

COMMONWEALTH OF PENNSYLVANIA

Aaron D. Baysore : State Civil Service Commission
 :
 v. :
 :
 Pennsylvania Game Commission : Appeal No. 29542

Aaron D. Baysore
Pro Se

Bradley C. Bechtel
Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Aaron D. Baysore challenging his furlough from regular Wildlife Maintenance Propagator employment with the Pennsylvania Game Commission. A hearing was held on May 1, 2017, at the Strawberry Square Complex, in Harrisburg, Pennsylvania before Commissioner Gregory M. Lane.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing. The issue before the Commission is whether there is a lack of work or a lack of funds for appellant's furlough.

FINDINGS OF FACT

1. By letter dated December 12, 2016, appellant was notified that he would be furloughed from his position as Wildlife Maintenance Propagator,

regular status, effective at the close of business January 27, 2017, due to a lack of funds. Specifically, the letter notifying appellant of his furlough stated, in relevant part:

As you are likely aware, the Pennsylvania Game Commission has experienced a continued shortfall in revenues which began during fiscal year 2015-2016 budget, and with the failure of the license fee increase to pass, the Pennsylvania Game Commission is required to take significant steps to further reduce operating and personnel expenses resulting in the closure of the Northcentral Game Farm. Accordingly, due to lack of funds, I regret to inform you that it will be necessary to furlough you from your permanent Civil Service status, Wildlife Maintenance Propagator position with the Pennsylvania Game Commission effective close of business January 27, 2017.

Comm. Ex. A.

2. The appeal was properly raised before this Commission and was heard under Section 951(a) of the Civil Service Act, as amended.
3. Robert Boyd has worked at the appointing authority since 1989. N.T. p. 13.

4. Boyd is the Wildlife Services Division Chief in the appointing authority's Bureau of Wildlife Management. N.T. p. 15.
5. Boyd has been overseeing the Pheasant Propagation Program since 2010, and also supervises appointing authority programs for Wildlife Biometrician and Research Associates. N.T. p. 15.
6. Boyd is responsible for the Pheasant Propagation Program's finances and budget. N.T. p. 15.
7. On April 7, 2015, the appointing authority's Executive Director issued a memorandum to all staff with the subject line, "Strategic Plan/Budget," which discussed finding ways to cut costs at the appointing authority. N.T. pp. 16-17; AA Ex. 1.
8. Boyd received a copy of the April 7, 2015, memorandum. N.T. p. 17; AA Ex. 1.
9. The appointing authority was instructed to cut its budget for the 2015-2016 fiscal year by ten percent and for the 2016-2017 fiscal year by an additional twenty-five percent. N.T. p. 18.

10. After being instructed to reduce its budget, the appointing authority did not fill vacancies of Wildlife Maintenance Propagators in three of the four game farms, stopped capital expenditure projects, and eliminated their breeding and hatchery operations in favor of purchasing day-old chicks from a private vendor. N.T. pp. 18-19.
11. The cost of the pheasant program in 2015 was \$4.7 million, and the projected cost in 2017 was approximately \$3 million. N.T. p. 19.
12. Personnel costs constitute sixty-five to seventy percent of the total cost of running the game farms. N.T. p. 19.
13. On November 15, 2016, Robert Hough was the appointing authority's Executive Director.
14. Hough sent a memorandum dated November 15, 2016, to the Secretary of Administration, Sharon Minnich, with the subject: "Furlough Notification," advising her that the appointing authority was furloughing thirteen Wildlife Maintenance Propagators from the Western and Northcentral Game Farms. AA Ex. 2.

15. Boyd received a copy of the November 15, 2016 memorandum. N.T. p. 22.

16. At the time of the hearing on this appeal, some Wildlife Maintenance Propagators from the Loyalsock Game Farm were performing maintenance work, such as mowing the grass, at the Northcentral Game Farm. N.T. p. 25.

DISCUSSION

In the current appeal, appellant is challenging his furlough from his regular status position as Wildlife Maintenance Propagator with the appointing authority. In an appeal challenging the furlough of a regular status employee, the appointing authority has the burden of presenting evidence establishing either a lack of work or a lack of funds as the basis for the furlough. *Stover v. Department of Environmental Resources*, 161 Pa. Commw. 325, 327, 636 A.2d 1275, 1276-1277 (1994); 71 P.S. §§ 741.3(s), 741.951(a); 4 Pa. Code § 105.15. In the present case, the appointing authority asserted a lack of funds as the basis for appellant's furlough. Specifically, the letter notifying appellant of his furlough stated that the appointing authority experienced "a continued shortfall in revenues which began during fiscal year 2015-2016 budget, and with the failure of the license fee increase to pass," the appointing authority was required to further reduce operating and personnel expenses, resulting in the closure of the Northcentral Game Farm. Comm. Ex. A.

The letter further indicated appellant would be furloughed effective at the close of business January 27, 2017. Comm. Ex. A. A detailed excerpt of the letter is included in Finding of Fact 1.

In a furlough based upon a lack of funds, the appointing authority must establish not only that funding was inadequate, but that a rational relationship exists between the lack of funding and the furloughs undertaken. *Eastern Pennsylvania Psychiatric Institute, Department of Public Welfare v. Russell*, 77 Pa. Commw. 390, 398, 465 A.2d 1313, 1317-1318 (1983). A lack of funds need not rise to the level of bankruptcy. *County of Beaver, Beaver County Children and Youth Services v. Funk*, 89 Pa. Commw. 226, 230, 492 A.2d 118, 121 n.6 (1985). “A lack of funds exists when insufficient revenue is available to meet all financial demands unless modifications are made in the system.” *Id.* See also *Forbes v. Pennsylvania Department of Transportation*, 61 Pa. Commw. 641, 434 A.2d 892 (1981). The Commission may not substitute its judgment for that of the appointing authority officials in matters relevant to economy and efficiency. *Pavia v. Commonwealth, Pennsylvania Department of Transportation*, 77 Pa. Commw. 480, 483, 466 A.2d 735, 737-738 (1983).

In support of its furlough action, the appointing authority presented the testimony of Robert Boyd. Appellant did not testify, nor did he present any witnesses to testify on his behalf.

Robert Boyd testified that he serves as the Wildlife Services Division Chief in the Bureau of Wildlife Management. N.T. p. 15. Boyd has worked for the appointing authority since 1989. N.T. p. 13. One of his duties is overseeing the

Pheasant Propagation Program, which he has been doing since 2010. N.T. p. 15. Boyd also supervises programs involving Wildlife Biometrician and Research Associates. N.T. p. 15. Boyd testified that he is responsible for the finances and budgeting for the Pheasant Propagation Program. N.T. p. 15.

Boyd also testified that he had received direction from the appointing authority regarding finding ways to cut costs. N.T. p. 15. The appointing authority submitted for the record a memorandum dated April 7, 2015, from the Executive Director to all staff with the subject line, "Strategic Plan/Budget." N.T. p. 16; AA Ex. 1. Boyd testified that he received a copy of the memorandum, and that the memorandum discussed finding ways to cut costs.¹ N.T. p. 17; AA Ex. 1. The memorandum stated that the appointing authority was developing a new strategic plan that would "be the framework for the agency through 2020," and would help it to identify and "focus on our priorities over the next 5 years." AA Ex. 1. The memorandum further noted that while in the past decade, the appointing authority had "enjoyed major increases in revenue from oil and gas revenue, as well as a dramatic jump in Pittman-Robertson funding," both of these sources of revenue were projected to decrease over the next five years and beyond. AA Ex. 1.

¹ Counsel for the appointing authority specifically asked:

Q. Did you receive that memo?

A. Yes

Q. All right. Could you tell us, were [sic] there any type of discussion with what the Game Commission was in need of finding ways to cut costs *in this memo*?

A. Yes. The memo lays out we were experiencing --- sort of forecasting serious budget problems due to increases in some of our personnel cost, due to healthcare and pension contribution issues. We were also experiencing significant reductions in revenue from Marcellus Shale. So this memo mentions that and also lays out some actions that will be taking place like limits on filling positions, new programs being curtailed. It also mentions that we were going to be going for a license fee increase, which takes legislative approval. And we are somewhat optimistic about that outcome.

The memorandum further stated that as a result of the proposed budget, the appointing authority had been instructed to reduce expenses in the annual budget (*i.e.*, the fiscal year running from July 1, 2015, through June 30, 2016) by a total of \$19.2 million. AA Ex. 1. The memorandum further noted that personnel costs constituted the largest expense in the appointing authority's budget. AA Ex. 1. Those personnel costs were increasing primarily due to increases in healthcare costs and increases in costs from the Commonwealth's retirement plan. The memorandum further stated, "If we were to hold our . . . status quo, we estimate that by 2019 we would be running a \$35 million deficit annually!" AA Ex. 1. The memorandum further noted the appointing authority's "immediate strategy to address current financial matters." This strategy consisted of three steps:

1. All requests to backfill full-time positions and renew limited term employees are being closely evaluated. Our costs for staffing represent the largest portion of our budget.
2. Any expenditure which incurs long-term costs to the agency will be closely evaluated. For example, we have decided to temporarily put a hold on the proposed building at Pymatuning.
3. New Programs. Any new program requests will be closely evaluated by the Executive Office. We will be looking at the mission critical need of any new program, and the long-term financial liability associated with the project. In addition, any proposed grant requests must be approved by the Executive Office prior to submitting the grant.

AA Ex. 1. Finally, the memorandum indicated that the appointing authority was looking to increase revenue by proposing an increase in the fee to obtain a hunting license. AA Ex. 1.

Boyd also testified that he received “specific guidance” regarding costs for the 2015-2016 fiscal year and the 2016-2017 fiscal year. N.T. p. 18. Boyd testified, “Each year we have specific guidance for preparing our budgets. And in 2015-16 we were to cut our budget by 10 percent. And by fiscal year ’16-’17, we were to cut an additional 25 percent from our budgets.” N.T. p. 18. Regarding how he carried out these instructions, Boyd testified:

Well, through a variety of measures. We --- we did not fill vacancies of propagators in three of our four farms. We were trying to get a vacancy in all four farms. We also held one limited term of Game Farm Worker from each farm. We stopped . . . fixed asset type of improvement[s,] capital expenditure projects. And we also came up with a process of greatly improving efficiency of operations and reducing costs by eliminating our breeders that maintain[,] through the winters, our hatchery operations and going through the process of purchasing day old chicks from a private vendor.

N.T. pp. 18-19.

Boyd further testified that the cost of the pheasant program in 2015 was \$4.7 million. N.T. p. 19. The projected cost of the program in 2017 was approximately \$3 million. N.T. p. 19. Boyd testified that the personnel costs constitute sixty-five to seventy percent of the total cost of running the game farms. N.T. p. 19.

The appointing authority also submitted for the record a memorandum dated November 15, 2016, from the appointing authority’s Executive Director, Robert Hough, to the Secretary of Administration, Sharon Minnich, with the subject:

“Furlough Notification.” N.T. p. 21; AA Ex. 2. Boyd was questioned about what the memorandum stated was the reason for the furloughs.² N.T. p. 21. The memorandum stated that the appointing authority was downsizing the pheasant program by reducing the number of game farms from four farms down to two, making major changes to improve efficiency and reduce costs, while still maintaining the benefits of hunter recruitment provided by the program. AA Ex. 2. It noted that the legislature—not the appointing authority—had control over the hunting fees from licenses. The memorandum stated that the legislature had not increased license fees since 1999, and an attempt to increase fees through the legislature in 2016 had failed. AA Ex. 2. Consequently, the appointing authority would be required to cut program costs and reduce staff. The memorandum further explained that the appointing authority’s four pheasant farms produced over 200,000 pheasants per year at a cost of over \$4 million annually. AA Ex. 2. Since there is not a separate license to hunt pheasants, those costs were not offset by any revenue: most of the costs of the program are paid from general license fees. The memorandum further asserted that the appointing authority, “has encountered hard financial times partly due to inflationary pressures across the past 17 years and recently because of rapidly increasing personnel costs coupled with a decline in natural gas revenues.” AA Ex. 2.

The memorandum explained, “It has been determined that it will be necessary to furlough 13 Wildlife Maintenance Propagators from the Western and Northcentral Game Farms.” AA Ex. 2. It identified these as civil service positions represented by a union and covered by collective bargaining unit AFSCME J1. AA

² Counsel for the appointing authority specifically asked: “**Q. So what did *the memo* say was the reason for the furloughs?**” N.T. p. 21.

Ex. 2. The memorandum stated that each game farm was its own seniority unit, and all Wildlife Maintenance Propagators in each unit were being furloughed. AA Ex. 2. The Western Game Farm was furlough unit 008, with seven Wildlife Maintenance Propagators. The Northcentral Game Farm was furlough unit 010 with six propagators. AA Ex. 2

The memorandum stated that the appointing authority initially considered closing all of the farms, which would have saved approximately \$4.5 million per year. AA Ex. 2. According to the memo, the appointing authority ultimately decided, due to the hunter recruitment and retention provided by the pheasant program, to instead downsize, cut costs, and create a new revenue stream by trying to get a pheasant license approved so that the pheasant program would move closer to paying for itself. AA Ex. 2.

Boyd testified that he received a copy of the November 15, 2016 memorandum. N.T. p. 22. He also was questioned about how the appointing authority selected the game farms that were closed:

Q. And to be clear, you did receive a copy of this memo. Correct?

A. Yes.

Q. Did closing the two Game Farms help cut costs?

A. Well, we haven't gone through a whole year yet. But certainly, it will.

Q. How did you pick which farms would be closed?

A. Well, it was a very difficult decision, to be honest with you. But we decided to divide the state into an eastern half and a western half. And the first criteria was to choose a farm that was somewhat centrally located in each of those two areas. In our two—in our western half of the state, the

Southwest Game Farm was the clear winner of that situation. But the Eastern half with the Loyalsock and Northcentral both are close together so that wasn't working. But what really distinguished the two farms is because the Loyalsock Game Farm had a breeding flock and no longer did they ha[ve] a lot of open field space for improvement of capacity for birds to be released for hunters....

N.T. pp. 22-23.

On cross examination, appellant asked Boyd about why the appointing authority was proceeding with a new class of Wildlife Conservation Officer (WCO) Trainees:

Q. And if money is an issue—I understand they're going to open up a new WCO class. If personnel costs are what is such a problem how can they furlough 13 people and then start a new WCO class to hire twice that many people?

A. That's a good question and I do not get that level to be involved in those decisions or how those decisions are being made. But I know *they* focused on the Propagation Program.

N.T. p. 25 (italics added). Boyd also acknowledged that there are some Wildlife Maintenance Propagators from the Loyalsock Game Farm that have been doing some maintenance work, such as mowing the grass, at the Northcentral Game Farm.

N.T. p. 25.

Having carefully reviewed the entire record, we turn to whether the appointing authority has met its burden of establishing a valid lack of funds to justify appellant's furlough. As noted above, the appointing authority must establish not

only that funding was inadequate, but that a rational relationship exists between the lack of funding and the furloughs undertaken. *Russell*, 77 Pa. Commw. at 398, 465 A.2d at 1317-1318. In the present case, the appointing authority presented the testimony of one witness—Robert Boyd—and relies upon two memoranda it submitted for the record at the hearing to establish its lack of funds case. Neither of these memoranda were written by Boyd: they were both authored by the appointing authority’s Executive Director at the time, Robert Hough. In fact, the only thing that the appointing authority has demonstrated with regard to these memoranda is that Boyd received copies of them. Boyd never testified that he was involved in drafting the content of these documents, nor did he expressly testify that he was directly involved in any of the plans or decisions memorialized by these documents, nor that he made recommendations that were incorporated into these documents. In short, the appointing authority has failed to establish that Boyd had any direct role in the actual decision to close the Northcentral Game Farm and furlough the employees, that he had direct knowledge of the insufficiency of the revenues as purported in the memoranda, or that he had personal knowledge of the relationship between the available funding and the furloughs that were conducted.³

The Commission is left with a record that essentially reflects Boyd’s testimony about what the two memoranda *said* were the reasons for the furlough, rather than testimony which should have, at least, confirmed that Boyd had personal knowledge of the information contained in the memoranda and that the information was accurate. A witness must have personal knowledge in order to competently testify regarding the decisions made. Additionally, without this minimum

³ The Commission notes that the appointing authority asked Boyd very specific questions at the hearing, and he provided answers that were, in turn, very specific to the exact questions being asked. This is evident from the excerpts, included above, directly quoting the questions asked by counsel for the appointing authority and Boyd’s responses.

foundational requirement, the content of these documents is also hearsay. The Commission cannot rely upon hearsay to make findings of fact unless that evidence is corroborated by other, non-hearsay evidence in the record. *See Bleilevens v. Commonwealth of Pennsylvania, State Civil Service Commission*, 11 Pa. Commw. 1, 5, 312 A.2d 109, 111 (1973) (“The Hearsay Rule is not a technical rule of evidence but a basic, vital and fundamental rule of law which ought to be followed by administrative agencies at those points in their hearings when facts crucial to the issue are sought to be placed upon the record.”); and *Broughton v. Housing Authority of the City of Pittsburgh*, 755 A.2d 105, 107 (Pa. Commw. Ct. 2000) (Hearsay evidence, admitted without objection, will be given its natural probative effect and may support a finding of the [hearing officer], if it is corroborated by any competent evidence in the record, but a finding of fact based solely on hearsay will not stand.”). In the present case, the record is lacking any such corroborative evidence. Without that corroborative evidence, the Commission cannot base findings of fact regarding the adequacy or inadequacy of funds, or the relationship of such funding to the furloughs. Without such findings, the Commission also cannot find that a reasonable relationship was demonstrated between the lack of funding and the furloughs undertaken. The absence of first-hand knowledge of the lack of funds and its relationship to, and impact on, furloughing appellant and the other employees is evident in Boyd’s testimony in response to the question on cross-examination regarding Wildlife Conservation Officer Trainees who began working for the appointing authority after the furloughs were effective. N.T. p. 25. Boyd’s response, essentially, indicated that he is not at a high-enough level in the appointing authority structure to be involved in or know how decisions are made regarding furloughing employees while simultaneously expending money on new employees. N.T. p. 25. The Commission cannot then infer that Boyd had the requisite decision-making authority and responsibility for funding and allocation of the appointing authority’s

budgetary resources to support the furlough. If the Commission did so, it would run directly counter to the only testimony on the record about Boyd's knowledge and actual authority--testimony presented by Boyd himself.

In *Beaver County Children and Youth Services v. Funk*, 89 Pa. Commw. 226, 230, 492 A.2d 118, 121 (1985), Commonwealth Court determined that where an agency only provided general statements about the deficit from the prior year, and testimony that the agency made a policy decision to hold personnel costs down to the prior year's costs, even though the applicable collective bargaining agreement provided for a nine percent wage increase, this was not sufficient to meet the agency's burden of proof to present a *prima facie* case of a lack of funds to furlough a regular status employee. The situation in the present record is similar to that in *Funk*, and the Commission similarly finds that the appointing authority has not established a *prima facie* case.⁴

Consequently, we are directing the appointing authority to reinstate appellant to the position of Wildlife Maintenance Propagator with backpay to the effective date of the furlough—January 27, 2017. We note that following reinstatement of appellant, if the appointing authority determines that there is a lack of work or lack of funds sufficient to justify a furlough at that time, and they re-

⁴ If the Commission were to accept the two memoranda and testimony of Boyd as sufficient to establish a lack of funds, it would turn the civil service hearing into little more than a perfunctory, rubber stamp for an agency's prior action—action which constitutes a termination of employment because of a lack of funds (71 P.S. § 741.3(s)). This would also eviscerate the requirement that the appointing authority bears the burden of proof in a furlough case under Section 951(a) of the Act and the court decisions articulating the elements that must be established by the appointing authority in an appeal challenging a furlough based upon a lack of funds. While this is not a very high burden for agencies to meet, it still must be satisfied by competent evidence that supports the appointing authority's action. In the present case, the appointing authority has failed to present such competent evidence to meet their burden of proof.

furlough appellant, appellant will have the right to appeal that subsequent furlough in accordance with the Civil Service Act and Rules. In such an appeal, the appointing authority will be required to present competent testimony and properly admissible documentary evidence to meet their burden of establishing lack of work or lack of funds. Accordingly, we enter the following:

CONCLUSION OF LAW

The appointing authority has failed to present evidence establishing a lack of funds sufficient to justify furlough under Section 802 of the Civil Service Act, as amended.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, sustains the appeal of Aaron D. Baysore challenging his furlough from regular Wildlife Maintenance Propagator employment with the Pennsylvania Game Commission and overrules the action of the Pennsylvania Game Commission in the furlough of Aaron D. Baysore from regular Wildlife Maintenance Propagator employment effective January 27, 2017. We order that the furlough be expunged from appellant's record and that appellant be returned to regular Wildlife Maintenance Propagator employment within thirty (30) calendar days with reimbursement of wages and emoluments since January 27, 2017, less wages earned and benefits received under the Public Laws of Pennsylvania as established by a sworn statement to be submitted by appellant. We further order that within thirty

(30) calendar days of the mailed date of this opinion, the appointing authority shall submit written notice of compliance with this Order to the Executive Director of the State Civil Service Commission

State Civil Service Commission

Bryan R. Lentz
Chairman

Odelfa Smith Preston
Commissioner

Gregory M. Lane
Commissioner

Mailed: April 5, 2018

COMMONWEALTH OF PENNSYLVANIA

Aaron D. Baysore : State Civil Service Commission
v. :
Pennsylvania Game Commission : Appeal No. 29542R

Aaron D. Baysore : Bradley C. Bechtel
Pro Se : Attorney for Appointing Authority

ADJUDICATION ON REMAND

This is an appeal by Aaron D. Baysore challenging his furlough from regular Wildlife Maintenance Propagator employment with the Pennsylvania Game Commission. A hearing was held on May 1, 2017, at the Strawberry Square Complex, in Harrisburg, Pennsylvania before Commissioner Gregory M. Lane.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing. In accordance with the Commonwealth Court’s decision remanding the appeal to the Commission, the issue is whether there is a lack of work or lack of funds for appellant’s furlough.

PROCEDURAL HISTORY

1. By letter dated December 12, 2016, appellant was notified that he would be furloughed from his position as Wildlife Maintenance Propagator,

regular status, effective at the close of business January 27, 2017, due to a lack of funds. Specifically, the letter notifying appellant of his furlough stated, in relevant part,

As you are likely aware, the Pennsylvania Game Commission has experienced a continued shortfall in revenues which began during fiscal year 2015-2016 budget, and with the failure of the license fee increase to pass, the Pennsylvania Game Commission is required to take significant steps to further reduce operating and personnel expenses resulting in the closure of the Northcentral Game Farm. Accordingly, due to lack of funds, I regret to inform you that it will be necessary to furlough you from your permanent Civil Service status, Wildlife Maintenance Propagator position with the Pennsylvania Game Commission effective close of business January 27, 2017.

Comm. Ex. A.

2. Appellant filed a timely appeal of his furlough with the Commission under Section 951(a) of the Civil Service Act, as amended,¹ docketed as Appeal No. 29542.
3. The Commission held a hearing on May 1, 2017, before Commissioner Gregory M. Lane.
4. On April 5, 2018, the Commission issued an Adjudication and Order in Appeal No. 29542 sustaining appellant's appeal.
5. The Commission concluded in its adjudication in Appeal No. 29542 that the appointing authority had not established a lack of funds under Section 802 of the Civil Service Act, as amended.
6. The Commission ordered the furlough to be expunged from appellant's record and appellant to be returned to Wildlife Maintenance Propagator employment with backpay from the effective date of his furlough (January 27, 2017).

¹ The relevant events at issue in the present appeal occurred prior to the full implementation of Act 71 of 2018, P.L. 460, No. 71, codified as 71 Pa.C.S. §§ 2101-3304. Full implementation occurred on March 28, 2019, the date on which all sections of Act 71 went into effect. *See* Act 71 of 2018, Section 3. Consequently, the substantive provisions of the Civil Service Act (Act 286 of 1941, P.L. 752, No. 286, 71 P.S. §§ 741.1-741.1005) and implementing regulations apply to the present appeal because that is the law in effect at the time the furlough occurred and appellant's appeal was adjudicated.

7. On May 1, 2018, the appointing authority filed a petition for review with the Commonwealth Court of Pennsylvania (No. 610 C.D. 2018) appealing the Commission's Adjudication and Order.²

8. On October 18, 2019, the Commonwealth Court of Pennsylvania issued an unreported memorandum opinion, *Pennsylvania Game Commission v. State Civil Service Commission (Baysore)*, 610 C.D. 2018, (Pa. Commw. Ct. October 18, 2019). The opinion adopted the reasoning set forth in *Pennsylvania Game Commission v. State Civil Service Commission (Wheeland)*, 219 A.3d 1257 (Pa. Commw. Ct. 2019);³ vacated the Commission's April 5, 2018 Adjudication and Order in Appeal No. 29542; and remanded the matter to the Commission for further proceedings consistent with the Court's analysis in *Wheeland*.

² By Order dated July 27, 2018, Commonwealth Court stayed the Commission's April 5, 2018 Order pending resolution of the petition for review.

³ The *Wheeland* decision was also issued on October 18, 2019 and is a reported opinion of Commonwealth Court. Timothy Wheeland was a Wildlife Maintenance Propagator who also had been furloughed from the Northcentral Game Farm.

FINDINGS OF FACT⁴

1. Robert Boyd has worked at the appointing authority since 1989. N.T. p. 13.
2. Boyd is the Wildlife Services Division Chief in the appointing authority's Bureau of Wildlife Management. N.T. p. 15.
3. Boyd has been overseeing the Pheasant Propagation Program since 2010, and supervises appointing authority programs for Wildlife Biometrician and Research Associates. N.T. p. 15.
4. Boyd is responsible for the Pheasant Propagation Program's finances and budget. N.T. p. 15.
5. The cost of the Pheasant Propagation Program in 2015 was \$4.7 million and the program produced over 200,000 pheasants per year. N.T. p. 19; AA Ex. 2.

⁴ We hereby incorporate paragraphs numbered 1, 2, and 3 of the Procedural History as Findings of Fact.

6. Since there is not a separate license to hunt pheasants, the costs of the Pheasant Propagation Program were not offset by any program revenue. Most of the costs of the program are paid from general hunting license fees. AA Ex. 2.
7. Hunting license fees are set by legislation, not the appointing authority. Hunter license fees have not been increased since 1999. AA Ex. 2.
8. In 1998, the appointing authority had 731 full-time staff positions and personnel costs of \$40.4 million. AA Ex. 2.
9. In 2015, the appointing authority had 714 full-time staff positions and personnel costs of \$82.1 million. AA Ex. 2.
10. Personnel costs constituted the largest expense in the appointing authority's budget, and were rising primarily due to increases in healthcare costs and increased expenses for the state's retirement program. AA Exs. 1, 2.
11. Between 2005 and 2015, the appointing authority had major increases in revenue related to oil and gas operations. AA Ex. 1.

12. By April of 2015, revenue from oil and gas operations were projected to decrease over the next five years. AA Ex. 1.
13. As of 2015, the appointing authority's Pheasant Propagation Program included four game farms located throughout the state: the Northcentral Game Farm, the Loyalsock Game Farm, the Western Game Farm, and the Southwest Game Farm. N.T. pp. 22-23; AA Ex. 2.
14. Prior to the 2015-2016 fiscal year, the Loyalsock and Southwest Game Farms had breeding programs. N.T. pp. 22-23.
15. On April 7, 2015, the appointing authority's Executive Director issued a memorandum to all staff with the subject line, "Strategic Plan/Budget," which discussed finding ways to cut costs at the appointing authority. N.T. p. 16; AA Ex. 1.
16. Boyd received a copy of the April 7, 2015, memorandum. N.T. p. 17; AA Ex. 1.

17. The appointing authority was instructed to cut its budget for the 2015-2016 fiscal year by ten percent and for the 2016-2017 fiscal year by an additional twenty-five percent. N.T. p. 18.
18. After the appointing authority was instructed to reduce its budget, in 2015, the appointing authority did not fill a Wildlife Maintenance Propagator position at each of the game farms, ended capital improvement projects, and the pheasant breeder flocks and hatchery operations of the Pheasant Propagation Program were eliminated. In place of the breeding and hatchery operations, the program purchased pheasant chicks. N.T. pp. 18-19; AA Ex. 2.
19. When the appointing authority ceased conducting breeding operations and moved to a program of purchasing live chicks to be raised, the Loyalsock and Southwest Game Farms had empty breeding pens in which the chicks were placed. N.T. pp. 22-23.
20. The appointing authority's attempts to obtain legislation to increase hunting license fees during the 2015-2016 legislative session were not successful. N.T. p. 21; AA Ex. 2.

21. After the failure to obtain an increase in the license fee during the 2015-2016 legislative session, the appointing authority initially considered closing all of the game farms, which would have saved approximately \$4.5 million per year. N.T. p. 21; AA Ex. 2.
22. Due to the hunter recruitment and retention provided by the pheasant program, the appointing authority ultimately decided that rather than close all of the game farms, it would downsize, cut costs, and create a new revenue stream by trying to obtain approval for a pheasant license so the Pheasant Propagation Program would move closer to paying for itself. AA Ex. 2.
23. At some point between April 7, 2015 and November 15, 2016, the appointing authority decided to close the Northcentral and Western Game Farms and furlough the thirteen Wildlife Maintenance Propagators employed at those locations. AA Exs. 1, 2.
24. Personnel costs constitute sixty-five to seventy percent of the total cost of running the game farms. N.T. p. 19.

25. When selecting which of the game farms would be closed, the appointing authority divided the state into a western half and eastern half. N.T. p. 22.
26. In the eastern half of the state, the Loyalsock Game Farm and Northcentral Game Farm are located close together geographically. N.T. p. 23.
27. The Loyalsock Game Farm had field space available from the discontinued breeding program that could be used to increase capacity and the number of pheasants that could be released for hunters. N.T. pp. 21-22.
28. Wildlife Maintenance Propagators are civil service positions and are also represented by a union. The employees are covered by collective bargaining unit AFSCME J1. AA Ex. 2.
29. Each game farm was its own seniority unit, and all Wildlife Maintenance Propagators employed at either the Western and Northcentral Game Farms were furloughed. AA Ex. 2.

30. The Western Game Farm was furlough unit 008, with seven Wildlife Maintenance Propagators. The Northcentral Game Farm was furlough unit 010, with six propagators, including appellant. AA Ex. 2.
31. The projected cost of the Pheasant Propagation Program in 2017 after changes to that program, including the closure of the two game farms and furloughing of the Wildlife Maintenance Propagators employed there, was approximately \$3 million. N.T. p. 19; AA Ex. 2.
32. As of November 2016, the appointing authority was projecting a budget deficit of between \$7 million and \$8 million for fiscal year 2017-2018. AA Ex. 2.
33. On November 15, 2016, Robert Hough was the appointing authority's Executive Director. N.T. p. 20.
34. Hough sent a memorandum dated November 15, 2016, to the Secretary of Administration, with the subject: "Furlough Notification," advising her that the appointing authority was furloughing thirteen Wildlife Maintenance Propagators from the Western and Northcentral Game Farms. The

memorandum detailed the reasons for that decision, including the financial and funding issues the appointing authority was facing. AA Ex. 2.

DISCUSSION

The present matter is on remand from the Commonwealth Court of Pennsylvania for proceedings in accordance with the Court's opinion and order issued on October 18, 2019. *Commonwealth of Pennsylvania, Pennsylvania Game Commission v. State Civil Service Commission (Baysore)*, 610 C.D. 2018 (Pa. Commw. Ct. October 18, 2019). That decision vacated the Commission's Adjudication and Order in Appeal No. 29542, which had sustained appellant's appeal of his furlough from Wildlife Maintenance Propagator. In its decision in *Baysore*, the Court adopted the reasoning set forth in *Pennsylvania Game Commission v. State Civil Service Commission (Wheeland)*, 219 A.3d 1257 (Pa. Commw. Ct. 2019), and remanded the matter to the Commission for further proceedings in accordance with the court's analysis in *Wheeland*.

As noted in the Procedural History, on December 12, 2016, appellant was notified he would be furloughed from his position as Wildlife Maintenance Propagator, regular status, effective at the close of business January 27, 2017, due to a lack of funds. Comm. Ex. A. The Commission conducted a hearing on May 1, 2017. The appointing authority, who has the burden of proof in a furlough appeal hearing, presented the testimony of one witness, Robert Boyd, and submitted into the record two exhibits in support of the furlough action.

Boyd served as the Wildlife Services Division Chief in the appointing authority's Bureau of Wildlife Management during the times relevant to the appeal. N.T. p. 15. Boyd has worked for the appointing authority since 1989 and has been overseeing the Pheasant Propagation Program since 2010. N.T. pp. 13, 15. The two exhibits were memoranda written by the appointing authority's Executive Director at the times in question. The first was an April 7, 2015, memorandum to all appointing authority staff with the subject line, "Strategic Plan/Budget," which discussed finding ways to cut costs at the appointing authority. N.T. pp. 16-17; AA Ex. 1. Boyd received a copy of the April 7, 2015, memorandum. N.T. p. 17; AA Ex. 1. The second exhibit was a memorandum dated November 15, 2016, to the Secretary of Administration with the subject: "Furlough Notification," advising her the appointing authority was furloughing thirteen Wildlife Maintenance Propagators from the Western and Northcentral Game Farms. AA Ex. 2.

In our adjudication dated April 5, 2018, the Commission determined the appointing authority had failed to establish a *prima facie* case of a lack of funds sufficient to justify furlough, because it did not establish that Boyd was involved in the drafting of the two memoranda, nor that he was directly involved in the decisions memorialized in the memoranda. The Commission concluded the appointing authority failed to establish Boyd had any direct role in the actual decision to close the Northcentral Game Farm at which appellant was employed and furlough the employees, that he had direct knowledge of the insufficiency of the revenues as indicated in the memoranda, or that he had personal knowledge of the relationship between the available funding and the furloughs that were conducted. In its decisions issued in *Baysore* and *Wheeland*, Commonwealth Court held that in doing

so, the Commission erred. *See Baysore*, 610 C.D. 2018, and *Wheeland*, 219 A.3d at 1265-66. In its decision in *Wheeland*, the Commonwealth Court majority opinion specifically directed:

On remand, the Civil Service Commission must give probative weight to the testimonial and admitted documentary evidence that the Game Commission offered to show a lack of funds and must address Boyd's testimony that [the] . . . furlough was necessitated by a lack of work when the Bureau of Wildlife Management stopped breeding pheasants and closed two game farms.

Id. at 1270. In its order in *Baysore*, Commonwealth Court remanded the matter to the Commission for further proceedings in accordance with the Court's analysis in *Wheeland*.

In light of, and in accordance with, the Commonwealth Court's order, we analyze appellant's appeal. As noted above, in support of the furlough, the appointing authority presented the testimony of Boyd, who has worked for the appointing authority since 1989 and is responsible for the finances and budgeting for the Pheasant Propagation Program. N.T. p. 15. Boyd testified that he had received guidance regarding the need for the appointing authority to cut costs. N.T. p. 15. This included the April 7, 2015, memorandum from the Executive Director to all staff, which Boyd testified described the appointing authority's current situation and forecast serious budget problems. N.T. p. 17; AA Ex. 1. Boyd testified those budget problems included an increase in expenditures for personnel costs due to healthcare and retirement contributions as well as a reduction in revenue from Marcellus Shale (i.e., oil and gas proceeds). N.T. p. 17. Boyd testified,

[W]e were forecasting serious budget problems due to increases in some of our personnel cost, due to healthcare and pension contribution issues. We were also

experiencing significant reductions in revenue from Marcellus Shale. So this memo mentions that and also lays out some actions that will be taking place like limits on filling positions, new programs being curtailed. It also mentions that we were going to be going for a license fee increase, which takes legislative approval. And we are somewhat optimistic about that outcome.

N.T. pp. 17-18.

The memorandum provided a description of some of the financial difficulties facing the appointing authority as well as plans to address them. The appointing authority was developing a new strategic plan that would “be the framework for the agency through 2020,” and would help it to identify and “focus on our priorities over the next 5 years.” AA Ex. 1. In the past decade, the appointing authority had “enjoyed major increases in revenue from oil and gas revenue, as well as a dramatic jump in Pittman-Robertson⁵ funding.” AA Ex. 1. Both of these sources of revenue were projected to decrease over the next five years and beyond. AA Ex. 1. As a result of the proposed budget, the appointing authority had been instructed to reduce expenses in the annual budget (i.e., the fiscal year running from July 1, 2015, through June 30, 2016) by a total of \$19.2 million. AA Ex. 1. Personnel costs constituted the largest expense in the appointing authority’s budget, and were increasing primarily due to increases in healthcare costs and increases in costs from the Commonwealth’s retirement plan. The memorandum stated, “If we were to hold our . . . status quo, we estimate that by 2019 we would be running a \$35 million deficit annually!” AA Ex. 1.

⁵ The record contains no definition of the term Pittman-Robertson funding.

The memorandum indicated the appointing authority's "immediate strategy to address current financial matters" was the following:

1. All requests to backfill full-time positions and renew limited term employees are being closely evaluated. Our costs for staffing represent the largest portion of our budget.
2. Any expenditure which incurs long-term costs to the agency will be closely evaluated. For example, we have decided to temporarily put a hold on the proposed building at Pymatuning.
3. New Programs. Any new program requests will be closely evaluated by the Executive Office. We will be looking at the mission critical need of any new program, and the long-term financial liability associated with the project. In addition, any proposed grant requests must be approved by the Executive Office prior to submitting the grant.

AA Ex. 1. Finally, the memorandum indicated the appointing authority was looking to increase revenue by proposing an increase in the fee to obtain a hunting license.

AA Ex. 1.

Boyd also testified he received "specific guidance" regarding costs for the 2015-2016 fiscal year and the 2016-2017 fiscal year. N.T. p. 18. Boyd testified, "Each year we have specific guidance for preparing our budgets. And in 2015-16 we were to cut our budget by 10 percent. And by fiscal year '16-'17, we were to cut an additional 25 percent from our budgets." N.T. p. 18. Regarding how he carried out these instructions, Boyd testified:

Well, through a variety of measures. We --- we did not fill vacancies of propagators in three of our four farms. We were trying to get a vacancy in all four farms. We also held one limited term of Game Farm Worker from each

farm. We stopped . . . fixed asset type of improvement[s,] capital expenditure projects. And we also came up with a process of greatly improving efficiency of operations and reducing costs by eliminating our breeders that maintain[,] through the winters, our hatchery operations and going through the process of purchasing day old chicks from a private vendor.

N.T. pp. 18-19.

Boyd further testified that the cost of the pheasant program in 2015 was \$4.7 million. N.T. p. 19. The projected cost of the program in 2017 was approximately \$3 million. N.T. p. 19. Boyd testified that the personnel costs constitute sixty-five to seventy percent of the total cost of running the game farms. N.T. p. 19. Boyd testified the appointing authority did not obtain the “license fee increase” they were anticipating, “which caused a great increase in the urgency of cutting costs and improving the efficiency” of their operations, particularly the Pheasant Propagation Program. N.T. p. 21. The appointing authority first considered closing all four farms and ending the entire program. N.T. p. 21. The appointing authority then looked at closing two farms and cutting costs and improving efficiency. N.T. p. 21.

Boyd also testified about the “Furlough Notification” memorandum dated November 15, 2016, from the appointing authority’s Executive Director to the Secretary of Administration. N.T. pp. 20-21; AA Ex. 2. The memorandum provides additional details about the closure of the game farms and about steps being taken to restructure operations and reduce costs. Consistent with Boyd’s testimony, the

memorandum notes the appointing authority initially considered closing all of the farms, which would have saved approximately \$4.5 million per year. AA Ex. 2. The appointing authority ultimately decided, due to the hunter recruitment and retention provided by the pheasant program, to instead downsize, cut costs, and create a new revenue stream by trying to get a pheasant license approved so that the pheasant program would move closer to paying for itself. AA Ex. 2. The appointing authority was reducing the number of game farms from four farms to two, and making major changes to improve efficiency and reduce costs, while maintaining the benefits of hunter recruitment provided by the program. AA Ex. 2. The appointing authority was required to cut program costs and reduce staff because the legislature had not increased license fees since 1999, and an attempt to increase fees through the legislature in 2016 had failed. The legislature—not the appointing authority—had control over the hunting fees from licenses. AA Ex. 2. The appointing authority’s four pheasant farms produced over 200,000 pheasants per year at a cost of over \$4 million annually. AA Ex. 2. Since there is not a separate license to hunt pheasants, those costs were not offset by any revenue: most of the costs of the program are paid from general license fees. The memorandum further indicated that the appointing authority, “has encountered hard financial times partly due to inflationary pressures across the past 17 years and recently because of rapidly increasing personnel costs coupled with a decline in natural gas revenues.” AA Ex. 2. As of November 2016, the appointing authority was projecting a budget deficit of between \$7 million and \$8 million for fiscal year 2017-2018. AA Ex. 2.

The memorandum explained, “It has been determined that it will be necessary to furlough 13 Wildlife Maintenance Propagators from the Western and Northcentral Game Farms.” AA Ex. 2. These were civil service positions represented by a union and covered by collective bargaining unit AFSCME J1. AA

Ex. 2. Each game farm was its own seniority unit, and all Wildlife Maintenance Propagators in each unit were being furloughed. AA Ex. 2. The Western Game Farm was furlough unit 008, with seven Wildlife Maintenance Propagators. The Northcentral Game Farm was furlough unit 010 with six propagators. AA Ex. 2.

Boyd also was questioned about how the appointing authority selected the two game farms to close. Boyd testified that the appointing authority divided the state into a western half and an eastern half, and the first criteria was choosing a farm “that was somewhat centrally located in each of those two areas.” N.T. p. 22. Regarding the western half, he testified “the Southwest Game Farm was the clear winner” over the Western Game Farm. N.T. pp. 22-23. Regarding the eastern half of the state, Boyd explained that the Loyalsock and Northcentral Game Farm are both very close together. N.T. p. 23. He testified that the distinguishing factor was that Loyalsock Game Farm previously had a breeder flock. N.T. p. 23. Since the pheasant program stopped their internal breeding program, Loyalsock had open field space to improve capacity for birds that would be released for hunters. N.T. p. 23. In contrast, the Northcentral Game Farm did not previously have a breeder flock, so it did not have space to increase capacity. N.T. p. 23.

On cross examination, appellant asked Boyd why the appointing authority was proceeding with a new class of Wildlife Conservation Officer (WCO) Trainees if personnel costs were such a problem. Boyd testified he was not involved in that decision, but the focus of the appointing authority was the cost of the Pheasant Propagation Program. N.T. p. 25. Boyd also acknowledged Wildlife Maintenance Propagators from the Loyalsock Game Farm had been doing some maintenance work, such as mowing the grass, at the Northcentral Game Farm. N.T. p. 25.

Appellant did not testify, nor did he present any witnesses to testify on his behalf. Appellant relies solely on his cross examination of Boyd and asserts that he does not understand how there can be a lack of work if the appointing authority is having other employees go to the game farm to do work. N.T. p. 28.

Analysis of Lack of Funds and Lack of Work

In compliance with the Commonwealth Court's opinion, we analyze first whether the appointing authority established a valid lack of funds to justify appellant's furlough. In a furlough based upon a lack of funds, the appointing authority must establish not only that funding was inadequate, but that a rational relationship exists between the lack of funding and the furloughs undertaken. *Eastern Pennsylvania Psychiatric Institute, Department of Public Welfare v. Russell*, 77 Pa. Commw. 390, 398, 465 A.2d 1313, 1317-18 (1983). A lack of funds need not rise to the level of bankruptcy. *County of Beaver, Beaver County Children and Youth Services v. Funk*, 89 Pa. Commw. 226, 230, 492 A.2d 118, 121 n.6 (1985). "A lack of funds exists when insufficient revenue is available to meet all financial demands unless modifications are made in the system." *Id.* See also *Forbes v. Pennsylvania Department of Transportation*, 61 Pa. Commw. 641, 434 A.2d 892 (1981).

In the present case, based upon the testimony presented by Boyd and the memoranda admitted into the record, we find the appointing authority has established a lack of funds. Taken together, the two memoranda and Boyd's testimony demonstrate that the appointing authority was caught between declining

revenues it had previously relied upon for funding, as well as rapidly increasing personnel costs and costs related to inflation. Hunting license fees had not been increased by the General Assembly since 1999. In addition, the appointing authority's attempts to obtain a fee increase for hunting licenses during the 2015-2016 legislative session failed. Those licensing fees were used to offset costs of the Pheasant Propagation Program since there was not a separate license for pheasant hunting to generate revenue. At the time of the decision to furlough appellant, the appointing authority was projecting a deficit of between \$7 million and \$8 million dollars.

As noted above, a lack of funds exists when there is insufficient revenue available to meet all financial demands unless modifications are made to the appointing authority's operations. The appointing authority established this insufficient revenue, as well as the inability to meet those demands by increasing revenue: the appointing authority is unable to unilaterally raise the hunting license fees. The appointing authority consequently decided to eliminate two of the game farms, furlough all thirteen of the Wildlife Maintenance Propagators working at those two game farms, and consolidate operations of the program at the two remaining farms. Since personnel costs represent sixty-five to seventy percent of the total cost of running a game farm, the appointing authority has established a rational relationship between the lack of funding and the decision to furlough the thirteen employees. In addition to the other steps taken to reduce the costs of the program in 2015, the furlough of the thirteen employees and closure of two of the game farms resulted in a reduction of expenses associated with the program from \$4.5 million in 2015 to a projected cost of \$3 million in 2017.

Appellant questions the appointing authority's decision to furlough existing employees while proceeding with adding a new class of WCO Trainees. Once the appointing authority demonstrates that there are insufficient revenues to meet their obligations, and that there was a rational relationship between that lack of funding and the furloughs undertaken, lack of funds has been established and the Commission cannot second-guess the appointing authority's decisions about how to conduct its operations or allocate its finances. The Commission may not substitute its judgment for that of the appointing authority officials in matters relevant to economy and efficiency. *Pavia v. Commonwealth, Pennsylvania Department of Transportation*, 77 Pa. Commw. 480, 483, 466 A.2d 735, 737-738 (1983).

We turn to the second issue Commonwealth Court directed the Commission to address on remand—namely, Boyd's testimony that appellants' furlough was the result of a lack of work when the Bureau of Wildlife Management stopped breeding pheasants and closed two game farms. In *Department of State v. Stecher*, the Pennsylvania Supreme Court articulated a three-part standard by which an agency can justify a furlough based upon lack of work. 506 Pa. 203, 484 A.2d 755 (1984). An appointing authority may demonstrate a valid lack of work sufficient to justify a furlough by establishing that: 1) the employee's position was eliminated; 2) reorganizational streamlining occurred; and 3) management in good faith believed that the work could be accomplished more efficiently in the absence of the eliminated position. *Id.* In *Stecher*, the court explained that "the appointing authority, in the exercise of its management discretion, may eliminate a position, and, thus, furlough an employee for lack of work, when services the employee performed may be more efficiently performed by other means." *Id.* at 209, 484 A.2d at 758. "It is a managerial prerogative to reallocate work to enhance operational efficiency and to effect cost savings." *Id.* at 211, 484 A.2d at 759.

Applying the three-part standard for lack of work enunciated in *Stecher* to the present case, we find the appointing authority has also demonstrated a valid lack of work for the appellant's furlough. The appointing authority demonstrated that it decided to close two of its four game farms, eliminate thirteen Wildlife Maintenance Propagator positions, and consolidate its pheasant operations in the two remaining game farms. The decision to close half of the game farms eliminated the primary operations of those farms related to the pheasant program. The appointing authority demonstrated that the consolidation of the operations into the Loyalsock and Southwest Game Farms was projected to significantly reduce the costs of the pheasant program without eliminating it entirely. Furthermore, since those game farms previously had breeding operations, the appointing authority determined it was more efficient to utilize those two game farms to raise the pheasant chicks that it was now purchasing because they had space available at those two facilities that was not available at the two other farms.

That fact that some maintenance work at the Northcentral Game Farm was being performed after the furloughs by Wildlife Maintenance Propagators from the Loyalsock Game Farm does not invalidate appellant's furlough. The appointing authority may make decisions regarding how services are to be performed when a position is eliminated, as long as those decisions are made in good faith and comply with any procedural requirements under the Civil Service Act. Management has discretion regarding how best to perform appointing authority operations in an efficient manner, and the prerogative "to reallocate work to enhance operational efficiency and cost savings." *Stecher*, 506 Pa. 211, 484 A.2d 759. As noted in

Stecher, the appointing authority is able to reassign some of the work formerly performed by the furloughed employee to other employees of the agency. The fact that some duties are reassigned, standing alone, does not demonstrate there is no lack of work to support a furlough. *Id.* The appointing authority chose to utilize remaining employees from the other game farms to perform any residual duties that needed to be completed at the closed game farms, and were able to do so as part of their responsibility for managing their programs. We will not second-guess the appointing authority's determination as to how best to perform its duties: that is a decision that is solely within their managerial discretion. *See Commonwealth, Department of Public Welfare v. Magrath*, 14 Pa. Commw. 257, 261, 321 A.2d 404, 405 (1974) ("The law has committed to the responsible officials of [the appointing authority], not to the Civil Service Commission or . . . [Commonwealth] Court, decisions as to what best promotes the efficiency of its services to the public."); and *Wright*, 123 Pa. Commw. at 450, 553 A.2d at 1058 (1989) ("It is up to the agency and not to the Commission or the Courts to determine what would best promote efficiency within the agency."). Accordingly, we enter the following:

CONCLUSIONS OF LAW

1. The appointing authority has presented evidence establishing a lack of funds sufficient to justify furlough under Section 802 of the Civil Service Act, as amended.

2. The appointing authority has presented evidence establishing a lack of work sufficient to justify furlough under Section 802 of the Civil Service Act, as amended.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of Aaron D. Baysore challenging his furlough from regular Wildlife Maintenance Propagator employment with the Pennsylvania Game Commission and sustains the action of the Pennsylvania Game Commission in the furlough of Aaron D. Baysore from regular Wildlife Maintenance Propagator employment effective January 27, 2017.

State Civil Service Commission

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

Mailed: