify layoff options and she was told to make sure that her application and resume were complete.

2.7 In accordance with WAC 357-58-455, DSHS adopted DSHS Administrative Procedure 18.58 and WMS Procedure 5.01 which govern layoffs.

2.8 WMS Procedure 5.01 requires the deputy, assistant secretary, or designee, to identify all unfunded positions, advise affected employees of the impending layoff, send written notification of the layoff to the human resources director (HRD), obtain and provide an updated resume and state application from each affected employee, and forward those documents to the layoff coordinator.

2.9 By letter dated July 5, 2005, Ross Dawson, Director of Program and Practice Improvement, notified Randi Burk, DSHS Layoff Coordinator, of the list of employees and their positions which were being eliminated. Mr. Dawson also forwarded the employees' resumes and applications to Ms. Burk. Ms. Burk reviewed the letter and compared the information provided against the information contained in the WMS "Crystal Report." Ms. Burk found that the salary standards that Mr. Dawson provided were incorrect. She informed Mr. Dawson of the error and on the same day, he submitted a corrected letter. The letter not only corrected the salary standards, but also increased the number of positions being laid off to ten.

2.10 As required by WMS Procedure 5.01, Ms. Burk notified the Diversity Affairs Office (DAO) of the layoff. DAO concluded that there was an adverse impact to certain individuals and requested justification for the layoffs from CA. CA provided the justification and on August 8, 2005, DAO approved the layoff.

2.11 As an initial step, Ms. Burk set up a layoff file which contained Appellant's resume, application and current position description form. These documents were used to determine which occupational codes Appellant was qualified for. Ms. Burk used this information, the salary standard for Appellant's current position, and Appellant's seniority to identify potential layoff options within the WMS.

2.12 WAC 357-58-065(11) defines "salary standard" as: "[w]ithin a management band a salary standard is the maximum dollar amount assigned to a position in those agencies that use a salary standard in addition to, or in place of, evaluation points." The salary standard may actually be more than an employee identified for layoff is making at the time of the layoff. In this case, Appellant's actual salary was $62,856, but the position salary standard was $67,180. Ms. Burk testified that when identifying layoff options for a WMS employee, she looks first for WMS positions that have a salary standard within $150 above or below the position salary standard of the employee being laid off. In this case, she looked for positions that were within $150 higher or lower than $67,180.

2.13 DSHS Administrative Policy 18.58 and the WMS rules outline the options available to WMS employees schedule for layoff. WAC 357-58-465 states:

> (1) Within the layoff unit, a permanent employee scheduled for layoff from a WMS position must be offered the option to take a position, if available, that meets the following criteria:
> (a) The employee has the required competencies for the position.
> (b) The WMS position is at the <u>same salary standard</u> and/or evaluation points. If no option to a position with the same salary standard and/or evaluation points is available, the employer must consider other WMS positions with a lower salary standard and/or evaluation points, or general service positions in accordance with WAC 357-46-035(1) in descending salary order if the employee has held permanent status in a WGS classification. At the agency's discretion, the employee may be offered a vacant position at higher evaluation points.
> (c) The position being offered as the option is funded and vacant. If no vacant position is available, the position being offered as the option must be occupied by the employee with the lowest retention rating.

(2) If a permanent employee has no option available under subsection (1) of this section, the employer must determine if there is an acting position in the layoff unit for which the employee is qualified.

(Emphasis added.)

2.14 DSHS WMS Procedure 5.01 identifies two types of layoff options. Formal layoff options to positions within the employee's current administration statewide, and informal options to funded statewide vacancies in other administrations. The DSHS WMS layoff practice of looking for layoff options to WMS positions that are within $150 of a position's salary standard is not included in the WMS policies, procedures or rules, but it is noted on the WMS RIF Options Worksheet.

2.15 Layoff options are determined in the sequence provided in WMS Procedure 5.01. The first option is to a funded vacant or filled position, in the same administration, at the employee's current salary standard, and for which the employee has the applicable work history and required job skills. An option to a vacant position will be offered before a filled position. If there are no vacancies, then an option to a filled position will be offered provided that the employee has more seniority than the employee being "bumped."

2.16 If there are no formal options, the second option is to a funded vacant position, statewide, at or below the employee's current salary standard, and for which the employee has the applicable work history and required job skills. There is no bumping of less senior employees for informal options. Administrators are encouraged to consider employees for the informal options, but are not required to offer the position to the employee.

2.17 To implement the layoff for Appellant, Ms. Burk ran reports for the six DSHS administrations. The reports indicated potential formal layoff options for Appellant with CA and potential informal layoff options for Appellant within other administrations. These reports, plus Appellant's application, resume and current position description form, were forwarded to the appropriate assistant secretary for each administration. The assistant secretary, or designee, was asked to review the documents provided by Ms. Burk, in conjunction with the position description form for each potential option to determine if Appellant possessed the applicable personal work history and required job skills to perform the functions of the potential layoff option.

2.18 After the reports were completed by each administration, they were returned to Ms. Burk indicating whether or not Appellant qualified for the potential layoff options. Appointing authorities for each of the potential layoff options are required to provide written justification as to why an employee did not qualify for a particular position. After receiving the information, Ms. Burk determined that there were formal options available within CA, but that there were no informal options available in the other DSHS administrations statewide.

2.19 An official layoff notification letter dated November 9, 2005, was sent to Appellant. The letter notified Appellant of her layoff effective at the end of her work shift on November 28, 2005. The letter also provided two formal layoff options to vacant positions within CA. The letter stated that other individuals were being offered the same positions, meaning the employees were "pooled" and that Appellant must bid on the positions by order of preference. If more than one employee bid on a position, seniority would prevail in determining who received the position.

2.20 The November 9, 2005 letter was mailed to the wrong address. Therefore a new layoff letter dated November 14, 2005, was sent to Appellant. This letter modified the effective date of the layoff to December 1, 2005, but did not change the layoff options.

2.21 Appellant was pooled with Melissa Hansen. Both Appellant and Ms. Hansen were offered the same layoff options. Ms. Hansen had more seniority than Appellant. Both Appellant and Ms. Hansen selected position TT23, Practice Improvement Program Manager in Thurston County, as their first choice. The second choice would have been position TS77, Family Team Decision Making Manager in Franklin County. Because she was more senior, Ms. Hansen received position TT23 and Appellant received position TS77.

2.22 Prior to the effective date of the layoff, CA discovered that position TT23 was not vacant, but had been permanently filed on January 1, 2005, by an employee with more seniority than either Appellant or Ms. Hansen. Therefore, position TS77 became Ms. Hansen's formal option. Because

Appellant no longer had an option to a vacant position, Ms. Burk continued to search for a new option.

2.23 Ms. Burk found an option that consisted of a bump into position TS79, Family Team Decision Making Manager in Yakima County. By letter dated November 18, 2005, Appellant was notified of her new layoff option.

2.24 Before the effective date of Appellant's and Ms. Hansen's layoffs, DSHS posted a new vacancy on or about November 17, 2006. This vacancy was for position TS83, Family Team Decision Making Manager in Pierce County. When Ms. Burk learned of the vacancy, she contacted Mr. Dawson and asked him to determine whether Appellant was qualified for the position. Mr. Dawson determined that Appellant was qualified. Ms. Hansen also met the qualifications for position TS83.

2.25 Because neither Appellant's nor Ms. Hansen's layoffs were effective, both of their layoff options were amended to include position TS77. By letters dated November 28, 2005, they were notified that their formal layoff options consisted of position TS77 and position TS83. Both Appellant and Ms. Hansen selected position TS83 as their first choice. Their second choice would have been position TS77. Because she was more senior, Ms. Hansen received position TT83 and Appellant received position TS77.

2.26 By letter dated November 29, 2005, DSHS confirmed Appellant's acceptance of position TS77. Appellant was to report to her new position on December 5, 2005. Her new position was at the same pay rate as her old position, and DSHS agreed to pay Appellant' relocation expenses in accordance with agency guidelines. Mr. Dawson and Appellant's new appointing authority, agreed to extend Appellant's report date by one week.

2.27 Before the layoff began, Mr. Dawson advised everyone at CA headquarters that three WMS positions were being held open as potential layoff options for employees whose positions were

impacted by the layoff. These positions were: SU08, a case review team supervisor; NS07, a QA program supervisor; and SQ70, a case review specialist.

2.28 The salary standard for position SU08 and position NS07 was $72,157 annually. Appellant's salary standard was $67,180. Appellant's layoff option was to a WMS position with a salary standard within $150 above or below Appellant's salary standard. Neither position SU08 nor position NS07 were offered to Appellant as a layoff options because neither position was at the same salary standard as Appellant's position.

2.29 The salary standard for position SQ70 was $67,180 annually, the same as Appellant's salary standard. Position SQ70 was a Case Review Program Specialist located in Thurston County. Mr. Dawson was asked to review Appellant's application and resume and the position description form for position SQ70 to determine if Appellant qualified for the position. Mr. Dawson determined that Appellant did not possess the personal work history or required job skills for this position because the position required three years of recent experience as a senior practitioner in CA supervising or delivering child protection services (CPS), child welfare services (CWS), or family reconciliation services (FRS).

2.30 Since March 1999, Appellant's history in CA was as a program manager, not in actually delivering services to clients as a senior practitioner. Appellant's resume indicates that prior to working as a program manager for CA, she was the director of programs for Catholic Charities and the YWCA working with CPS clients. Neither her resume nor application described the duties Appellant performed in these positions. Neither indicated that her duties included supervising or delivering child protection services, child welfare services, or family reconciliation services.

2.31 Prior to the layoff, in September 2004, Appellant applied for a Safety and Early Intervention Supervisor position in CA. Although she believed that she would be appointed to the position, she was not. The position was reposted in December 2004, and in January 2005, someone other than Appellant was hired to fill the position.

2.32 Also prior to the layoff, in February 2005, Appellant was given a developmental assignment to a field position in Region Six. Appellant reported to the position, but she had no developmental job assignments given to her. Her developmental assignment was scheduled to end July 1, 2005. Prior to the end of her assignment, Mr. Dawson informed her that her permanent position was being eliminated as a part of the layoff. Appellant remained in the Region Six position from July through mid-December. During this time, she applied for several positions at headquarters, but she was not appointed to any of the positions for which she applied.

## III. ARGUMENTS OF THE PARTIES

3.1 In summary, Respondent argues that the layoff was necessary due to a lack of funds and the directive to reduce the number of mid-management positions. Respondent asserts that all applicable WMS policies and procedures were followed in the implementation of the layoff and in identifying layoff options. Respondent contends that based on Appellant's seniority and experience, including the information she provided about her personal work history, Appellant was offered the appropriate options. Respondent asserts that Appellant was given proper notice of the layoff and that the effective date was extended when it was discovered that the first notice was mailed to the wrong address. Respondent also asserts that Appellant was given proper notice and time to consider and chose a layoff option. Respondent contends that Appellant received layoff options in accordance with agency procedures and based on seniority and the information Appellant provided in her application and resume. Respondent asserts that Appellant suffered no adverse impact as a result of layoff, she was not financially harmed, she continued to be employed in the same classification and receive the same salary and benefits as prior to the layoff, and she did not relocate to the position in Franklin County even though DSHS offered to pay for her relocation expenses. While Respondent acknowledges that some errors were made during the layoff process, Respondent asserts that the errors were corrected and were harmless.

3.2 In summary, Appellant argues that Respondent applied a salary standard that was not included in the WMS procedure or rules thereby adversely impacting the layoff options that were offered to her. Appellant contends that options were available in WMS Band 2 at lower salary

standards that should have been offered to her as layoff options, but were not offered due to Respondent's improper application of the salary standard criteria. Appellant also contends that she should have been offered layoff options to positions held by less senior employees. Appellant asserts that her supervisor, Peggy Brown, had a bias that excluded consideration of Appellant for any position supervised by Ms. Brown and that Ms. Brown and Mr. Dawson undervalued Appellant's qualifications, experience and work history to exclude her from consideration for layoff options that should have been offered to her. Appellant argues that Respondent failed to comply with its written policy and failed to follow an orderly system using standardized criteria to both select positions for elimination and provide layoff options to affected employees in an equitable fashion.

## IV. CONCLUSIONS OF LAW

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

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

4.3 Respondent has met its burden of proof. Respondent has shown that the layoff was necessary due to a lack of funds and the directive to reduce the number of mid-management positions. In addition, Respondent has shown that appropriate layoff options were identified and offered to Appellant.

4.4 In Van Jepmond v. Employment Security Dept., PAB No. L96-15 (1988), aff'd Thurston Co. Super. Ct. No. 88-2-00274-3 (1989), the Personnel Appeals Board determined that when a lack of funds is demonstrated, a RIF may be upheld even when there is a showing of the possibility of another motive, such as personal animosity, for abolishing a position.

4.5 In this case, we do not find any credible evidence of an ulterior motive in Respondent's decision to eliminate Appellant's position. However, even if we had, following the reasoning

used in Van Jepmond, when a lack of funds or need to reduce positions is demonstrated, a layoff may be upheld even when there is a showing of the possibility of another motive for the layoff.

4.6 In De Liberio v. Dept. of Social and Health Services, PAB No. RIF-00-0006 (2001), the appellant made numerous claims, including that he was RIF'd with just two and one half months left toward retirement and that the RIF was motivated by a desire to remove him from the agency. The Board found that the appellant was offered a layoff option within the agency and therefore, had an option for continued employment as a state employee which did not support a conclusion that the agency misused the RIF procedures to remove the appellant from the agency.

4.7 In this case, Appellant continued to be employed by the agency in the same classification with no loss in salary or benefits. While Appellant may not have liked the location of the layoff option offered to her, in accordance with Respondent's WMS policy and the civil service rules, it was an available option within the layoff unit that was a vacant position, at the same salary standard and for which Appellant met the qualifications. Therefore, position TS77 was an appropriate layoff option to be offered to Appellant. Furthermore, in accordance with the procedures and rules, Appellant was given proper notice of her layoff option and the appropriate time in which to select the option.

4.8 During the hearing, Appellant testified that there were six positions held by less senior employees that she believed should have been offered to her as layoff options. In accordance with Respondent's WMS Policy 18.58, WMS Procedure 5.01, and WAC 357-46-035, positions held by less senior employees should not be offered as layoff options unless there are no vacant positions available within the layoff unit, at the same salary standard and for which the employee being laid off is qualified.

4.9 An employee can only be placed in a vacant position if he/she meets the qualifications of the position. Respondent utilized the information provided by Appellant in her application and resume to determine whether Appellant's work history and experience qualified her for positions that required three years of recent experience as a senior practitioner in CA supervising or delivering

child protection services, child welfare services, or family reconciliation services. Appellant was aware that her application and resume would be used to identify layoff options and that the information she provided needed to be complete. However, in reviewing the information she provided, we find that Appellant did not completely describe her duties and responsibilities prior to her employment with DSHS. Therefore, we conclude that based on the minimal information Appellant provided, Respondent correctly determined that Appellant did not meet the qualification of recent experience as a senior practitioner.

4.10 In regard to Appellant's assertion that Respondent improperly applied the salary standard in identifying layoff options, we agree. The WMS rules define the salary standard as the maximum salary dollar amount assigned to a position. Here, Respondent applied a more generous standard by considering positions with a maximum salary of $150 higher or lower than the maximum salary dollar amount assigned to the position from which the employee is being laid off. Respondent's application of the salary standard provides more latitude in identifying potential options than searching for options that meet the maximum salary dollar amount only. Appellant was not harmed by Respondent's application of a more generous salary standard criterion.

4.11 Respondent has met its burden of proof, and the appeal should be denied.

## V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Pat Dettling is denied.

DATED this _____ day of _____, 2006.

WASHINGTON PERSONNEL RESOURCES BOARD

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MARSHA TADANO LONG, Chair

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LARRY GOODMAN, Vice Chair