

March 31, 2010

TO: Robyn Steacy, Field Representative
Kathy Andruss, Classification Specialist
Washington Federation of State Employees (WFSE)

FROM: Teresa Parsons, SPHR
Director's Review Program Supervisor

SUBJECT: Nolan Lattyak v. Department of Ecology (ECY)
Allocation Review Request ALLO-09-032

On November 2, 2009, I conducted a Director's review conference regarding the allocation of Nolan Lattyak's position. In addition to both of you, Senior Human Resource Consultant Pam Durham and Mr. Lattyak's supervisor, Hazardous Waste and Toxic Reduction Section Manager Ava Edmonson, were present during the conference. Mr. Lattyak participated by telephone. After the Director's review conference, the parties provided additional information via email correspondence through mid January 2010.

Director's Determination

This position review was based on the work performed for the six-month period prior to January 23, 2009, the date Mr. Lattyak submitted his request for a position review to ECY's Office of Human Resources (HR). As the Director's designee, I carefully considered all of the documentation in the file, the exhibits presented during the Director's review conference, and the verbal comments provided by both parties. Based on my review and analysis of Mr. Lattyak's assigned duties and responsibilities, I conclude his position is properly allocated to the Environmental Specialist 2 classification.

Background

Mr. Lattyak began working for ECY in April 2007 as a hazardous waste compliance inspector in an Environmental Specialist 2 (ES 2) position, #1122. On January 23, 2009, Mr. Lattyak submitted a Position Review Request (PRR) to ECY's HR Office, requesting reallocation of his position to the Environmental Specialist 3 (ES 3) classification. On May 13, 2009, Ms. Durham determined Mr. Lattyak's position was properly allocated as an Environmental Specialist 2. Specifically, Ms. Durham determined Mr. Lattyak's assigned work was completed under the guidance of a senior compliance inspector. As a result, Ms.

Durham did not believe the majority of Mr. Lattyak's work fit the Environmental Specialist 3 level of independently performing work with little direction and supervision.

On May 15, 2009, Mr. Lattyak requested a Director's review of ECY's allocation determination.

Summary of Mr. Lattyak's Perspective

Mr. Lattyak asserts that he independently plans, prioritizes, and leads inspections of dangerous waste generators and transporters to determine compliance with regulations, site statutes and facility permits. Mr. Lattyak notes that it is hard to distinguish between the ES 2 and 3 levels, and he contends there were higher level positions performing work at a lower level than he performed. Mr. Lattyak indicates that most of his inspections include onsite evaluation of a handler's compliance with federal and state dangerous waste regulations and permits, including detailed compliance inspections such as Treatment, Storage Disposal (TSD), Large Quantity Generator (LQG), and State Priority Inspection (SPI) visits.

Mr. Lattyak indicates that he has independently researched and selected facilities in need of compliance and that he has been assigned complex inspections because of his knowledge and capabilities. Mr. Lattyak further indicates there have been instances when he pointed out errors in the work of higher level ES positions in his unit. Mr. Lattyak disagrees that his position is closely supervised because he contends he independently performed complex inspections and served as the lead on inspections. Further, Mr. Lattyak asserts the majority of oversight he received from his supervisor had to do with proofreading errors rather than content. Mr. Lattyak indicates he was under the impression that performance had been a key factor in getting a position upgraded, and he disputes his supervisor's assessment of his performance. Mr. Lattyak believes his performance warrants an upgrade, and he further contends he has been performing work at the ES 3 level.

Summary of ECY's Reasoning

ECY indicates that Mr. Lattyak's position is allocated based on the needs of the program and work unit. ECY explains there is no expectation that an incumbent in a position will come into the unit at a certain level and then be promoted through reallocation of the position. ECY acknowledges that the primary distinction between the ES 2 and 3 levels is the level of independence and oversight, explaining that a senior level inspector will typically work with a junior level inspector at an onsite location. ECY contends that in all instances, Mr. Lattyak was backed up with a more senior inspector. As a result, ECY contends that when Mr. Lattyak was given a lead role, it was in a learning capacity and a senior level position still maintained oversight and reviewed his actions.

Additionally, ECY asserts there are different levels of complexity involved with the various site inspections and that positions allocated to the ES 3 level perform more complex inspections with less direct supervision and oversight than positions allocated to the ES 2 level. ECY contends Mr. Lattyak was still learning many of the complexities associated with

the hazardous waste inspections and that he required more direct supervision. Therefore, ECY contends Mr. Lattyak's position was not assigned inspections beyond the complexity expected at the ES 2 level and believes the ES 2 is the appropriate allocation.

Rationale for Director's Determination

Both the Personnel Appeals Board (PAB) and the Personnel Resources Board (PRB) have consistently held that the purpose of a position review is to determine which classification best describes the overall duties and responsibilities of a position. A position review is neither a measurement of the volume of work performed, nor an evaluation of the expertise with which that work is performed. A position review is a comparison of the duties and responsibilities of a particular position to the available classification specifications. This review results in a determination of the class that best describes the overall duties and responsibilities of the position. Liddle-Stamper v. Washington State University, PAB Case No. 3722-A2 (1994).

Duties and Responsibilities

The position objective or purpose described on both the PDF and PRR state, in part, the following:

. . . Under the direction and supervision of the Hazardous Waste and Toxics Reduction Section Manager this position conducts field investigations of businesses, industries and public agencies that generate, transport, and manage hazardous wastes. This position recommends appropriate actions to ensure compliance with State and Federal hazardous waste requirements . . . provides assistance to persons subject to hazardous waste regulations with the goal of improving understanding and achieving voluntary compliance. . . .

Similarly, the majority of work described on both the PDF and PRR as 55% indicates that Mr. Lattyak's position works under direction and supervision and serves as staff Environmental Specialist in compliance & enforcement functions, which include the following:

- Planning, prioritizing, and conducting dangerous waste inspections of businesses, industries and public agencies to ensure compliance;
- Assisting with complex inspections lead by senior staff;
- Providing technical and regulatory assistance to regulated businesses to achieve compliance using inspection reports and compliance letters;
- Preparing written documentation of inspections, observations, and recommendations to achieve compliance consistent with agency and program policies and procedures;
- Submitting or entering field investigation data into agency data systems.

In the Supervisor Review Section of the PRR, Ms. Edmonson agreed with the above description of work. However, she disagreed that Mr. Lattyak's position performed work at

the Environmental Specialist 3 level, indicating that his position was closely supervised. Ms. Edmonson wrote, in part, the following:

Nolan determined if information submitted by a facility is sufficient to determine if they have returned to compliance. He then can notify the facility of that decision with a boilerplate letter without my review. However if he determines that they have not returned to compliance, he must submit that determination and his reasons to me for review.

Additionally, Ms. Edmonson disagreed with statements in Mr. Lattyak's addendum to the PRR (Exhibit A-4). I have highlighted the points of disagreement as follows (Exhibit C-7):

- Mr. Lattyak indicated that he had been working out of class since 11/1/2007. Ms. Edmonson clarified that this is the date he began to lead hazardous waste compliance inspections.

During the Director's review conference, Ms. Edmonson explained that Mr. Lattyak began taking the lead on inspections to learn the higher level work with oversight from a higher level ES position. She also reiterated that junior inspectors are typically paired with a higher level inspector and while one position will serve as the lead, the higher level ES position will review the work performed by an ES 2 position, such as Mr. Lattyak's.

- Mr. Lattyak referenced a Classification Questionnaire (CQ) for another position allocated to the ES 3 level and stated that he performed similar work. Ms. Edmonson emphasized that Mr. Lattyak worked under direction and supervision even while in a lead capacity and "[i]n all instances Nolan was backed up with a more senior inspector" (Exhibit C-7).
- Mr. Lattyak included an illustration of the complexity of Compliance Evaluation Inspections (CEIs). While Ms. Edmonson agreed there is a spectrum of interactions performed by an inspector, she indicated that "an ES-2 hazardous waste compliance inspector would be expected to have that full spectrum of interactions . . ." (Exhibit C-7). Mr. Lattyak stated that he had been assigned the most complex inspections depicted in the Continuum of Inspection Types example.

During the Director's review conference, Ms. Edmonson explained the process for assigning inspections. She indicated that the work unit meets on a quarterly basis and as a group discusses the facilities needing inspection. Ms. Edmonson indicated that inspections may be assigned based on a particular employee's interest or experience, or they may provide a training opportunity for less experienced inspectors to work with a senior inspector. In response to Mr. Lattyak's statement that he had been expected to independently compile and research facilities that may be in need of compliance, Ms. Edmonson stated that "targeting" potential hazardous sites was expected at the ES 2 level. She further indicated that Mr. Lattyak did a great job on this aspect of work. Although a quarterly plan is devised

for the work assigned and Mr. Lattyak may create a plan, a higher level inspector still oversees and reviews his work and a plan may change as different needs arise.

Ms. Edmonson also indicated that inspections vary from being routine inspections conducted every three to five years to responses to particular incidents. Ms. Edmonson further explained that facility sites also range from very large manufacturing facilities with a greater complexity to smaller facilities, which are generally less complex. However, a smaller inspection may evolve into a complex inspection as it progresses, depending on the types of hazards encountered, or a large facility may involve a single, less significant issue. Ms. Edmonson emphasized that two inspectors generally work together onsite and that junior inspectors are paired with senior inspectors. Ms. Edmonson noted that ES 4 level inspectors were also involved with Mr. Lattyak's assigned inspections. As the supervisor, Ms. Edmonson ultimately reviews all inspections. This is supported by Mr. Lattyak's statement that his "[i]nspection reports and cover letters are first passed through a senior inspector before going to [his] supervisor" (Exhibit A-4).

In addition, the examples of work Mr. Lattyak provided show a senior inspector along with his name on the Checklist Summary of Requirements for Generators of Hazardous Waste documents. For example, the majority of documents identify either Dee Williams or Leslie Morris as the inspectors working with Mr. Lattyak (Exhibit B-1-b). The organizational chart identifies Ms. Williams as an ES 4 and Ms. Morris as a Manager, which supports Ms. Edmonson's explanation that even when working in a lead capacity, Mr. Lattyak's position had been working under the direction of a senior inspector (Exhibit C-9). Mr. Lattyak's additional examples also identify Ms. Williams as one of the inspectors (Exhibit D-4). While one of the examples did not identify a second inspector, Mr. Lattyak wrote an October 27, 2009 email to the facility stating, in part, the following: "In discussing this with my supervisor today, she reminded me . . . there are sensitivities I must consider . . . Could you standby on this one, I'll be meeting with her this afternoon" (Exhibit D-2). Overall, the preponderance of duties and responsibilities described on the PDF, as well as the descriptions of work and comments from all parties indicate that Mr. Lattyak worked under the direction and supervision of senior inspectors or his supervisor.

During the Director's review conference, both parties discussed issues pertaining to Mr. Lattyak's performance and abilities. While I understand the level of supervision provided is a distinction between the ES 2 and 3 levels, I did not make an assessment about Mr. Lattyak's actual performance or his ability to perform higher level work. Instead, I considered the duties and level of responsibility characterized by the documents in conjunction with the comments from all parties, comparing Mr. Lattyak's work to the available job classifications.

Class Specifications

When comparing the assignment of work and level of responsibility to the available class specifications, the class series concept (if one exists) followed by definition and distinguishing characteristics are primary considerations. While examples of typical work

identified in a class specification do not form the basis for an allocation, they lend support to the work envisioned within a classification.

The **Environmental Specialist 3** definition reads as follows:

Serves as a staff environmental specialist performing one or more of the following functions independently with little direction and supervision: compliance and enforcement; development of draft legislation; develops, performs, coordinates, implements and evaluates scientific analyses, plans or services involving office or field projects; conducts surveys, analyses and records field conditions; project administration and environmental technical assistance for grants/contracts/loans; gathers and analyzes information to develop recommendations and make decisions; permit development, review and/or oversight. May lead assigned staff.

Some of the typical work examples that an ES 3 position performs, independently with little direction and supervision, include:

- Responding to and investigating complex or highly technical complaints/violations and performing complex inspections or field investigations . . . ;
- Planning, developing, researching, and conducting or overseeing technical data collection, analyzing, evaluating, and interpreting data . . . writing reports and/or reviewing draft reports ;
- Developing and/or implementing project plans . . .
- Overseeing contractor or consultant services for compliance and certifying performance . . . ;
- Having lead responsibility in the development of policies, procedures, statutes and/or regulations of a high degree of complexity.

I recognize Mr. Lattyak conducts field investigations, provides technical assistance to bring businesses into compliance, and recommends appropriate actions. I also recognize that Mr. Lattyak may assist senior inspectors with complex inspections. However, his position has not been tasked with independently investigating complex or highly technical violations; he does not perform this level of work without direction and supervision from senior inspectors or his supervisor. Therefore, he does not perform these duties with the level of independence described in the ES 3 class definition.

Further, the Personnel Resources Board (PRB) has previously held that most positions within the civil service system occasionally perform duties that appear in more than one classification. However, when determining the appropriate classification for a specific position, the duties and responsibilities of that position must be considered in their entirety and the position must be allocated to the classification that provides the best fit overall for the majority of the position's duties and responsibilities. Dudley v. Dept. of Labor and Industries, PRB Case No. R-ALLO-07-007 (2007).

Even when Mr. Lattyak has taken the lead on an investigation, his work has still been performed under the guidance and direction of a senior compliance investigator. In those instances, Mr. Lattyak's position had not been acting as a lead worker to the senior position; rather, the senior position had been backing up and providing oversight to Mr. Lattyak's position. Therefore, Mr. Lattyak's position had not been assigned work at the level of independence anticipated by the ES 3 classification.

At the **Environmental Specialist 2** level, the definition indicates the following:

Serves as an environmental specialist performing one or more of the following functions under direction and supervision: compliance and enforcement; performs and evaluates scientific analysis and technical services on assigned office or field projects; assists in the development of draft legislation; conducts surveys, analyses and records field conditions; project administration and environmental technical assistance for grants/contract/loans; gathers and analyzes information to develop recommendations and make decisions, and/or permit development.

Some of the ES 2 typical work examples most in line with Mr. Lattyak's assignments include:

- Investigating complaints, performing inspections, assisting in issuing notices of violation or noncompliance;
- Researching and compiling information for use in regulation or policy development;
- Performing routine inspections or investigations of facilities or project sites which require specialized knowledge of industry processes, pollutant sources, or natural processes;
- Responding to inquiries or requests for technical assistance . . .

Consistent with the ES 2 definition, the above examples of work are performed under direction and supervision, which differs from the level of independence that an ES 3 position performs hazardous waste inspections. In the materials Mr. Lattyak submitted for review, he included comparisons to other positions allocated to the ES 3 level.

In Byrnes v. Dept's of Personnel and Corrections, PRB No. R-ALLO-06-005 (2006), the Board held that "[w]hile a comparison of one position to another similar position may be useful in gaining a better understanding of the duties performed by and the level of responsibility assigned to an incumbent, allocation of a position must be based on the overall duties and responsibilities assigned to an individual position compared to the existing classifications. The allocation or misallocation of a similar position is not a determining factor in the appropriate allocation of a position." Citing Flahaut v. Dept's of Personnel and Labor and Industries, PAB No. ALLO 96-0009 (1996).

In this case, the overall duties, level of responsibility, and scope of work assigned to Mr. Lattyak's position (#1122) best fit the Environmental Specialist 2 classification.

Appeal Rights

RCW 41.06.170 governs the right to appeal. RCW 41.06.170(4) provides, in relevant part, the following:

An employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to . . . the Washington personnel resources board Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

The mailing address for the Personnel Resources Board (PRB) is P.O. Box 40911, Olympia, Washington, 98504-0911. The PRB Office is located at 600 South Franklin, Olympia, Washington. The main telephone number is (360) 664-0388, and the fax number is (360) 753-0139.

If no further action is taken, the Director's determination becomes final.

c: Nolan Lattyak
Pam Durham, ECY
Lisa Skriletz, DOP

Enclosure: List of Exhibits

Nolan Lattyak v. Dept. of Ecology

ALLO-09-032

List of Exhibits

A. Nolan Lattyak Exhibits submitted with request

1. Director's Review Request form May 15, 2009
2. Agency Allocation Determination letter dated May 13, 2009
3. Position Review Request form received by HR January 23, 2009
4. Position Review Request Additional Information from Nolan Lattyak

B. Nolan Lattyak's Exhibit Notebook from WFSE

1. Complexity
 - A. Examples of inspections and letters
 - B. EPA, more complex
2. Review of work
3. Independently choosing sites to inspect.
 - A. Inspection Numbers 2008
4. Designation Work
5. ESII vs. ESW 3
6. Senior Inspector using verbage "We" in the reports
7. Central Files
8. EPA
9. Beyond Required Trainings
10. Praise from a Senior Inspector
 - A. Compliance Report
11. Fellow ES2 not allowed to do inspections
12. Letter of Recommendation

C. Department of Ecology Exhibits

1. Agency response dated May 13, 2009 to Mr. Lattyak regarding the Position Review Request
2. A cover memo from Ava Edmonson, supervisor dated January 23, 2009 for Mr. Lattyak's request for a position review
3. Position Review Request from Mr. Lattyak dated January 23, 2009
 - a. Position Review Request Additional Information from Nolan Lattyak
 - b. Position Description Form for Position #1185 from 2006 (not Mr. Lattyak's position)
 - c. Position Description Form for Position #1185 from 2008 (not Mr. Lattyak's position)
 - d. Position Description Form for Position #1122 (Mr. Lattyak's position) from December 2006

- e. Classification Questionnaire (CQ) for Position #1122 (Mr. Lattyak's position) from 2005 – prior to Mr. Lattyak being in the position
 - f. Document Labeled Attachment D – Positive comments regarding Mr. Lattyak's work
 - g. Mr. Lattyak's Training Record
 - h. Hazardous Waste and Toxics Reduction Program Organizational Chart January 2009
4. Samples of work submitted by Mr. Lattyak
 5. February 17, 2009 email from Mr. Lattyak to Pam Durham addressing his supervisor's responses to his Position Review Request
 6. April 8, 2009 email from Mr. Lattyak to Ava Edmonson regarding his inspection plan for May 2008.
 7. Supervisor's response to Mr. Lattyak Position Review Request
 8. Class Specifications:
 - a. Environmental Specialist 2
 - b. Environmental Specialist 3
 9. Organizational Charts
 10. Guidance documents:
 - a. The purpose of reviewing a positions allocation
 - b. Key documents considered
 - c. Glossary of Classification, Compensation and Management terms
 11. Position Description Form for Position #1122 (Mr. Lattyak's position) from December 2006 with attached Essential Function Analysis
 12. Performance and Development Plan from November 2008
- D.** Additional documentation and email correspondence subsequent to Director's review Conference:
1. Compliance Inspection Definitions from Chapter 3 of Manual
 2. Examples of Mr. Lattyak's working drafts and editing emails with comments and feedback from his supervisor, Ava Edmonson.
 3. November 12, 2009 email from Mr. Lattyak to Teresa Parsons indicating that he received Ms. Edmonson's examples of working drafts and editing emails with comments and feedback in Exhibit D-2.
 4. December 8, 2009 email from Kathy Andruss, WFSE, with attached examples of work regarding inspections worked on by Mr. Lattyak.
 5. January 14, 2010 email from Pam Durham, ECY, with Ms. Edmonson's responses to the examples of work provided by Mr. Lattyak in Exhibit D-4.
 6. January 14, 2010 added response from Kathy Andruss, WFSE.
 7. January 15, 2010 email from Teresa Parsons to parties giving a February 1, 2010 deadline for any final documentation.