



by Kevin Techau. The State of Iowa was represented by Jeffery Edgar and Henry Widen. Upon request from Tinker, the undersigned ordered that the evidentiary record remain open until September 13, 2018, to allow for additional evidence to be introduced which was not available at the time of hearing. The parties reconvened by telephone conference on September 13, 2018. No additional evidence was introduced and the evidentiary record was closed at that time. Both parties submitted post-hearing briefs, which were received on October 31, 2018.

Based upon the entirety of the record, and having reviewed and considered the parties' arguments, I make the following findings of fact, conclusions of law, and order:

#### FINDINGS OF FACT

The Iowa DNR is a state agency tasked with maintaining state parks and forests, protecting the environment, and managing fish, wildlife, land and water resources in Iowa. DNR's organizational structure consists of three main divisions: (1) environmental services division ("ES division"); 2) conservation and recreation division ("CR division"); and 3) "administrative" division, which includes the director and deputy director, director's staff, human resources, budget and finance, IT, customer and employee services, and legal services. The ES division and CR division are headed by division administrators and further organized into multiple bureaus.

Relevant to this appeal is DNR's implementation of Iowa Code chapter 459, the Animal Agriculture Compliance Act, which sets regulatory standards for animal feeding operation (AFO) facilities containing more than 300 animal units

and concentrated animal feeding operation (CAFO) facilities containing more than 1,000 animal units. The AFO/CAFO facilities are considered pollutant sources that have environmental and community impacts in terms of air, water and land quality. DNR's regulation of the AFO/CAFO program is fairly decentralized across the four ES division bureaus – air quality, water quality, land quality, and field services and compliance. Each bureau implements different aspects of the AFO/CAFO regulations including permitting, inspecting, and monitoring compliance of new and existing AFO/CAFO facilities.

The AFO Coordinator position that Tinker occupied was in the ES division and part of the “Environmental Services Division Management Unit.” He was classified as an Executive Officer 3 (EO3). The AFO Coordinator, the State Geologist and the ES division bureau chiefs reported to the ES division administrator William Ehm.

Tinker worked out of DNR's central office in Des Moines and coordinated different aspects of oversight for the AFO program. His duties included planning and developing administrative rules, policies and procedures pertaining to the AFO/CAFO program as well as providing training and guidance to field staff implementing AFO regulations at DNR's six field offices. Tinker had knowledge about AFO activities occurring at the field offices and thus served as a “central” source of information for AFO stakeholders on the status of DNR's implementation of the AFO program across the entire state. He also provided technical assistance and educational trainings to stakeholders, including

livestock producers, environmental groups, and local communities affected by AFO/CAFO regulations.

The RIF plan that resulted in Tinker's layoff was proposed and approved due to a lack of funds. DNR's annual operating budget is approximately \$120 million. Its funding is derived from over 30 different funding sources, including general fund and special appropriations from the Iowa legislature, grants, license and permit revenues, and federal funding. The only two funding sources relevant to this appeal, however, are the general fund appropriations the DNR receives from the Iowa legislature and the Animal Agriculture Compliance Fund ("Compliance Fund"), a dedicated fund created by Iowa Code chapter 459 to implement the AFO/CAFO program. This dedicated fund supported the AFO Coordinator position. It also funded all other employees working on AFO activities, such as permit reviewers and inspectors, based on the number of hours they reported working on AFO activities.

General fund appropriations have no special purpose or obligation tied to it. DNR has discretion to determine which programs or expenses to pay with the general fund money and typically uses it as a supplement to other funding sources. The amount of general fund appropriations that DNR receives is determined on a fiscal year basis by the Iowa legislature. In contrast to the general fund, a dedicated fund like the Compliance Fund can only be expended in accordance with the statutory provisions that created the fund. The restrictions set on the Compliance Fund are set out in Iowa Code section

459.401.<sup>2</sup> For the most part, the Compliance Fund derives its income from various operating, license, permit, management and compliance fees that regulated AFO producers are required to pay. Any leftover funds are carried over into the next fiscal year as a balance forward in the dedicated fund.

For fiscal year (FY) 2017, the DNR initially received a general fund appropriation of approximately \$12.8 million. It was appropriated the same general fund amount in fiscal years 2014, 2015 and 2016 without a “salary adjustment” appropriation that would cover annual merit and cost-of-living salary increases. The DNR planned its FY17 budget based on the \$12.8 general fund appropriation. In late December 2016, however, the Iowa Department of Management (DOM) informed executive branch agencies that the Governor planned to present a de-appropriation bill in response to lower than projected state revenues. DNR was informed that it would be impacted by the de-appropriation and instructed to prepare a plan outlining how it would address an anticipated reduction of approximately \$1.3 million to its general fund, reducing the initial FY17 appropriation of \$12.8 million down to \$11.5 million.

The timing of the \$1.3 million de-appropriation was particularly challenging to address given the department was already halfway through the

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<sup>2</sup> **459.401 Animal agriculture compliance fund.**

3. Moneys in the compliance fund are appropriated to the department exclusively to pay the expenses of the department in administering and enforcing the provisions of subchapters II and III as necessary to ensure that animal feeding operations comply with all applicable requirements of those provisions, including rules adopted or orders issued by the department pursuant to those provisions. The moneys shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this subsection. The department shall not transfer moneys from the compliance fund’s assessment account to another fund or account, including but not limited to the fund’s general account.

fiscal year. The division administrators and deputy director formulated several measures to reduce the department's general fund spending for the remainder of FY17 and sent the plan to DOM on December 29, 2016. In implementing the reduction, DNR sought to balance maintaining critical services with spreading the impact of the de-appropriation across the department as much as possible. In line with these considerations, the reductions it proposed included closing DNR's Springbrook Education Center, reducing the number of yearly publications of DNR's *Iowa Outdoors Magazine*, and instituting a hiring freeze.

The department also identified that rent expenses for DNR's field offices were paid entirely by the general fund. DNR determined that a portion of the rent expense could be paid from the Compliance Fund since about 44 of the 98 staff positions across the six field offices had some AFO responsibilities. DNR calculated the amount that could be attributed to AFO activities based on the number of hours the field staff reported working on AFO activities. For FY17, it determined that approximately \$165,000 of the rent expense could be paid by the Compliance Fund. DNR implemented this measure only for FY17 as a way to address the mid-year general fund de-appropriation. Although the de-appropriation bill was not enacted until February 2017, DNR immediately implemented the proposed measures and was able to manage the FY17 general fund reduction without instituting any layoffs.

For FY18, DNR received a general fund appropriation of approximately \$11.2 million, an appropriation even lower than the FY17 de-appropriated amount of \$11.5 million. This presented an additional budgetary challenge for

FY18 and the department had to devise a FY18 spending plan based on the lower general fund appropriation. After reviewing its various fund balances and projected expenses, DNR leadership concluded its budget could not sustain the current staffing levels and that a reduction in force was necessary.

DNR leadership assumed the task of developing a RIF plan. The hiring freeze remained intact and DNR held more than 90 vacancies open. In determining which positions to eliminate, DNR again utilized the same approach as before by prioritizing indispensable and mission critical programs and seeking to spread the impact of the RIF across the agency as much as possible. One aspect of this decision-making process involved determining whether the duties performed by eliminated positions could be absorbed by other staff. The decision also involved examining whether the elimination of certain positions may impact DNR's receipt of federal grants or prior commitments the department made to certain programs.

One prior commitment that impacted its RIF decision-making was a 5-year work plan agreement ("Work Plan") the DNR entered into with the EPA in 2013. The Work Plan was agreed upon after the EPA concluded that DNR did not have an adequate CAFO permitting and inspection program as required by its EPA-delegated duty to enforce certain provisions of the Clean Water Act pertaining to CAFO facilities. DNR was required to successfully complete the Work Plan to avoid losing its delegated authority under the Clean Water Act.

At the time the Work Plan was signed in 2013, the Compliance Fund had a sustainable balance. However, one part of the Work Plan obligated the DNR to

inspect over 8,500 CAFO facilities the EPA identified during its inquiry and the department did not have adequate staff to complete the required inspections. To assure the inspections were timely completed, DNR used the Compliance Fund to hire seven additional inspectors. The department realized at the time the fund could not sustain the additional staff long-term but determined it was critical to hire additional inspectors to complete the Work Plan. DNR projected it would conclude its obligations under the Work Plan before the fund was depleted and the additional staff could then be reassigned to other funding sources. With the additional staff working on AFO activities, the Compliance Fund had less carryover money each year from FY15 and on. The overspending of the fund was further accelerated in FY17 when DNR used \$165,000 to pay a portion of rent expenses for the six field offices.

DNR used the Compliance Fund's budget numbers from FY12 to FY17 to make projections regarding the fund's expected revenues and expenditures for FY18. It projected the total revenues would decrease by about \$530,000. About \$30,000 of the projected decrease in revenue was based on DNR's estimates on the various permit, certification, license and education fees it expected to collect from the regulated community. With the exception of one fee account within the Compliance Fund, the different fees collected during FY12 to FY17 had both increases and decreases from year to year. Only one account, the manure compliance fee account, had some amount of increase every year from FY12 to FY17. The amount of the increase, however, varied significantly from year to year and had no predictable pattern, sometimes increasing by as much as \$84,000

one year and by about \$20,000 another year. For reasons not explained on this record, DNR projected the revenues from the manure compliance fee account would decrease by about \$16,000 in FY18 even though FY12 to FY17 showed some amount of increase every year.

The remaining \$500,000 of the projected revenue decrease in the Compliance Fund for FY18 was attributed to the fund's lower carryover balance. Going into FY17, the Compliance Fund had a carryover balance of about \$1.1 million. Going into FY18, however, the DNR projected the balance forward would only be about \$630,000. The lower balance forward was due in part to the \$165,000 rent payment made from the Compliance Fund in FY17.

DNR projected its total expenditures in the Compliance Fund would decrease by about \$635,000 in FY18. The projected decrease was due in part to the shifting of office rent payments out of the Compliance Fund back to the general fund and a decrease of five full-time employees (FTEs) who were being supported by the Compliance Fund (from 16.45 to 11.45 FTEs). It appears the employees were moved to other funding sources. For FY18, DNR moved forward with one discretionary expenditure that it did not have in FY17 by implementing an electronic Manure Management Plan (eMMP) program.<sup>3</sup> The cost of the eMMP implementation was about \$158,000.

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<sup>3</sup> All animal agriculture producers of a certain size are required to submit a plan for managing its manure. This process was completed by paper submission and was time-intensive for both AFO staff reviewing the submissions and for producers submitting the plans. In late 2016, the DNR held a process improvement event and determined the way to streamline this aspect of the AFO program was to convert the MMP requirements into an electronic process.

Based on FY18 projections, DNR predicted the Compliance Fund could not sustain its current staffing levels. The fund was relying on its depleting carryover balance to cover expenses each year. DNR's main concern during this time was that the fund may be depleted before the completion of the EPA Work Plan.

The RIF decision-making process lasted about two months before DNR submitted its RIF plans for approval. In planning the RIF, DNR leadership had to decide which AFO roles were more critical to maintain. The working drafts and documentation pertaining to the RIF planning indicate the AFO Coordinator position was being considered for elimination as early as April 2017. The reasoning provided was to conserve the Compliance Fund for the AFO field staff positions. The AFO Coordinator did not perform or otherwise have an active role in assuring the required inspections under the Work Plan were completed. Instead, the AFO Coordinator's role was limited to providing information and updates on the status of the ongoing inspections. After consideration, DNR determined that it was more imperative to keep the AFO staff who worked directly with producers and performed the required inspections. The department also concluded the AFO Coordinator duties could be absorbed by field staff and ES division administrator Ehm.

In a "memo to file" dated June 12, 2017, DNR documented its rationale for eliminating the AFO Coordinator position, which stated in part:

Significant reductions in the General Fund appropriated to DNR require the Department to make changes in order to absorb the loss of funding.

In order to meet January 2017 cuts in the General Fund, the DNR substituted \$165,000 of Manure Compliance Funds for Field

Services rent. Field Services rent was formerly paid for entirely with General Fund. Currently the Manure Compliance Fund is being overspent by over \$300,000 per year and is projected to be in the red at the end of FY2019. The DNR has moved four Field Services staff members to other funding sources for FY2018 in order to conserve the Manure Compliance Fund. The Environment First account for animal feeding operations is also expected to be in the red by the end of FY2019.

It is critical that the DNR continue to carry out inspections associated with the AFO Workplan signed with EPA on September 11, 2013. Performance of the inspections and day-to-day AFO duties performed by Field Services staff is a higher priority than the duties performed by the AFO Coordinator. The funding shortfalls necessitate the need to eliminate the Executive Officer 3 position that serves as AFO Coordinator. The functions performed by the AFO Coordinator will be absorbed by other staff from Field Services, the Legal Bureau, the AFO Enforcement Coordinator, and the Field Services Bureau Chief.

DNR estimated the elimination of the AFO Coordinator position would result in \$135,078 savings for the Compliance Fund.

On June 20, 2017, DNR submitted for approval four RIF plans impacting four different organizational units. DOM and DAS approved the plans on June 28, 2017, and the Governor's office approved the plans on July 5, 2017. A total of seven employees were laid off. Around the same time, DNR also implemented over forty reassignments pursuant to DAS subrule 11—59.2, which gives agencies authority to reassign its employees as long as it does not change the employees' merit system coverage.

One of the reassignments relevant to Tinker's arguments in this appeal is the reassignment of Tim Hall, an EO3 who served as DNR's Hydraulic Coordinator. Effective June 12, 2017, Hall was reassigned from the "Environmental Services Division Management Unit" to the land quality bureau

within the ES division. Hall was hired several months prior to Tinker and thus had longer tenure. Had Hall not been reassigned to the land quality bureau, he would have been included in the RIF plan that resulted in Tinker's layoff because he was in the same EO3 job classification.

At the time DNR implemented the RIF plans, the applicable statutory provision and DAS rules stated, in pertinent part:

**8A.413 State human resource management — rules.**

The department shall adopt rules for the administration of this subchapter pursuant to chapter 17A. ... The rules shall provide:

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16. For layoffs by reason of lack of funds or work, or reorganization, and for the recall of employees so laid off, giving consideration in layoffs to the employee's performance record and length of service.

... .

**11—60.3(8A) Reduction in force.** A reduction in force (layoff) may be proposed by an appointing authority whenever there is a lack of funds, a lack of work or a reorganization. A reduction in force shall be required whenever the appointing authority reduces the number of permanent merit system covered employees in a class or the number of hours worked, as determined by the "full-time equivalent" funding attributed to the position, by a permanent merit system covered employee in a class, except as provided in subrule 60.3(1).

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**60.3(2)** The agency's reduction in force shall conform to the following provisions:

*a.* Reduction in force shall be by class.

*b.* The reduction in force unit may be by agency organizational unit or agencywide. If the agency organizational unit is smaller than a bureau, it must first be reviewed by the director.

*c.* The appointing authority shall develop a plan for the reduction in force and shall submit that plan to the director for approval in advance of the effective date. The plan must be approved by the director before it can become effective. The plan shall include the reason(s) for and the effective date of the reduction in force, the reduction in force unit(s), the reason(s) for choosing the unit(s) if the unit(s) is smaller than a bureau, the number of permanent merit system covered employees by class to be eliminated or reduced in

hours, the cutoff date for length of service and performance credits to be utilized in determining retention points, and any other information requested by the director.

d. The appointing authority shall notify each affected employee in writing of the reduction in force, the reason(s) for it, and the employee's rights under these rules. A copy of the employee's retention points computation worksheet shall be furnished to the employee. The official notifications to affected employees shall be made at least 20 workdays prior to the effective date of the reduction in force unless budgetary limitations require a lesser period of time. These official notifications shall occur only after the agency's reduction in force plan has been approved by the director, unless otherwise authorized by the director.

e. The appointing authority shall notify the affected employee(s), in writing, of any options or assignment changes during the various steps in the reduction in force process. In each instance the employee shall have five calendar days following the date of receipt of the notification in which to respond in writing to the appointing authority in order to exercise the rights provided for in this rule that are associated with the reduction in force.

One of the four RIF plans DNR implemented resulted in Tinker's layoff as the AFO Coordinator. The approved RIF plan indicated it was being proposed for budgetary reasons and DNR's need to prioritize certain projects and programs in FY18 and on. The documentation indicated the affected organizational unit was the "Environmental Services Division Management Unit." The affected job classification was the EO3 classification and the effective date of the layoff was August 2, 2017.

The RIF plan indicated the State Geologist and the AFO Coordinator, both classified as EO3's, would be laid off. DNR calculated the affected employees' retention points based on length of service and performance credits with a cutoff date of June 12, 2017. The retention point calculation worksheet and an organizational chart was included with the RIF plan documentation. With a hire date of May 2003, Tinker had 336 retention points while the State Geologist,

with a hire date of April 1982, had 844 retention points. The RIF plan indicated the State Geologist's duties would subsequently be handled by the University of Iowa and division administrator Ehm while the AFO Coordinator's duties would be performed by the field services bureau chief and field staff, the AFO enforcement coordinator and DNR's legal bureau.

On July 5, after the RIF plan was approved, DNR met with Tinker and provided him with written notice that he would be laid off effective August 2, 2017. The written notice indicated the RIF was being implemented for "budgetary considerations" that made it necessary for DNR to reduce the number of employees. DNR informed Tinker he did not have any bumping rights associated with the layoff and provided him with a copy of the approved RIF plan containing the retention point calculation worksheet.

Tinker timely appealed the July 5 notice of layoff through the Iowa Code subsection 8A.415(1) grievance procedure steps. For various reasons that will be addressed, Tinker's appeal claimed that sufficient funds existed, or should have existed, to support the AFO Coordinator position. Thus, because sufficient funds existed, he asserted that DNR did not substantially comply with Iowa Code subsection 8A.413(16) and DAS rule 11—60.3 (unnumbered subsection) because his layoff was not precipitated by a lack of funds as the DNR claimed in its RIF plan. Tinker's grievance was denied at all three steps of the grievance procedure. Tinker filed the instant appeal with PERB on September 28, 2017.

In his appeal to PERB, Tinker continues to assert that DNR did not substantially comply with Iowa Code subsection 8A.413(16) and DAS rules 11—

60.3. However, he also presents a new nuance to his appeal by asserting DNR's elimination of the AFO Coordinator position was motivated by improper retaliatory reasons after several agricultural groups expressed their dissatisfaction with Tinker. He argues the agency used the RIF as a pretext to remove him from his position and points to several events in support of this allegation.

Tinker gave a presentation to a group of county supervisors in December 2016 and March 2017. His presentations informed counties how they can use the master matrix, a regulatory tool used during the permitting process for CAFO facilities, to add additional requirements for permit applicants.<sup>4</sup> At least one county used the information from Tinker's presentation to add additional requirements on the master matrix application before the applicants could earn the points associated with that question. As a result, several agricultural groups requested a meeting with DNR leadership and met with the director, deputy director and ES division administrator Ehm on May 4, 2017. Among other items, the groups conveyed to DNR leadership that they did not like Tinker's presentations on the master matrix and that they believed he was providing more information to counties than he should. Although disputed on this record, Tinker

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<sup>4</sup> The master matrix consists of 44 questions/criteria regarding the proposed CAFO facility. Each question has an assigned point value and an applicant must earn at least 440 points of the total 880 available to get a "passing" score on the application. A permit applicant is not required to provide a response to each question. The master matrix is designed to allow counties to add local input by passing additional requirements for matrix criteria not otherwise defined by the AFO regulations. The applicant must meet the additional criteria set by the county to earn the points associated with that particular criterion. DNR ultimately determines whether to issue the requested CAFO construction permit.

asserts Ehm directed him to stop giving the master matrix presentation a week after DNR leadership met with the aggrieved agricultural groups.

#### CONCLUSIONS OF LAW

Tinker filed the instant grievance appeal pursuant to Iowa Code subsection 8A.415(1) and PERB subrule 621—11.2(1). The pertinent statutory language states:

**8A.415 Grievance and discipline resolution procedures.**

1. *Grievances.*

*a.* An employee . . . who has exhausted the available agency steps in the uniform grievance procedure provided for in the department rules may, within seven calendar days following the date a decision was received or should have been received at the second step of the grievance procedure, file the grievance at the third step with the director [of the Department of Administrative Services]. The director shall respond within thirty calendar days following receipt of the third step grievance.

*b.* If not satisfied, the employee may, within thirty calendar days following the director’s response, file an appeal with the public employment relations board. The hearing shall be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act, chapter 17A. Decisions rendered shall be based upon a standard of substantial compliance with this subchapter and the rules of the department. . . .

Particularly significant in the excerpted language is that PERB’s decision in a subsection 8A.415(1) grievance appeal “shall be based upon a standard of substantial compliance with [Iowa Code chapter 8A, subchapter IV] and the rules of the department [of Administrative Services].” The burden is on the appealing employee to establish the State failed to substantially comply with the cited statute or rule. *Studer and State of Iowa (Dep’t of Human Servs.)*, 98-MA-12 at 9. Accordingly, to prevail in this appeal, Tinker must establish that DNR failed to substantially comply with Iowa Code subsection 8A.413(16) or DAS rule 11—

60.3 (unnumbered subrule) when it implemented the RIF plan that resulted in his layoff.

DAS subrule 11—60.3(2) outlines specific procedural requirements an appointing authority must follow when implementing a reduction in force. Those provisions, previously excerpted, require the appointing authority to determine the layoff unit, develop and submit a RIF plan for approval, implement the reduction by job classification, calculate retention points for all affected employees, and provide the affected employees with notice at least twenty work days prior to the effective date of the layoff. The record establishes, and Tinker does not dispute, DNR complied with the specific procedural requirements contained in subsection 60.3(2).

Tinker's central claim in this appeal is that his layoff was not precipitated by a lack of funds as the DNR purported and, as a result, the RIF plan failed to meet the threshold requirement imposed by Iowa Code subsection 8A.413(16) and DAS rule 11—60.3, which direct that a RIF can only be proposed due to a lack of funds, a lack of work, or a reorganization. Tinker attacks DNR's purported lack of funds position from several different angles.

Tinker asserts a review of DNR's FY17 and FY18 budget shows that sufficient funds existed, or would have existed, to support the AFO Coordinator position if DNR had made different expenditure decisions with the Compliance Fund. One aspect of this argument is Tinker's continued assertion that DNR's use of the Compliance Fund to pay \$165,000 in field office rent expenses is improper because it violates Iowa Code section 459.401. PERB's jurisdiction in

section 8A.415(1) grievance appeals is limited to determining substantial compliance with Iowa Code chapter 8A, subchapter IV, and the DAS rules. *Fulton and State of Iowa (Dep't of Corr.)*, 10-MA-03 at 7. As addressed in a prior ruling concerning this appeal, PERB lacks jurisdiction to determine whether DNR's payment of rent expenses from the Compliance Fund violates Iowa Code section 459.401. *Tinker and State of Iowa (Dep't of Nat. Res.)*, 18-ALJ-102085 (Ruling on Motion for Partial Summary Judgment, August 7, 2018). Instead, the only relevant fact about the rent expenditure is that DNR used the Compliance Fund to pay \$165,000 in rent expenses. This decision resulted in less carryover money in the Compliance Fund to use on any other expenses in FY18, including money for staff positions such as the AFO Coordinator position.

The other aspect of Tinker's argument about DNR's expenditure decisions is his claim that DNR did not take a "prioritization approach" when concluding a RIF was necessary. He points out DNR moved forward with discretionary expenses, such as the implementation of the eMMP, during a budget shortfall in the Compliance Fund. Tinker asserts the department should have prioritized saving a staff position over discretionary expenses such as the eMMP program. Tinker's argument fails to demonstrate how any of the applicable statutory provisions or DAS rules required DNR to prioritize staff positions above other business expenses the department determined necessary. An appointing authority has the discretion to determine which programs and services to fund. While he may disagree with DNR's spending decisions, the fact is those expenditures were made and that money was no longer available to use on any

other expense. Tinker's disagreement with DNR's spending decisions does not demonstrate that DNR failed to substantially comply with 8A.413(16) or DAS rule 11—60.3.

Tinker also claims DNR's budget projections for FY18 are unrealistic and that more accurate projections would show sufficient funds existed in the Compliance Fund to support his position. In reviewing DNR's FY18 projections, the record shows those projections were made based on the FY 12 to FY17 budget history. All the different fee accounts, except the manure compliance fee account, show a history of increases and decreases from one year to another. Thus, DNR's projection that some of these fee accounts may decrease while others may increase in FY18 is consistent with the revenue history from the six prior years.

Tinker argues the manure compliance fees, specifically, would increase in FY18, not decrease as the DNR projected, because more AFO facilities are built each year and thus more producers would be required to pay this fee. The FY12 to FY17 revenue history supports this assertion as it shows consistent increases that range from about \$20,000 to \$84,000 from year to year. It is unclear on this record what informed DNR's projection that the compliance fee revenue would decrease by approximately \$16,000 in FY18. However, in looking at the entirety of the FY18 projections, this one outlier does not significantly change the projected revenues for FY18. Even if DNR had projected an increase of \$20,000 in compliance fees, as was the case from FY16 to FY17, this amount is not significant enough to show sufficient funds existed to support the AFO Coordinator position.

An overall review of the Compliance Fund shows the fund was depleting as its expenditures outpaced the incoming revenues. The fund has been relying on its carryover balance to cover annual expenses since FY15 and on. In FY17, the fund would have been short about \$500,000 if it did not have a carryover balance of more than \$1.1 million from FY16 going into FY17. A review of the fund also shows that while the carryover balance had been gradually decreasing by about \$100,000, the carryover balance from FY17 to FY18 had decreased by about \$500,000, cutting the entire carryover balance by almost half compared to FY17.

Tinker's allegation that DNR's RIF decision was motivated by improper retaliatory reasons is unpersuasive. Tinker claims DNR "raided" the Compliance Fund after the agricultural groups expressed their dissatisfaction with Tinker just so the department could later claim the fund was unable to support its current staffing levels. He also asserts that he was added to the RIF days or weeks after DNR met with the agricultural groups who were upset with his presentations on the master matrix. The timeline of events established by this record does not lead to the conclusion Tinker seeks.

The record demonstrates that DNR decided to use the Compliance Fund for rent payments in late December 2016 after DOM instructed the department to find ways to deal with the FY17 de-appropriation. Thus, DNR's decision to use the Compliance Fund for field office rent expenses occurred almost five months before DNR ever learned that agricultural groups were upset by Tinker's presentations. Additionally, the RIF documentation presented shows that DNR

considered the elimination of the AFO Coordinator position in April 2017, which was also before DNR met with the aggrieved agricultural groups.

Tinker's claim that DNR took administrative steps to assure he had no bumping rights associated with the RIF is also unsupported by the record. While Hall was reassigned out of the layoff unit prior to the RIF, the record also shows that Hall was one of forty reassignments that occurred during this time. More importantly, the record demonstrates that Hall had longer tenure than Tinker and presumably would have had more retention points had he remained in the layoff unit. Tinker's argument regarding bumping rights appears to be based on an erroneous interpretation of DAS subrule 11—60.3(3), which outlines the criteria for calculating retention points. Tinker claims that Hall's length of service as a bureau chief would not have counted toward his retention points because it was a supervisory position. Tinker's argument is not supported by 11—60.3(3). While the rule excludes certain periods of time when calculating an employee's length of service, time employed in a supervisory capacity is not one of those excluded time periods.

The record as a whole demonstrates the Compliance Fund was depleting. DNR was forced to make a decision regarding the positions and expenses it deemed indispensable and concluded its current staffing levels were unsustainable based on its budget projections. These decisions led to the elimination of seven positions through the four RIF plans the department implemented, including the elimination of the AFO Coordinator position. Tinker has failed to show that the RIF was not precipitated by a lack of funds. The record

presented demonstrates the RIF plan that resulted in Tinker's layoff substantially complied with Iowa Code subsection 8A.413(16) and DAS rule 11—60.3. Consequently, I propose the following:

ORDER

Appellant Eugene Tinker's Iowa Code subsection 8A.415(1)(b) state employee grievance appeal is DISMISSED.

The cost of reporting and of the agency-requested transcript in the amount of \$1,931.00 are assessed against Eugene Tinker pursuant to Iowa Code subsection 20.6(6) and PERB rule 621—11.9. A bill of costs will be issued to Tinker in accordance with PERB subrule 621—11.9(3).

This proposed decision and order will become PERB's final agency action on the merits of Tinker's appeal pursuant to PERB rule 621—11.7 unless, within 20 days of the date below, a party files a petition for review with the Public Employment Relations Board or the Board determines to review the proposed decision on its own motion.

DATED at Des Moines, Iowa this 12th day of September, 2019.

/s/ Jasmina Sarajlija  
Administrative Law Judge

Electronically filed.  
Parties served via eFlex.