

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Ohio Department of Rehabilitation & Correction,	:	
	:	
Appellant-Appellee/ Cross-Appellant,	:	
	:	No. 10AP-726
v.	:	(C.P.C. No. 10CVF 02 3009)
William Middlestead,	:	(REGULAR CALENDAR)
	:	
Appellee-Appellant/ Cross-Appellee.	:	
	:	

D E C I S I O N

Rendered on May 17, 2011

Michael DeWine, Attorney General, and *Nicole S. Moss*, for appellee/cross-appellant.

Moses Law Offices, LLC, and *Michael A. Moses*, for appellant/cross-appellee.

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, P.J.

{¶1} Appellee-appellant and cross-appellee, William Middlestead, appeals from a judgment of the Franklin County Court of Common Pleas remanding his appeal to the State Personnel Board of Review ("SPBR") for further consideration of whether appellant-appellee and cross-appellant, Ohio Department of Rehabilitation and Correction

("ODRC"), acted in bad faith in implementing job abolishments and layoffs that resulted in Middlestead's losing his displacement rights. Because the evidence from the hearing conducted before the SPBR establishes ODRC acted in bad faith, we reverse.

I. Facts and Procedural History

{¶2} Employed for a number of years with ODRC, Middlestead as of 2008 held the position of Building Maintenance Superintendent 1 ("BMS1") at the Ohio State Penitentiary. On January 31, 2008, Ohio's governor issued an executive order instructing state agencies to reduce their expenditures in light of the state's impending budget deficit. ODRC determined that, to reduce its own budget, it would need to abolish positions and implement a hiring freeze beginning in January 2008.

{¶3} As of February 6, 2008, the "Q's" and "A's" section of ODRC's Budget Impact Website stated the hiring freeze affected the hiring, transfer and promotion of all positions, except those essential for safety, prisoner care and revenue generation. Under those parameters, BMS1 and BMS2 positions were not exempt from the hiring freeze. Although the director of ODRC notified each warden or regional director of the number of positions to eliminate at their respective facilities, each warden or regional director retained the discretion to determine which positions at the facility should be abolished.

{¶4} David Bobby was the warden at Trumbull Correctional Institution from 2003 to March 2008; he then became the warden at the Ohio State Penitentiary. Trumbull Correctional Institution and Ohio State Penitentiary are in the same layoff jurisdiction. In January 2008, Warden Bobby, aware jobs would have to be abolished, was looking at which positions to abolish at the Trumbull Correctional Institution; in the first two weeks of

February, the positions were identified. Sometime in February 2008, Bobby met with Warden Houck at the Ohio State Penitentiary to discuss Houck's list of positions to be abolished, as Middlestead's BMS1 position was on the list, and ODRC selected it for abolishment in February 2008.

{¶5} Despite the hiring freeze, ODRC promoted Louis Savric on February 17, 2008 from the position of BMS1 to fill a vacancy in the position of BMS2 at Trumbull Correctional Institution. Bobby was aware of the promotion and testified the process to fill the BMS2 position at Trumbull began in December 2007 or January 2008 and was posted sometime prior to February 2008.

{¶6} On April 8, 2008 ODRC submitted to Ohio Department of Administrative Services ("DAS") a rationale, based on projected cost savings, for abolishing several hundred positions within ODRC. DAS calculated retention points for the employees whose positions were to be abolished and authorized ODRC to proceed with the abolishments and resulting layoffs. As a result, Middlestead's BMS1 position was abolished, his layoff was effective June 21, 2008, and he was advised by letter June 2, 2008 that no positions were available into which he could displace. Middlestead took a voluntary demotion, and ODRC "rehired" him as a Corrections Officer effective June 23, 2008. (ALJ R&R, 9.) Had Savric not been promoted from BMS1 to BMS2 at Trumbull Correctional Institution, Middlestead could have exercised his displacement rights and "bumped" into the BMS1 position at Trumbull Correctional Institution. ODRC offered no explanation for the circumstances.

{¶7} Middlestead appealed the matter to the SPBR where a hearing was held in early December 2008. The Administrative Law Judges ("ALJs") issued a Report and Recommendation concluding ODRC proved, by a preponderance of the evidence, it abolished Middlestead's position for reasons of economy. The ALJs also concluded Middlestead proved, by a preponderance of the evidence, ODRC acted in bad faith when it promoted Savric from BMS1 to BMS2 in violation of the hiring freeze. By doing so, the ALJs explained, ODRC pre-positioned Savric to prevent Middlestead from displacing him even though Middlestead had superior retention points. Concluding ODRC presented no evidence to rebut Middlestead's evidence, the ALJs decided Middlestead's layoff should be disaffirmed, and Middlestead should be allowed to exercise his displacement rights as though Savric had not been pre-positioned to prevent him from doing so.

{¶8} The SPBR adopted the ALJs' recommendation, ordered Middlestead's layoff be disaffirmed, and determined Middlestead was entitled to exercise his displacement rights. In its opinion attached to the order, the SPBR noted Warden Bobby knew both that Savric was promoted and Middlestead's position was abolished and thus "knew that those two actions were taking place and would ultimately effect [sic] each other." (SPBR Opinion.) The SPBR concluded ODRC, by promoting Savric when it did, took "away [Middlestead's] displacement rights" even though Middlestead had more retention points than Savric and would have been able to displace him had Savric remained a BMS1 and not been pre-positioned to defeat Middlestead's displacement rights. Despite adopting the findings of the ALJs, SPBR rejected the ALJs' conclusion that ODRC acted in bad faith and instead determined ODRC abused its discretion.

{¶9} ODRC appealed the SPBR's order to the Franklin County Court of Common Pleas, arguing the SPBR incorrectly applied an abuse of discretion standard in disaffirming ODRC's actions regarding Middlestead. According to ODRC, Middlestead's effort to have his layoff disaffirmed required him to establish ODRC acted in bad faith, something ODRC argued Middlestead failed to do. ODRC admitted in its brief filed to support its appeal that "Savric occupied a BMS1 position prior to his appointment to the BMS2 position in February 2008, had fewer retention points than Middlestead, and worked in the same layoff jurisdiction as Middlestead." ODRC nonetheless claimed the facts alone were insufficient to establish ODRC intended to subvert the civil service system. Middlestead responded, asserting SPBR could disaffirm Middlestead's layoff upon finding the appointing authority abused its discretion.

{¶10} On June 22, 2010, the common pleas court entered its decision on the merits, followed by a judgment entry on July 26, 2010. Believing bad faith, and not abuse of discretion, to be the test for determining the propriety of ODRC's actions, the court remanded the matter to the SPBR "for proper consideration of whether there was sufficient evidence to warrant a finding of bad faith." (Decision, 5.) Middlestead timely appealed.

II. Assignments of Error

{¶11} Middlestead assigns the following errors:

Assignment of Error No. 1

A CONCLUSION BY A COURT OF COMMON PLEAS THAT AN ORDER OF THE STATE PERSONNEL BOARD OF REVIEW SHOULD BE REVERSED FOR LACK OF SUBSTANTIAL EVIDENCE THAT A JOB ABOLISHMENT

WAS IN BAD FAITH OR, ALTERNATIVELY, THAT THE BOARD IMPROPERLY DISAFFIRMED THE JOB ABOLISHMENT ON THE BASIS OF AN ABUSE OF DISCRETION RATHER THAN BAD FAITH, IS A LEGAL DETERMINATION FULLY REVIEWABLE BY THE COURT OF APPEALS UNDER O.R.C. SEC. 119.12.

Assignment of Error No. 2

THE LOWER COURT ERRONEOUSLY FAILED TO ACCORD DUE DEFERENCE TO THE FACTFINDER INSOFAR AS IT REVERSED THE ORDER OF THE STATE PERSONNEL BOARD OF REVIEW DISAFFIRMING THE APPEAL OF MR. MIDDLESTEAD'S LAYOFF DUE TO THE VIOLATION OF HIS DISPLACEMENT RIGHTS IN CONTRAVENTION OF O.R.C. SEC. 124.321 AND O.A.C. SEC. 123:1-41 BY THE PRE-POSITIONING OF AN EMPLOYEE THROUGH PROMOTION DESPITE THE EXISTENCE OF THE GOVERNOR'S EXECUTIVE ORDER IMPOSING CONTROLS ON HIRING, TRANSFER AND PROMOTIONS IN ALL STATE AGENCIES BECAUSE IT WAS NOT SUPPORTED BY RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE AND WAS NOT IN ACCORDANCE WITH LAW.

Assignment of Error No. 3

THE LOWER COURT ERRONEOUSLY FAILED TO DETERMINE IF THE ORDER OF THE STATE PERSONNEL BOARD OF REVIEW WAS SUPPORTED BY RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE UNDER THE PROVISIONS OF O.R.C. SEC. 119.12.

Assignment of Error No. 4

THE LOWER COURT ERRONEOUSLY FAILED TO DETERMINE IF THE ORDER OF THE STATE PERSONNEL BOARD OF REVIEW WAS IN ACCORDANCE WITH LAW UNDER THE PROVISIONS OF O.R.C. SEC. 119.12.

{¶12} ODRC cross-appeals, assigning the following error:

Assignment of Error No. 1. The lower court erroneously failed to reject and reverse the decision of the State Personnel Board of Review.

{¶13} The appeal and cross-appeal present two issues: (1) whether the SPBR may disaffirm Middlestead's layoff upon determining ODRC abused its discretion but did not act in bad faith, and (2) whether the common pleas court erred when it remanded the matter to the SPBR.

III. Standard of Review

{¶14} Under R.C. 119.12, a common pleas court, in reviewing an order of an administrative agency, must consider the entire record to determine whether reliable, probative, and substantial evidence supports the agency's order and the order is in accordance with law. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 110-11. The common pleas court's "review of the administrative record is neither a trial de novo nor an appeal on questions of law only, but a hybrid review in which the court 'must appraise all the evidence as to the credibility of the witnesses, the probative character of the evidence, and the weight thereof.'" *Lies v. Veterinary Med. Bd.* (1981), 2 Ohio App.3d 204, 207, quoting *Andrews v. Bd. of Liquor Control* (1955), 164 Ohio St. 275, 280. The common pleas court must give due deference to the administrative agency's resolution of evidentiary conflicts, but "the findings of the agency are by no means conclusive." *Conrad* at 111. The common pleas court conducts a de novo review of questions of law, exercising its independent judgment in determining whether the administrative order is "in accordance with law." *Ohio Historical Soc. v. State Emp. Relations Bd.*, 66 Ohio St.3d 466, 471, 1993-Ohio-182.

{¶15} An appellate court's review of an administrative decision is more limited than that of a common pleas court. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621, 1993-Ohio-122. The appellate court is to determine only whether the common pleas court abused its discretion. *Id.*; *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219 (defining abuse of discretion). Absent an abuse of discretion, a court of appeals may not substitute its judgment for that of an administrative agency or the common pleas court. *Pons* at 621. An appellate court, however, has plenary review of purely legal questions. *Big Bob's, Inc. v. Ohio Liquor Control Comm.*, 151 Ohio App.3d 498, 2003-Ohio-418, ¶15.

IV. Bad Faith or Abuse of Discretion

{¶16} Middlestead contends SPBR properly disaffirmed Middlestead's layoff upon finding ODRC abused its discretion. ODRC disputes Middlestead's argument, asserting SPBR was required to find ODRC acted in bad faith before it could disaffirm ODRC's actions regarding Middlestead.

{¶17} The undisputed evidence before SPBR's ALJs demonstrated ODRC needed to cut its expenditures due to Ohio's budget deficit; one of ODRC's biggest expenditures was payroll costs. An appointing authority may abolish a position for reasons of economy, as well as efficiency or lack of work, and employees "may be laid off as a result of abolishment of positions." R.C. 124.321(D)(1). The appointing authority bears the burden by a preponderance of the evidence to prove a job abolishment was undertaken for the reasons set forth in R.C. 124.321(D)(1). Ohio Adm.Code 124-7-01(A)(1). Here, the ALJs concluded ODRC abolished Middlestead's BMS1 position for reasons of economy, and no one disputes the abolishment in that respect was proper.

{¶18} Despite acknowledged reasons of economy to support ODRC's job abolishment, SPBR may affirm a layoff or job abolishment only "if the appointing authority has substantially complied with procedural requirements" set forth in R.C. 124.321 et seq. "and the administrative rules promulgated pursuant to these statutes." Ohio Adm.Code 124-7-01(A)(3). The parties stipulated ODRC "complied with the relevant procedural and notice requirements of the Ohio Revised Code and Ohio Administrative Code in implementing Appellant Middlestead's layoff." (R&R, 7.)

{¶19} A corollary issue arises when positions are abolished. If an abolishment, as here, results in the reduction of a workforce, the appointing authority must allow the employee with the most retention points to displace the employee with the fewest retention points in the same classification. R.C. 124.321(D)(3)(b); see also Ohio Adm.Code 124-7-01(C) (providing that "[w]hen a position is abolished or an employee is laid off, displacement rights," as set forth in R.C. 124.321(D), "shall be afforded the employee"). An employee subject to a layoff may exercise displacement rights, but "[d]isplacement rights * * * may only be exercised within the employees appointing authority and within the layoff jurisdiction as established in this chapter." Ohio Adm.Code 123:1-41-11(A). Given the stipulations that ODRC acted for reasons of economy and complied with relevant procedural and notice requirements, Middlestead, according to Ohio Adm.Code 124-7-01(A), was required to prove ODRC acted in bad faith. Id. (providing "[j]ob abolishments and layoffs shall be disaffirmed if the action was taken in bad faith," with the employee bearing the burden to "prove the appointing authority's bad faith by a preponderance of the evidence").

{¶20} Applying Ohio Adm.Code 124-7-01(A)'s bad-faith standard, we decided in *State ex rel. Gould v. Ohio Bur. of Emp. Servs.* (1985), 28 Ohio App.3d 30, 32, that "[b]ad faith may be established by showing appropriate evidence or inferences therefrom that the job abolishments were not made in good faith and were used as a subterfuge to subvert the civil service system." In *Gould*, the Ohio Bureau of Employment Services ("OBES") abolished an old job training program and replaced it with a new job training program; funding for the new program necessitated a reduction in staff. OBES transferred certain employees to a division called "Executive General," placing those employees into safe positions where they were able to retain their seniority, while other employees were left in the old job training program. *Id.* at 33. OBES then abolished the old job training program and transferred the employees in Executive General into the new program. *Id.* The employees left in the old program lost their jobs, while the employees transferred first to Executive General and then to the new program escaped that end.

{¶21} Commenting on the series of events, this court noted "at that point, strange things occurred which may be logically explained by finding bad faith on the part of OBES [which] intended to subvert the civil service system retention rights of certain employees of [the old program] who would otherwise have been eligible for similar positions in [the new program]." *Id.* at 32-33. "While no specific motive for this procedure was established, there is a reasonable inference that, by a subterfuge, handpicked employees retained their positions and less favored employees had their jobs abolished[,] * * * a subterfuge to avoid the application of the seniority system based upon retention points." *Id.* at 33.

{¶22} We examined in *Blinn v. Ohio Bur. of Emp. Serv.* (1985), 29 Ohio App.3d 77, the same conduct at issue in *Gould*. Although in *Gould* SPBR disaffirmed the abolishments, SPBR in *Blinn* affirmed the abolishments, concluding the employees did not establish bad faith "because there was no evidence of political or personal animus, * * * all procedural laws and rules concerning the abolishment of civil service positions had been followed, and * * * no * * * employee was moved into or out of the effective classifications after OBES had submitted retention points" to DAS. *Id.* at 79.

{¶23} Reviewing SPBR's rationale for its bad-faith determination, we held "[t]he existence of bad faith in the transfer and promotion of civil service employees does not depend upon a finding that the employer acted with a political or personal animus, or failed to comply with procedural requirements." *Id.* at syllabus. We further pointed out SPBR did not address the hearing officer's finding of bad faith that arose from OBES's "handpicking civil service employees in order to avoid application of the seniority system and retention rights." *Id.* at 80. We ultimately concluded bad faith was demonstrated "[w]here the intent and consequence of the employer's method is to subvert the civil service system to allow the selection of handpicked employees to fill jobs that should have been available to civil service workers based upon seniority and retention points." *Id.* at 80.

{¶24} We revisited in *Henschen v. Ohio Dept. of Taxation*, 10th Dist. No. 06AP-341, 2007-Ohio-2528, application of bad-faith principles in the context of job abolishments. In *Henschen*, the Ohio Department of Taxation ("ODT") reorganized, creating separate audit and taxpayer services divisions. Pursuant to the reorganization,

DAS created a new Tax Auditor Classification series that included a newly created Tax Auditor Agent Manager position. Although the audit division began operating in July 2001, the employees were classified in the "old Tax Commissioner Agent and Tax Commissioner Supervisor series because the new classification series of Tax Auditor Agent and Supervisor series were not effective until October 10, 2001." Id. at ¶20.

{¶25} Before creating the new audit division, the Tax Commissioner assured employees no job losses or decreases in pay would occur due to the reorganization. After the new classifications became effective in October 2001, ODT submitted a statement of rationale to DAS to abolish various positions, including Henschen's Tax Commissioner Supervisor 3 position. ODT purposefully waited until after the new audit division classifications were effective and filled to proceed with the abolishments. Had the abolishments occurred before the new classifications were effective, employees with superior retention points could have displaced those employees with less retention points who were hired to work in the new audit series but were still classified under the old series. Noting Ohio Adm.Code 124-7-01, we stated "[t]he evidence presented established that the abolishments were delayed until after the new classifications in the Tax Auditor Agent series were created, effective, and filled. By doing so, ODT eliminated the possibility of any displacement rights of the holders of the abolished positions" and thus bad faith was shown. Id. at ¶19.

{¶26} Here, ODRC appropriately admitted SPBR, "in finding the abuse of discretion," actually "cited evidence supportive of a finding of bad faith." (Brief of ODRC, 7.) Indeed, the facts here are similar to the facts amounting to bad faith in *Gould, Blinn*,

and *Henschen*. The evidence demonstrated that in February 2008 Warden Bobby knew abolishments were necessary, Middlestead's BMS1 position at the Ohio State Penitentiary was set for abolishment, and Savric was promoted from BMS1 to BMS2 at Trumbull Correctional Institution. Moreover, in promoting Savric, ODRC violated its own hiring freeze as articulated on its informational website that stated the freeze affected promotions of all non-exempt positions. ODRC nonetheless moved Savric into a safe position, pre-positioning "Savric so that he could not be displaced" and thus preventing Middlestead from exercising his displacement rights. (R&R, 14.)

{¶27} Because Trumbull Correctional Institution and the Ohio State Penitentiary were in the same layoff jurisdiction, Middlestead, who had more retention points than Savric, would have been able to displace Savric from his BMS1 position at Trumbull Correctional Institution had ODRC not promoted Savric from BMS1 to BMS2. Although SPBR concluded ODRC's conduct was an abuse of discretion, the "intent and consequence of" ODRC's timing and method of promoting Savric was "to subvert the civil service system to allow the selection of [a] handpicked employee[] to fill [a] job[] that should have been available to [Middlestead] based on seniority and retention points." *Blinn* at syllabus. Moreover, promoting Savric during a hiring freeze confirmed ODRC did not act in good faith. *Gould* at 32. Accordingly, even though SPBR stated ODRC abused its discretion, SPBR, in adopting the factual findings of its ALJs, substantively found ODRC acted in bad faith as a matter of law.

{¶28} In an attempt to circumvent such a conclusion, ODRC argues Middlestead could not have met his burden of establishing bad faith because he presented "no

evidence * * * that anyone had knowledge in January and February 2008 what Middlestead's retention points were vis á vis Savric." (Cross-appeal brief of ODRC, 4 n.1.) Warden Bobby, however, testified he had known Middlestead since 1993. He thus would have had some idea of Middlestead's long service with the state. More significantly, such knowledge is not indispensable to concluding ODRC acted in bad faith. See *Henschen* at ¶¶25-27 (noting that when ODT filled the new audit division positions in July 2001, it did not know the retention points of the employees whose positions were to be abolished vis á vis the employees hired into the new audit division but bad faith nonetheless was present because the ultimate effect of ODT's waiting until the "new classifications were effective and filled ensured that the Audit Division employees would not be displaced by employees whose jobs were abolished").

{¶29} Similarly, ODRC here promoted Savric, ensuring Middlestead would not be able to displace him. Had ODRC first calculated Savric and Middlestead's retention points and submitted that list to DAS, ODRC arguably could not have promoted Savric. Ohio Adm.Code 123:1-41-08(F). Moreover, even not knowing the exact number of retention points each employee held, ODRC knew Savric and Middlestead's positions were in the same classification series and in the same layoff jurisdiction such that Savric's promotion would affect Middlestead's employment.

{¶30} Middlestead, by contrast, contends that even if bad faith is not supported in the record, SPBR was justified in disaffirming his layoff upon finding ODRC abused its discretion. Middlestead notes the Supreme Court of Ohio stated SPBR may " 'disaffirm layoff orders not only where it finds that the appointing authority acted arbitrarily,

unreasonably, or unlawfully, but also where it finds from an independent review of the layoff that the decisions made and actions taken by the appointing authority regarding the layoff of employees were improper or unnecessary.' " *State ex rel. Bispeck v. Bd. of Commrs. of Trumbull Cty.* (1988), 37 Ohio St.3d 26, 29, quoting *State ex rel. Ogan v. Teater* (1978), 54 Ohio St.2d 235, 245. The Supreme Court, however, also stated "we should be cautious not to pluck a few statements from *Bispeck* and apply them overly literally." *Penrod v. Ohio Dept. of Adm. Servs.*, 113 Ohio St.3d 239, 2007-Ohio-1688, ¶26.

{¶31} *Bispeck* and *Penrod* both concerned an agency's substantial compliance with the substantive aspects of the statutes and regulations governing the implementation of abolishments, and the court stated, in that context, an agency's failure to comply with a statutory requirement for implementing an abolishment "need not rise to the level of bad faith for the abolishment to be overturned; it is sufficient that [the agency] failed to comply with the statutory requirements." *Penrod* at ¶43. Here, ODRC undisputedly complied with all relevant procedural and substantive aspects of the law in implementing the abolishments for purposes of economy. *Bispeck* and *Penrod* do not support applying an abuse of discretion standard here.

{¶32} In the final analysis, Middlestead, by the requisite degree of proof, established ODRC acted in bad faith when it promoted Savric amidst a hiring freeze to prevent Middlestead from exercising his displacement rights. Ohio Adm.Code 124-7-01(A). Pursuant to *Gould*, *Blinn*, and *Henschen*, when the SPBR's order concluded ODRC filled "the [BMS2] position knowing that Appellant's [BMS1] position was going to be abolished, thus taking away his displacement rights," it found ODRC acted knowingly

to subvert the civil service system, a finding that ODRC acted in bad faith as a matter of law.

V. Common Pleas Decision to Remand

{¶33} Middlestead asserts the common pleas court erred when it failed to determine whether reliable, probative, and substantial evidence supports SPBR's order and whether the order is in accordance with law. ODRC's cross-assignment of error asserts the common pleas court erred in failing to reverse SPBR's decision and in remanding the matter to SPBR. Both parties are partially correct.

{¶34} A court of common pleas, reviewing an appeal from an order of an agency, "may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law." R.C. 119.12. If the court were to find the agency's order is not so supported or is not in accordance with law, the court "may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law."

{¶35} Here, in terms of the nature of the evidence, the common pleas court stated it could not determine whether Middlestead established that ODRC acted in bad faith in light of SPBR's opinion rejecting the ALJs' finding of bad faith. The court thus was presented with a somewhat unusual circumstance: in the absence of SPBR's finding bad faith, the court concluded it should not determine the bad-faith issue in the first instance.

As a result, the court did not determine whether reliable, probative, and substantial evidence supported SPBR's order.

{¶36} Although the common plea court's decision perhaps implicitly concludes SPBR's order is not in accordance with law, the court did not specifically so state. Rather, it stated "any conclusion reached by the Board must be in accordance with law," and then noted it had not found a case where a finding of abuse of discretion could be substituted for bad faith in circumstances at issue here. In the end, the court remanded the matter to SPBR to determine whether the evidence demonstrated bad faith.

{¶37} The difficulty with the common pleas court's approach is that SPBR already determined the bad-faith issue and concluded the evidence did not establish bad faith. Pursuant to R.C. 119.12, the court, having determined bad faith was necessary to disaffirm Middlestead's layoff, should have examined the evidence to see whether substantial, reliable, and probative evidence supported SPBR's conclusion regarding bad faith. In such circumstances, we ordinarily would remand this matter to the common pleas court to examine the record evidence pursuant to R.C. 119.12 and further to decide whether SPBR's decision is in accordance with law. Here, such a procedure appears unnecessary. We may decide the issue of law de novo and conclude the common pleas court properly decided bad faith was the appropriate standard under the administrative rule for determining whether Middlestead's layoff should be disaffirmed. As to the evidence, SPBR adopted the findings of its ALJs, and those findings compared to the facts of *Gould*, *Blinn*, and *Henschen* leave no room for any conclusion but that ODRC acted in bad faith.

VI. Disposition

{¶38} Accordingly, we sustain the parties' assigned errors to the extent indicated, and we reverse the common pleas court's judgment remanding the matter to SPBR for further consideration. We remand this matter to the common pleas court to modify SPBR's order disaffirming Middlestead's layoff to reflect, as modified, a finding of bad faith, and on that basis to affirm SPBR's order which disaffirmed Middlestead's layoff and ordered Middlestead be allowed to exercise his displacement rights as though Savric had not been promoted in a manner that precludes his doing so.

*Judgment reversed; cause
remanded with instructions.*

SADLER and TYACK, JJ., concur.
