STATE OF WASHINGTON

OFFICE OF THE STATE HUMAN RESOURCES DIRECTOR

DIRECTOR'S REVIEW PROGRAM

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December 21, 2012

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

FROM: Kris Brophy, SPHR
Director's Review Investigator

SUBJECT: Robert Steen v. Washington State Patrol (WSP)
Allocation Review Request ALLO-12-014

This Director's review was conducted as a consolidation of the following positions:

Robert Steen	(ALLO-12-014)
Dale Huber	(ALLO-12-015)
Anthony Cooling	(ALLO-12-017)

Director's Determination

As the Director's designee, I carefully considered all of the documentation in the file, including 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. Steen's assigned duties and responsibilities, I conclude his position should be reallocated to the Commercial Vehicle Enforcement Officer 2 (CVEO 2) classification.

Background

On November 17, 2011, WSP Human Resources (WSP-HR) received Mr. Steen's Position Review Request (PRR) form, requesting that his position be reallocated to the Commercial Vehicle Enforcement Officer 2 classifications (Exhibit B-2).

WSP-HR, conducted a position review and by letter dated February 6, 2012, notified Mr. Steen that his position was properly allocated to the Commercial Vehicle Enforcement Officer 1 classification (Exhibit B-1).

On February 29, 2012, the Office of the State Human Resources Director received Mr. Steen's request for a Director's review of WSP's allocation determination (Exhibit A-1).

On October 23, 2012, I conducted a consolidated Director's review conference of the above-referenced appeals. Present for the conference were Officer Anthony Cooling; Mr. Dale Huber,

retired CVEO1, WSP; Ms. Natalie Kaminski, Union Representative, IFPTE Local 17; Mr. Tim Cooley, Lieutenant, WSP; Ms. Debb Chavira, HR Manager, WSP; and Ms. Yvette Fabregas, Human Resource Consultant, WSP.

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 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

Mr. Steen's duties and responsibilities as a Commercial Vehicle Enforcement Officer are summarized from the PRR (Exhibit B-2) as follows:

90% An armed commissioned Commercial Vehicle Enforcement Safety Officer with authority limited to commercial vehicles and their drivers. Conducts terminal and group safety audits and investigations to include, investigate and elicit information and documents from carrier to analyze, interpret and assess, compiling evidence of accidents and violations of regulations to support establishment of carrier's safety rating with the potential of being placed out of service.

Review company records and documentation for compliance with state and federal regulations governing qualifications of drivers, driving of motor vehicles, parts and accessories necessary for safe operations, hours of service of the drivers, drug and alcohol testing, accidents and complaints with respect to evasion of motor vehicle safety regulations that include driver and vehicle safety, hazardous materials, record keeping and permit authorities. Compiling evidence to support assessments.

Conduct safety inspections in the field and at terminals and placing vehicles and driver's out-of-service that meet the criteria set forth by CVSA and RCW.

Facilitate training seminars for company officials to educate them and familiarize them with the commercial vehicle regulations. Prepare and submit reports.

5% Weigh commercial vehicles to ensure compliance with state weight laws; measure commercial vehicles and their loads to determine compliance with length, width, height and other configuration requirements, perform vehicle and driver inspection on commercial motor vehicles to include hazardous materials and take proper enforcement action in compliance with state and federal laws. Place vehicles and or – drivers out-of-service according to the Commercial Vehicle Safety Alliance out-of-service criteria.

5% Attend training and maintain FMCSA, CVSA and hazmat certification as well as maintaining current knowledge of federal and state regulations. Conduct training for Commercial Vehicle Officers. Testify in court proceedings as required. Attend training as required/directed. Perform duties as assigned. Supply directions, information and

> assistance to the motoring public; render first aid as necessary. Conduct public presentations to the transportation industry.

The employee's supervisor, Officer Linda Powell, CVEO 3, supports the employee's request. She indicates in her comments that the employees serve in a specialized position that takes up to a year to become efficient. She indicates that officers in these positions have the same knowledge as CVEO 2 Compliance Review Officers and work under the same conditions.

Summary of Employees' Perspective

The employees assert that their positions meet the requirement of the Definition of the CVEO 2 class of performing vehicle driver inspections on commercial motor vehicles and conducting terminal safety audits.

The employees assert the level of work they perform as safety auditors is consistent with the level of responsibility required by compliance review officers allocated to the CVEO 2 class. The employees assert that the compliance review officer and the safety auditor positions each require the duty to conduct terminal audits. The employees assert both audit processes start with the assignments from their supervisor, to the pre-audit investigations, to the audits themselves and the close out which may result in severe consequences to the carriers.

The employees assert both positions require similar certification which includes passing an 80 hour Federal audit certification class and must maintain certifications which require CVSA Level 1 Inspections, Hazardous Material and Cargo Tanks. They assert Cargo Tank certification is required for auditors but is voluntary for all other CVEO positions.

The employees assert that both positions work without direct supervision, make their own day to day decisions regarding scheduling, appointments and activities with limited guidance from supervisors. They assert they facilitate training seminars for companies and corporations to educate and familiarize them with commercial vehicle safety regulations and provide resources for obtaining compliance with the commercial vehicle regulations.

Finally, the employees assert that neither the compliance review nor the safety auditor positions act as lead workers, nor do any of these positions evaluate, correct, instruct or check the work of others unless serving as acting CVEO 3.

Summary of WSP's Reasoning

WSP contends that the employee's duties and responsibilities do not reach the level of responsibility required by the CVEO 2 classification.

WSP acknowledges that Mr. Steen's duties working in the New Entrant Program involve auditing new trucking companies to ensure carriers understand federal regulations and are in compliance with safety and applicable hazardous materials regulations. WSP asserts Mr. Steen's primary functions of providing education and training during safety audits is consistent with CVEO 1 level of responsibility. WSP asserts safety audits are non-enforcement educational opportunities for "new entrant" motor carriers (Exhibit B-1).

In comparison, WSP asserts that the agency's Compliance Review Program is an on-site examination of a motor carrier's operations and includes examining the drivers' hours of service,

maintenance and inspection, driver qualification, commercial drivers' license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets required safety and fitness standards. WSP asserts the extended training, enforcement and investigations into fatalities and violations, and the imposing of fines and safety ratings by CVEO auditors working in that program are more appropriately aligned with the scope of responsibility required at the CVEO 2 level class.

In total, WSP asserts Mr. Steen's position is properly allocated to the CVEO 1 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.

Comparison of Duties to Commercial Vehicle Enforcement Safety Officer 1

The Definition for this class states:

> As an armed commercial vehicle enforcement officer with authority limited to commercial vehicles, enforces laws and regulations pertaining to weight, size, equipment safety, the transporting of hazardous materials, and licensing permit requirements of commercial vehicles, private carrier buses and their operators by weighing and/or inspecting vehicles traveling on public highways, or performs vehicle driver inspections on commercial motor vehicles, assists with investigations of major accidents and fatalities involving commercial vehicles, initiates fuel tax evasion investigations, initiates and assists with investigations as part of the Drug Interdiction Assistance Program (DIAP), initiates and assists with investigations involving stolen heavy duty equipment, and conducts covert surveillance.

A portion of Mr. Steen's duties are consistent with the requirements of this class. Mr. Steen works as an armed commercial vehicle enforcement officer. His position enforces laws and regulations pertaining to weight, size, equipment safety, the transporting of hazardous materials, and licensing permit requirements of commercial vehicles, private carrier buses and their operators. A small portion of his time is spent weighing commercial vehicles to ensure compliance with state weight laws. This includes conducting level 1 vehicle safety inspections at road side locations. He measures commercial vehicles and their loads to determine compliance with length, width, height and other configuration requirements. He takes proper enforcement actions in compliance with state and federal laws. He also places vehicles and or – drivers out-of-service according to the Commercial Vehicle Safety Alliance out-of-service criteria.

However, this class does not address Mr. Steen's primary responsibility for performing higher level Safety Audits as part of the agency's New Entrant Program. The primary focus of his position, and the majority of his duties as a whole, is performed in direct support of auditing new motor carriers entered into the agency's New Entrant Program.

Additionally, this class does not reach Mr. Steen's specific knowledge and experience required to perform his duties, or the extent of his program-specific responsibilities for performing auditing functions as part of his duties. This class does not address the overall scope and

breadth of impact of Mr. Steen's duties and responsibilities of working as an auditor for the Safety Audit process. In total, Mr. Steen's position should not be allocated to the CVEO 1 level class.

Comparison of Duties to Commercial Vehicle Enforcement Safety Officer 2

The Definition for this class states:

> Performs as an assistant to a supervisor and assigns and schedules commercial vehicle staff to specific work assignments. As an armed commercial vehicle enforcement officer with authority limited to commercial vehicles, enforces laws and regulations pertaining to weight, size, equipment safety, the transportation of hazardous materials, and licensing permit requirements of commercial vehicles, private carrier buses, and their operators by weighing and/or inspecting vehicles traveling on public highways; or performs vehicle driver inspections on commercial motor vehicles, and conducts terminal safety audits.
>
> [Emphasis added]

The Commercial Vehicle Enforcement Officer 2 class better describes the primary focus and overall higher level of responsibility assigned to Mr. Steen's position of conducting terminal safety audits.

Although the Definition for this class states that incumbents serve as an assistant to a supervisor and assign and schedule work to staff, WSP acknowledges that similar to the CVEO safety auditor positions, the CVEO 2 compliance review officer positions do not serve in this capacity, unless there is a specific instance of serving as an acting CVEO 3 for a work shift or other absence.

In Salsberry v. Washington State Parks and Recreation Commission, PRB Case No. R-ALLO-06-013 (2007), the Personnel Resources Board addressed the concept of best fit. The Board concurred with the former Personnel Appeals Board's conclusion that while the appellant's duties and responsibilities did not encompass the full breadth of the duties and responsibilities described by the classification to which his position was allocated, on a best fit basis, the classification best described the level, scope and diversity of the overall duties and responsibilities of his position. Allegri v. Washington State University, PAB Case No. ALLO-96-0026 (1998).

Further, 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).

Finally, positions are to be allocated to the class which best describes the majority of the work assignment. Ramos v DOP, PAB Case No. A85-18 (1985).

In this case, the Commercial Vehicle Enforcement Officer 2 (CVEO 2) class addresses the employees' primary responsibility to conduct federally mandated Safety Audits as part of the agency's New Entrant Program. The primary focus of their positions and the majority of their duties as a whole are performed in direct support of auditing new motor carriers entered into the

agency's New Entrant Program. The employees also perform vehicle driver inspections on commercial motor vehicles. Officer Cooling noted during the review conference that conducting vehicle inspections is required in order to maintain certification as a safety auditor. In total, the majority of the employees' duties are consistent with the allocating requirement of the definition of this class of performing vehicle driver inspections on commercial motor vehicles and conducting terminal safety audits.

The CVEO 2 class describes the employees' specific knowledge and experience required to perform their auditing duties and the extent of their program-specific responsibilities for performing auditing functions as part of their duties.

In 2003 the Federal Motor Carrier Safety Administration (FMCSA) issued the New Entrant Rule. These regulations require that educational safety audits be conducted on new interstate motor carriers within the first 18 months of operation. The safety audit process was established to provide educational and technical assistance to "new entrant" motor carriers and to gather critical safety data needed to make an assessment of these carriers' safety performance and basic safety management controls (see Anthony Cooling exhibit A-20, page 3). The employees conduct safety audits for the WSP's New Entrant Program. A key role of the safety auditor position is to conduct formal audits of new trucking companies to ensure the carriers understand commercial vehicle safety regulations and are in compliance with safety and applicable hazardous materials regulations. Safety auditors must be individually certified under FMCSA regulations. Federally mandated Safety audits consist of an interview with a motor carrier official and a review of records and operational policies.

As a result, the majority of the duties assigned to Mr. Steen's position and his level of responsibility are best described by the Commercial Vehicle Enforcement Officer 2 classification which specifically addresses the work he performs conducting terminal Safety Audits. For these reasons his position should be reallocated to that class.

Appeal Rights

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

> 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 on the 4th floor of the Insurance Building, 302 Sid Snyder Avenue SW, Olympia, Washington. The main telephone number is (360) 902-9820, and the fax number is (360) 586-4694.

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

c: Natalie Kaminski, PTE Local 17
Robert Steen
Debb Chavira, WSP
Lisa Skriletz, OSHRD

Enclosure: List of Exhibits

ROBERT STEEN v WSP
ALLO-12-014

A. Robert Steen Exhibits

1. Request for Director's Review form received February 29, 2012. (2 pages)
2. Letter of request from Robert Steen dated February 23, 2012 (1 page)

B. WSP Exhibits

1. February 6, 2012 WSP allocation determination (5 pages)
2. Position Review Request form submitted by employee November 17, 2011
3. Commercial Vehicle Enforcement Officer 1 classification specification
4. Commercial Vehicle Enforcement Officer 2 classification specification
5. From Chapter 10-Compliance Review Section of the Commercial Vehicle Division Standard Operating Procedures manual (12 pages)
6. From Chapter 14-Safety Audit Unit Section of the Commercial Vehicle Division Standard Operating Procedures manual (8 pages)
7. From WSP Internet - information on New Entrant Safety assurance process (1 page)
8. From Inside WSP Commercial Vehicle Division webpage - Overview of the Compliance Review Section (2 pages)
9. From Inside WSP Commercial Vehicle Division webpage - Overview of the Compliance Review Section & New Entrant safety Programs (2 pages)
10. From Inside WSP Commercial Vehicle Division webpage –summary of the compliance Review Section & New Entrant Safety Programs (1 page)
11. WSP Agreement IOC March 8, 2005, between WSP and Federal motor Carrier Safety Administration (FMCSA) (7 pages)
12. WSP Agreement IOC July 28, 2003, between WSP and FMCSA (8 pages)
13. Email from Linda Powell, supervisor, to Linda Shincke regarding New Entrant Safety Audit Implementation Plan (3 pages)

14. Email from Yvette Fabregas to CVEO 3 dean Ide regarding comparison of duties (2 pages)

15. Position Description for CVEO 1 Robert Steen (6 pages)

16. Reallocation summary write up (9 pages)

17. Region 1 Commercial Vehicle Division Organizational Chart