BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

PATRICIA BROWN, Appellant, vs. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	CASE NO. R-LO-05-004 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, MARSHA TADANO LONG, Vice-Chair, and LARRY GOODMAN, Member. The hearing was held on July 26, 2006, at the Personnel Resources Board office in Olympia, Washington.

1.2 **Appearances.** Appellant Patricia Brown was present and appeared *pro se*. 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 Social and Health Program Manager 2 position due to lack of funds.

II. FINDINGS OF FACT

2.1 Appellant Patricia Brown 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 22, 2005.

2.2 Appellant began her employment with DSHS in February 1984. At the time of her layoff, Appellant was employed as a Social and Health Program Manager (SHPM) 2 with DSHS's Children's Administration Technology Services. She had also held permanent status as a Social Worker 2 and 3; Public Information Officer 2 and 3; and a Service Delivery Coordinator.

2.3 DSHS Administrative Policy 18.46 sets forth the process to be followed by DSHS when implementing a layoff and identifying options for affected employees. Randi Burk, DSHS Layoff Coordinator, determined which options were available to Appellant. She first looked for vacant SHPM2 positions in Yakima County; then she looked for SHPM2 positions being held by employees with less seniority that Appellant; and then she look for other positions in which Appellant had held permanent status. Ms. Burk found no layoff options for Appellant in Yakima County.

2.4 After exhausting the search in Yakima County, Ms. Burk searched for positions within DSHS Region 2. She found a possible option for Appellant to a Social Worker 2 position. Ms. Burk asked the appointing authority for the position to review Appellant's resume and position description to determine if Appellant possessed the skills and abilities needed for the Social Worker 2 position. It appeared that appellant had the qualifications for the Social Worker 2 position and by letter dated October 26, 2005, she was given her formal layoff notification and the layoff option of bumping into the Social Worker 2 position.

2.5 The October 26, 2005, layoff notice informed Appellant that the layoff action would be effective at the close of her work shift on November 14, 2005, and that she needed to accept the layoff option by no later than October 31, 2005. WAC 357-46-025 requires that employees be given at least 15 calendar days' notice of the layoff. The DSHS Administrative Policy 18.46 requires that

employees be given 5 calendar days from the layoff notification to select a layoff option. Appellant was given 19 days' notice of her layoff and 5 days in which to accept her layoff option.

2.6 Appellant disputed her qualifications for the Social Worker 2 position because, while her prior position had been classified as a Social Worker 2, the duties she performed were those of a public information officer rather than a social worker. After Appellant raised concerns about her qualifications for this position, the appointing authority determined that she did not have the skills and abilities to perform the duties of the Social Worker 2 position.

2.7 Ms. Burk continued her search for available layoff options for Appellant by looking for positions within DSHS statewide. A vacant SHPM2 position was found in the Special Commitment Center located on McNeil Island. The appointing authority reviewed Appellant's resume and position description, determined that she was qualified for the position and that she possessed the skills and abilities he felt were need to successfully perform the duties and responsibilities of the position.

2.8 By letter dated November 18, 2005, Appellant was given notification of her amended layoff option. The letter instructed Appellant that she needed to accept the layoff option by no later than the close of business on November 29, 2005. Appellant was given 11 days in which to accept her layoff option. By email dated November 29, 2006, Appellant accepted her layoff option. The supervisor and human resource representative for the social worker position were provided copies of the amended layoff option letter so that they would know that Appellant would not be appointed to the social worker position.

2.9 Appellant engaged in a number of conversations and email exchanges with Lee Mosley, the appointing authority for the SHPM2 position at the Special Commitment Center. Appellant had

questions about the duties and responsibilities of the position but did not raise any issues in regard to her qualifications for the position.

2.10 Because acceptance of the layoff option would require Appellant to relocate, in accordance with DSHS policy, the agency was prepared to pay her moving expenses. In addition, DSHS offered to accommodate Appellant by paying for 10 days of temporary lodging during her relocation.

2.11 On December 27, 2005, Appellant reported for work at the Special Commitment Center. A member of the staff met Appellant that morning when Appellant arrived at McNeil Island and escorted her to the Special Commitment Center. Appellant was introduced to the staff, shown the facility and met with Mr. Mosley. After being at the facility for approximately 2 hours, Appellant indicated that she could not work in an institutional environment and Mr. Mosley agreed that she could leave. Appellant returned to Yakima and utilized her accrued leave.

2.12 On February 8, 2006, Appellant sent an email to Mr. Mosley stating the she was submitting her formal resignation from state service effective at 5:00 pm on February 8, 2006. She subsequently revised her notice to indicate that she was retiring from state service effective at 5:00 pm on February 8, 2006. As a result of her notice of her intent to retire, Appellant's retirement became effective April 1, 2006.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that DSHS followed Administrative Policy 18.46 in determining Appellant's layoff options and that she when she was offered an option for which she was not qualified, the agency rescinded the option and offered her one for which she did possess the necessary skills and abilities. Respondent contends that Appellant's retirement was voluntary and asserts that being faced with an inherent unpleasant situation does not change the objectivity of the

retirement. Respondent contends that Appellant was provided proper notification of her layoff and her layoff option. Respondent asserts that although Appellant was qualified for the position at the Special Commitment Center, she did not want to work in an institutional environment and instead chose to retire. Respondent also asserts that layoff information is not confidential and that it was appropriate to notify the supervisor and human resource representative for the social worker position that the option had been rescinded.

3.2 Appellant argues that notification of her layoff by certified mail was harsh and contends that the supervisor and human resource representative for the social worker position should not have been provided a copy of her amended layoff option letter. Appellant asserts that this information should have been treated confidentially. Appellant argues that relocating during the winter months was difficult but that she was willing to do so if the job required it. She also argues that she had concerns about the position at the Special Commitment Center and asserts that she explored alternatives such as performing the work elsewhere in order to make the layoff option work. Appellant asserts that she was under duress as a result of her layoff and the institutional environment in which she was being asked to work. Appellant contends that this was an emotional time for her and that she did not feel that her retirement was voluntary. Appellant asserts that if she had been offered another position, she would not have resigned.

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. WAC 357-52-110.

4.3 Respondent has established that Administrative Policy 18.46 was followed and that appropriate layoff options were identified and offered to Appellant. Respondent has also established that Appellant was qualified for the SHPM2 position at the Special Commitment Center. Appellant's discomfort with working in an institutional environment does not negate her qualifications for the position nor disqualify the position as an appropriate layoff option.

4.4 The issue before the Board is whether Appellant was provided with the appropriate layoff options. However, Appellant raised questions regarding service of her layoff notice by certified mail and the confidentiality of information related to her layoff. In regard to service of the layoff notice, WAC 357-04-105 requires that notice to an employee be by personal service, United States mail, or telephone facsimile with same-day mailing. Service by certified mail complies with this provision of the rules. In regard to the confidentiality of Appellant's amended layoff option letter, there is no evidence that Respondent inappropriately disclosed this information.

4.5 Respondent has met its burden of proof that Appellant was provided with the appropriate layoff option. Therefore, the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Patricia Brown is denied.

DATED this _____ day of _____, 2006.

WASHINGTON PERSONNEL RESOURCES BOARD

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MARSHA TADANO LONG, Vice-Chair

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LARRY GOODMAN, Member