

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. MA-03-09

(MANAGEMENT SERVICE DISCIPLINE)

JENNIFER DUBROW,	)	
	)	
Appellant,	)	
	)	RULING ON
v.	)	RESPONDENT'S PETITION
	)	FOR RECONSIDERATION
STATE OF OREGON, PARKS AND	)	
RECREATION DEPARTMENT,	)	
	)	
Respondent.	)	
_____	)	

On May 3, 2010, this Board issued an Order which held that the State of Oregon (State), Parks and Recreation Department (Department) violated ORS 240.570(3) when it suspended Appellant Jennifer Dubrow without pay for one week, and permanently demoted Dubrow. We set aside the one-week suspension without pay, and ordered the Department to make Dubrow whole for loss of pay and benefits caused by the suspension, to remove the letter of suspension, and to substitute a letter of reprimand in its place. We also set aside Dubrow's demotion from a human resource analyst (HRA) 3 position to an HRA 2 position, and ordered the Department to temporarily demote Dubrow to an HRA 2 position for a two month period. In addition, we ordered the Department to make Dubrow whole for any wages and benefits she would have received had she continued working as an HRA 3, with interest, for the period beginning on the date her two month demotion ended and ending on the date the Department restored her to her HRA 3 position.

On May 14, the State petitioned for reconsideration of our Order. On June 1, Dubrow responded to the petition.

We grant reconsideration to correct an error in our Order and to consider a new claim the State raises concerning the remedy. The remainder of the State's petition concerns legal issues we considered and decided in our original Order. Accordingly, the petition raises no new issues of law and we decline to reconsider our conclusions that the State violated ORS 240.570(3) when it suspended and demoted Dubrow.

The petition also alleges new facts which the State argues should change the remedy we ordered. The State asserts that Dubrow was on leave from the Department until March 31, 2009. The State alleges that after Dubrow returned to work, she was often absent and created a number of problems in the workplace when she was there. The State asserts that Dubrow resigned on May 1, 2009, and only worked 12 hours between March 31 and May 1. According to the State, it cannot comply with that portion of our Order requiring it to demote Dubrow for two months and then restore her to an HRA 3 position. The State asks that we set aside this part of our Order. We decline to do so.

The facts alleged in the State's petition concerning Dubrow's return to work and resignation are not part of the record. The State has not sought to reopen the record to introduce any new evidence to support its contentions. We cannot consider facts which are outside of the record. *Arlington Education Association v. Arlington School District No. 3*, 177 Or App 658, 34 P3d 1197 (2001). This rule applies to decisions on reconsideration. *Greenwood v. Oregon Department of Forestry*, Case No. MA-3-04, *recons* (2006). Any effect Dubrow's resignation may have on the State's ability to implement the remedy we ordered is an issue more properly pursued in a compliance proceeding. If such a proceeding becomes necessary, the State may develop a record and seek clarification of its obligations to Dubrow.

In her response to the State's motion, Dubrow asserts that our Order erroneously states that her demotion was effective on January 5, 2009. Dubrow is correct; her demotion was effective on January 26, 2009. We will amend our Order accordingly.

#### ORDER

We adhere to all portions of our May 3, 2010 Order as written, except for the first sentence of Finding of Fact 50, which is amended to read as follows:

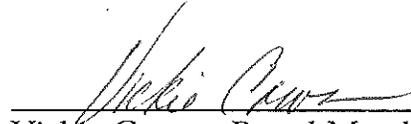
“On January 26, 2009, the Department notified Dubrow that effective January 26, 2009, it was demoting her from an HRA 3 to an HRA 2.”

DATED this 30<sup>th</sup> day of June, 2010.



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Paul B. Gamson, Chair



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Vickie Cowan, Board Member



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Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.