



STATE OF WASHINGTON
OFFICE OF THE STATE HUMAN RESOURCES DIRECTOR

DIRECTOR'S REVIEW PROGRAM
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November 16, 2012

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

FROM: Kris Brophy, SPHR
Director's Review Investigator

SUBJECT: Alyes Yusos v. Labor and Industries (LNI)
Allocation Review Request ALLO-12-012

Director's Determination

This position review was based on the work performed for the six-month period prior to October 12, 2011, the date LNI Human Resources received Mr. Yusos' request for a position review. As the Director's Review Investigator, I carefully considered all of the documentation in the file, the exhibits, and the verbal comments provided by both parties during the review telephone conference. Based on my review and analysis of Mr. Yusos' assigned duties and responsibilities, I conclude his position is properly allocated to the Customer Service Specialist 2 classification.

Background

On October 12, 2011, LNI's Human Resources office received Mr. Yusos' Position Review Request form (PRR), requesting that his Customer Service Specialist 2 (CSS2) position be reallocated to Industrial Relations Specialist 2 (IRA2). On January 11, 2012, Tracey Aiona, Human Resource Consultant, notified Mr. Yusos that his position was properly allocated to the CSS2 classification based on the majority of duties assigned to his position (Exhibit A-2).

On February 7, 2012, the Office of State Human Resources Director received Mr. Yusos' letter of appeal requesting a Director's review of LNI's allocation decision (Exhibit A-1).

On August 23, 2012, I conducted a Director's review telephone conference regarding Mr. Yusos' position allocation. Present during the meeting were Alyes Yusos; Perry Gordon, Council Representative, WFSE; Sheri Clarke, Classification & Compensation Manager; Amy Chaney, Administrative Assistant 4; Vicki Kamin, HRC, LNI; and Liz Smith, Employment Standards Program Manager (during the period under review), LNI.

Following the review conference, the parties submitted additional information. LNI submitted a final reply on November 9, 2012. This information has been added to the record and incorporated as exhibits herein.

Rationale for Director's Determination

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 class 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

Mr. Yusos provides direct service to customers of the LNI Employment Standards program. The purpose of his position is to provide information and assistance to callers and customers about various child labor laws, regulations and processes. Mr. Yusos uses his specialized knowledge of child labor regulations and agency procedures to evaluate minor work injury reports and process follow-up investigation, permitting and citation procedures. This involves reviewing reports and referring cases to field agents for investigation, and processing appropriate administrative actions in conjunction with minor work permit violations. He also works with other programs and agencies across the state to assist customers in understanding and applying applicable laws, regulations and processes to communicate information and resolve complaints and problems related to child labor laws and regulations.

Mr. Yusos describes his duties and responsibilities in the Position Review Request (PRR) submitted for reallocation as follows:

- 55% Responsible for verification of minor work permits violations utilizing the minor injury report and identifying fraudulent employers using multiple software applications and licensing information to determine whether they are compliant. Independently investigate the compliance of companies with minor work permit violations, including following up on referrals and tracking the results. Responsible for creating, issuing, monitoring and explaining child labor citations for violations of the minor work laws. Educate customers on their rights and responsibilities via the laws and rules. Approve the daily minor work permits on MLS system and investigate discrepancies by contacting the employers. Creating, tracking and maintaining a database for the activities performed for reporting and follow-up purposes.
- 20% Provide direct services to telephone customers at times utilizing the Language Line Services, resolving the problem by interpreting laws, policies and procedures or referring the customer to the proper agency/agent for further assistance. Educate customer as to the intent and meaning of the law in their specific situation. Research and discuss unusual or more complex issues with an Industrial Specialist. Provide complaint forms and posters as requested.
- 10% Responsible for creating, issuing, monitoring and explaining child labor citations for violations of minor work laws.
- 10% Create monthly reports for review including the Minor Injury Report, DOSH and public referrals and the Quarterly Scorecard. Process and route incoming mail.

During the review conference the parties further clarified Mr. Yusos duties relating to the "no minor work permit" citation process. Mr. Yusos works within an established protocol to review minor injury reports and contact those employers who do not have a minor work permit on file but have had a minor employee file a claim for injuries. Mr. Yusos calls or emails the employer, informs them of the need to obtain a work permit within ten days of notification, follows up with the employer to assist in obtaining a permit, and prepares citations for signature by higher level staff for those employers who do not obtain a permit within the required timeframes.

During the review period Mr. Yusos' reported to Ms. Shere Bennett, Secretary Supervisor. Ms. Amy Chaney, Administrative Assistant 4, became Mr. Yusos' supervisor subsequent to the filing of the position review request. She provided comments to LNI HR regarding Mr. Yusos' duties and responsibilities in December 2011 (Exhibit B-3).

Ms. Chaney does not believe Mr. Yusos' description of duties and percentages of time spent performing his duties are accurate and complete. During the review conference Ms. Chaney stated she reviewed Mr. Yusos' duties and based on her observation of his work believes Mr. Yusos' duties are more appropriately summarized as follows. In her comments, Ms. Chaney states Mr. Yusos spends approximately forty percent of his time answering basic questions and providing information and assistance to callers/customers about various employment laws, regulations, and agency processes. This includes resolving customer problems and complaints and referring customers to the proper agency or Industrial Relations Agent for further assistance.

Ms. Chaney states Mr. Yusos spends approximately thirty percent of this time reviewing, approving and/or denying minor work permit requests by following established protocols and procedures. This includes consulting with the Child Labor Specialist on complex issues related to minor work permit requests. Ms. Chaney states the Child Labor Specialist determines the appropriate action to take. She indicates Mr. Yusos performs data entry and reporting functions, contacts employers who do not have minor work permits by phone or in writing, and using standard templates prepares citation and collection letters for signature by the Child Labor Specialist and/or the Program Manager.

Ms. Chaney indicates that Mr. Yusos spends approximately fifteen percent of his time entering incoming complaints into the Employment Standards Case Handling (ESCH) data management system following established protocols and procedures. Mr. Yusos routes complaints to the appropriate regional supervisor for action and/or assignment to a field Industrial Relations Agent to investigate.

In her comments, Ms. Chaney states Mr. Yusos' duties and responsibilities do not include performing the duties of an Industrial Relations Agent and therefore, she does not believe Mr. Yusos' position should be reallocated to the IRA 2 class.

Summary of Mr. Yusos' Perspective

Mr. Yusos asserts that during the review period he spent approximately sixty percent of his time performing higher level duties associated with the Industrial Relations Agent 2 class. Mr. Yusos acknowledges his role in issuing "no minor work permit" citations was administrative; however, he contends he had complete discretion to perform his work during the time period in which the

Child Labor Specialist, Ms. Mary Miller, was absent from work. Mr. Yusos asserts he independently performed higher level duties including reviewing injury report descriptions and determining what investigative actions, if any, to take. This includes referring prohibited duties and safety violations to industrial relations agent supervisors and Department of Safety and Health for further investigation, and/or issuing citations. Mr. Yusos contends this also included explaining the citations to the Program Manager, and issuing the citations following her review and signature.

Mr. Yusos asserts that he submitted his original request to his supervisor in August, 2011 (Exhibit A-14). Mr. Yusos contends that a revised Position Description Form was filed by LNI management in September 2011 which removed the higher level functions duties from his position description that he had been performing immediately before he requested the review process. Mr. Yusos contends this supports his contention that he had been performing higher level duties during the review period.

In total, Mr. Yusos asserts these activities meet the threshold of the Industrial Relations Agent 2 and his position should therefore be reallocated to that class.

Summary of LNI's Reasoning

LNI asserts that Mr. Yusos provides reviews, approves and/or denies minor work permit requests by following established protocols and procedures consistent with the Customer Service Specialist 2 class. LNI asserts Mr. Yusos performs data entry and reporting functions, contacts employers who do not have minor work permits by phone or in writing, and using standard templates prepares citation and collection letters for signature by the Child Labor Specialist and/or the Program Manager. LNI asserts Mr. Yusos' position requires consulting with the Child Labor Specialist on complex issues related to minor work permit requests who determines the appropriate actions to take with regard to follow up referral or investigation by an Industrial Relations Agent.

LNI asserts Mr. Yusos does not perform the functions of the Industrial Relations Specialist 2 class. LNI asserts Mr. Yusos does not have responsibility for independently applying and enforcing the Industrial Welfare Act or other employment laws, statutes and agency policy at the level intended by this class. LNI asserts Mr. Yusos does not investigate wage complaints or disputes, mediate or negotiate settlements, provide assistance to higher level Industrial Relations Agents, make independent determinations about investigative actions to take, or perform the other duties of an Industrial Relations Agent. Therefore, LNI asserts Mr. Yusos' position is properly allocated to the Customer Service Specialist 2 class.

Comparison of Duties to 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.

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).

Comparison of Duties to Industrial Relations Agent 2

The Class Series Concept for this series states:

In the Department of Labor and Industries, enforces the Industrial Welfare Act, Public Works Act, Farm Labor Contractors Act and the Minimum Wage and Overtime Act, the Wage Payment Act, and other related statutes. Investigates wage disputes. Mediates and/or negotiates settlements between employers and employees.

The Definition for this class states:

This is the journey level of the series. Enforces the Industrial Welfare Act, Public Works Act, Labor Contractors Act and the Minimum Wage and Overtime Act, the Wage Payment Act, and other related statutes. Investigates routine wage disputes. Provides assistance to higher level Industrial Relations Agents of more complex investigations and/or disputes, issues of notices of violation, notices of infraction, and citations and assessments. Mediates and/or negotiates settlements between employers and employees on issues of a routine nature.

The Distinguishing Characteristics for this class state:

Incumbents in these positions independently apply and enforce relevant administrative law and agency policies. Incumbents use a substantial amount of discretionary authority for exercising judgment, in conjunction with above cited acts and other related statutes.

Mr. Yusos' position does not meet the intent of the Industrial Relations Agent series, nor does he perform the functions of the Industrial Relations Agent 2 class. Mr. Yusos does not have responsibility for independently applying and enforcing the Industrial Welfare Act or other employment laws, statutes and agency policy. Mr. Yusos does not perform journey level industrial relations agent work investigating routine wage complaints or disputes, mediating or negotiating settlements, providing assistance to higher level Industrial Relations Agents, or independently applying and enforcing administrative law and agency policies regarding investigative and enforcement actions taken.

Additionally, Mr. Yusos' position does not require the use of a substantial amount of discretionary authority in exercising judgment and performing investigative work as required by this class. A portion of Mr. Yusos' duties involves performing one related aspect of this class of issuing citations. Mr. Yusos follows established administrative procedures to issue citations to employers without required minor work permits following minor injury claims, but this is more of an administrative process, rather than an investigative process requiring a broad degree of discretionary authority. For example, Mr. Yusos receives copies of minor injury reports and checks them against an internal database to determine if the employer has the required minor work permit. Mr. Yusos follows established agency procedures to contact the employer to assist

them in obtaining the necessary permit. He then prepares standard citation letters for those employers who fail to obtain the permit within the required ten day timeframe.

Secondly, Mr. Yusos states in his comments that he had complete discretion to perform his work for three months during the review period in which the Child Labor Specialist, Ms. Mary Miller, was absent. Mr. Yusos stated during the review conference that he independently performed her duties which included reviewing injury report descriptions for prohibited duties and referring prohibited duties and safety violations to an Industrial Relations Agent supervisor or the Department of Safety and Health for further investigation. However, Ms. Chaney states in her comments that, "...in the past year, when there was a vacancy at the Child Labor Specialist desk, he was asked to send information directly to the regional supervisors so they could determine the need to follow up ...if there was a child labor violation." Mr. Yusos stated that this also included explaining the citations to the Program Manager, and administratively issuing the citations following her review and signature.

However, LNI states in exhibit B-7 that the citation process, "does not require detailed knowledge of the law or analysis of complex facts and circumstances." Additionally, LNI states, "It is the statewide practice that CSS 2's (in both regional offices and in Central Office) enter complaints into the ESCH system and initiate referrals to field supervisors for appropriate action and investigation by a field IRA 2." Further, based on the information provided, the overall time Mr. Yusos spent performing these duties was a minor portion of his overall work duties and did not constitute a majority of his work during the review period.

Therefore, the overall scope of Mr. Yusos' work related to the "No Minor Work Permit" process does not reach IRA 2 level investigative responsibility which LNI states in exhibit B-7 includes such activities as interviewing workers; gathering evidence; writing investigative summaries containing facts, allegations, and analysis; and determining whether a violation occurred based on the totality of information presented. As a whole, the "No Minor Work Permit" citation and referral process is a pre-determined process with little or no latitude for discretion or authority to vary from pre-defined parameters. This therefore limits Mr. Yusos' overall degree of discretionary authority and responsibility for conducting investigations at a level consistent with this class. The overall thrust and primary focus of Mr. Yusos' position does not involve performing the duties of an Industrial Relations Agent 2 and his position should not be reallocated to that class.

Comparison of Duties to Customer Service Specialist 2

The Definition for Customer Service Specialist 2 states:

Independently resolves complaints, inquiries and client/customer service problems while maintaining appropriate confidentiality. Provides agency interpretation and applies knowledge of laws, regulations, and processes in the resolution of inquiries, complaints and problems.

Although the Typical Work examples do not form the basis for an allocation, they lend support to the work envisioned within a classification. The following provides an example of the level of work assigned to this class, as stated on the class specification:

Acts as liaison between clients/customers and agency; gives presentations and offers assistance to other State and Federal agencies;

Independently resolves client/customer problems by identifying the issues, determining procedural steps necessary to bring resolution, working with program staff to implement resolution, and communicating results to the client/customer;

Creates and manages customer profiles and maintains integrity of the data and information while delivering specialized services.

The overall focus of Mr. Yusos' position and the majority of duties as a whole are fully described by the Definition of this class. Mr. Yusos provides direct customer service to clients of the LNI Employment Standards program. He provides information and primary assistance to callers and customers over the phone about various child labor laws, regulations and processes within the Employment Standards Program. Mr. Yusos uses his specialized knowledge of child labor regulations and agency procedures to evaluate minor work injury reports and process follow-up investigation, permitting and citation procedures. He reviews minor injury reports and refers cases to field agents for investigation, and administratively processes letters, citations and performs other actions in conjunction with minor work permit violations. He works with other programs and agencies to assist customers in understanding and applying applicable laws, regulations and processes to communicate information and resolve complaints and problems related to child labor laws and regulations.

Consistent with this class, he independently resolves client/customer complaints by identifying the issues, he determines the procedural steps necessary to bring resolution, and he works with and/or refers issues to agency staff for resolution. Mr. Yusos monitors and maintains data and other information while delivering specialized child labor services to clients and other customers.

A position's allocation is based on the duties and responsibilities assigned and how the majority of those duties best fit into the available job classifications. During the period of time under this review, the majority of his work assignments are aligned with the requirements of the CSS 2 class. Therefore, the Customer Service Specialist 2 classification best describes his position and Mr. Yusos' position should remain allocated to that class.

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 main telephone number is (360) 664-0388, and the fax number is (360) 586-4694.

If either party plans to hand-deliver or fax an appeal to the PRB, please call the above number for details. The PRB Office is currently located at 521 Capitol Way South, Olympia.

However, on or around **November 26, 2012, PRB staff will move to a new location in the Insurance Building on the Capitol Campus, 302 – 14th Avenue S.W., 4th Floor, Olympia, Washington.**

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

c: Alyes Yusos, LNI
Gordon Perry, WSFE
Tracey Aiona, LNI
Lisa Skriletz, DOP

Enclosure: List of Exhibits

ALYES YUSOS v LNI (ALLO-12-012)

Exhibit List

A. Alyes Yusos Exhibits

1. Letter requesting Director's Review from Alyes Yusos dated February 7, 2012
2. Copy of LNI's allocation determination letter from Tracey Aiona to Alyes Yusos dated January 11, 2012
3. Alyes Yusos' rebuttal to supervisor's comments titled, "Rebuttal of Management Comments to Industrial Relations Agent Duties"
4. Explanation of work with attached examples (12 pages)
5. Explanation of job duties regarding Minor Injury Report Referral and process with attached examples of minor injury report referrals
6. Explanation of job duties titled, "Employment Standards Case Handling" with attached screen shots from internal LNI ESCH system
7. Rebuttal statement by Alyes Yusos with attached copy of the September 2007 Position Description form for his position
8. October 18, 2011 email regarding Child Labor Citation Process with explanation (page 1-2)
9. Explanation of work regarding Minor Injury Reports with data
10. Tables prepared by Mr. Yusos listing the work he performed on a monthly basis regarding minor injury reports
11. Tables prepared by Mr. Yusos listing the work he performed on a monthly basis regarding making referrals to IRA's or DOSH
12. Letter of recommendation from Mary E. Miller, MN, RN regarding Mr. Yusos
13. Final letter of response to LNI statements from Mr. Yusos dated September 19, 2012
14. Original letter of request for position review dated August 10, 2011 submitted from Alyes Yusos to his supervisor at that time, Shere Bennett

B. LNI Exhibits

1. Position Review Request from Alyes Yusos without supervisor comments received by LNI HR on October 12, 2011
2. Position Description Form for Alyes Yusos' position received on September 19, 2011 by LNI HR
3. Cover email from Amy Chaney to Tracey Aiona dated December 14, 2011 with enclosed supervisor's comments
4. DOP Class Specification for Customer Service Specialist 2, (102B)

5. DOP Class Specification for Industrial Relations Agent 2, (124B)
6. Organization charts for Specialty Compliance Services dated February 28, 2012
7. LNI's response to exhibits A10 – A12 and closing statement, dated September 7, 2012
8. LNI's response to exhibit A-14, dated November 9, 2012