



STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT

STATE HUMAN RESOURCES DIVISION | DIRECTOR'S REVIEW PROGRAM
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November 20, 2014

TO: Rhonda Fenrich, Attorney at Law

FROM: Holly Platz, SPHR
Director's Review Program Investigator

SUBJECT: Thomas Cyra v. Department of Fish and Wildlife (DFW)
Allocation Review Request ALLO-14-004

Director's Determination

On November 12, 2014, we met for a Director's review conference to review the allocation of Thomas Cyra's Fish and Wildlife Biologist 2 position. Present during the review conference were you, Thomas Cyra, Michael Sanchez, Human Resource Consultant for the Department of Fish and Wildlife (DFW) and Gregory Schirato, Deputy Director for DFW.

Typically a position review is based on the work performed during the six-month period prior to the date that the incumbent's human resources office receives the request for review. In this case, Mr. Cyra's review request was received by DFW's Human Resources office (HR) on November 7, 2013. However, due the seasonal nature of Mr. Cyra's work, we talked in more general terms about his work on a yearly basis.

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. Based on my review and analysis of Mr. Cyra's assigned duties and responsibilities, I conclude his position is properly allocated to the Fish & Wildlife Biologist 2 classification.

Background

After receiving Mr. Cyra's Position Review Request form, Mr. Sanchez conducted a review of Mr. Cyra's position. By letter dated December 27, 2013, Mr. Sanchez determined that Mr. Cyra's position was properly allocated to the Fish and Wildlife Biologist 2 classification. (Exhibit B-1).

On January 24, 2014, the State Human Resources division received Mr. Cyra's request for a Director's review of DFW's allocation determination. In his review request, Mr. Cyra indicated that the Fish and Wildlife Biologist 3 classification best described his duties.

In the documents he provided for this review, Mr. Cyra included the position descriptions for a number of Fish and Wildlife (F&W) Biologist 3 positions at DFW. However, as we discussed during the conference, the Personnel Resources Board has addressed the issue of the allocation of similar positions on numerous occasions. For example, 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 to Flahaut v. Dept's of Personnel and Labor and Industries, PAB No. ALLO 96-0009 (1996).

Therefore, while I considered Mr. Cyra's arguments regarding the allocation of other positions and I reviewed the position descriptions Mr. Cyra provided, the allocation or misallocation of other positions is not a determining factor in the allocation of Mr. Cyra's position.

As background, Mr. Cyra's position is located in District 13 within Region 4. His supervisor is a F&W Biologist 4. Mr. Cyra works primarily in salt water areas ranging from Neah Bay to Vancouver, British Columbia. In addition to District 13, Mr. Cyra performs work in other districts and in multiple regions. When working in other districts, district staff typically act as the lead on the project. For surveys initiated by DFW staff, the surveys are designed by the Waterfowl Section Manager and the Waterfowl Marine Specialist located in Olympia. Surveys are not designed at the regional level.

When working with a team, the team usually includes Mr. Cyra, another F&W Biologist 2 and a F&W Biologist 4. Mr. Cyra also performs works alone and is sometimes accompanied by his supervisor or others. Due to Mr. Cyra's and his team members' recognized expertise in conducting waterfowl, marine bird, game and mammal surveys, he and the team are often requested by other entities, including federal agencies, to conduct surveys in coastal waters of California, Oregon and British Columbia.

In addition, Mr. Cyra is recognized as DFW's go-to-person for statewide Wildlife Program radio operator training and call number assignments. He is also the go-to person for watercraft safety and he advises staff in his areas of work on the safe operation of watercraft. He also provides safety instruction and input on operating procedures regarding air-flight safety matters. Mr. Cyra has honed his expertise through 17 years of on-the-job experience.

The following summarizes Mr. Cyra's perspective as well as his employer's:

Summary of Mr. Cyra's Perspective

Mr. Cyra argues that he is a specialist in marine mammal capture and waterfowl surveys. Mr. Cyra explains that his supervisor provides him with a list of yearly surveys to be conducted. The surveys are designed by others within and outside of the agency. Mr. Cyra explained that in addition to performing some surveys independently, he typically works with a survey team consisting of himself, another F&W Biologist 2 and a F&W Biologist 4. Mr. Cyra argues that he plans, develops, designs and conducts professional studies that include a surveying component. He asserts that when doing surveys such as the ones he did for marbled murrelets and pika, he determines when to conduct the survey and once on site, he assesses resources

and determines how to best position and utilize survey equipment in the survey area. Mr. Cyra explains that after completing the survey, he compiles and analyzes the survey data and develops a report of the results. Mr. Cyra argues that he functions as a specialist consistent with the F&W Biologist 3 classification.

Mr. Cyra argues that DFW HR failed to talk with his supervisor or with his second-level supervisor and asserts that if they had, they would have understood the scope and level of his work. He contends that the notes written on the specifications by Deputy Director Gregory Schirato (included in exhibits B-5 and B-6) are inaccurate. Mr. Cyra asserts that his expertise in waterfowl surveys and marine mammal captures equate to senior-level program specialist work and contends that the duties and responsibilities of his position best fit within the definition and typical work of the F&W Biologist 3 classification.

Summary of DFW's Reasoning

DFW argues that the focus of Mr. Cyra's work is to assist higher level staff and outside entities with various studies by conducting surveys and assisting in captures. DFW asserts that Mr. Cyra does not design surveys or determine which surveys will be conducted. Rather, DFW contends that surveys are part of a yearly survey matrix which is prioritized by staff in Olympia. Surveys are then assigned to regions/districts who determine who will conduct the surveys. DFW asserts that when conducting surveys, Mr. Cyra uses established protocols and techniques to conduct surveys as requested by others. DFW further asserts that Mr. Cyra does not develop how or where to look or evaluate the impact of the survey. DFW argues that the complexity of work being performed, not experience, determines whether a position fits within the F&W Biologist 3 level. DFW explains that at the 3 level, incumbents perform senior level, complex and highly complex work. DFW recognizes that Mr. Cyra performs skilled journey-level work and some complex work and that he utilizes a broad knowledge of capture and survey techniques. However, DFW contends that the majority of Mr. Cyra's duties and responsibilities do not encompass the level of independence and complexity encompassed at the 3 level.

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

In the Position Review Request form (Exhibits B-2), Mr. Cyra's major duties are listed as:

- 45% Conduct biological inventories, surveys and population assessments for waterfowl, and marine birds in all waters of Region 4, and all marine waters of Washington (Regions 4, 5, and 6). Principle responsibilities to record, organize, analyze, and present data, and develop conclusions and write reports as assigned by the statewide water fowl specialist. Capture, band, and equip waterfowl and marine birds with telemetry equipment, or for other purposes as needed.

- 45% Conduct surveys and population assessments for game and diversity species in District 13. Record, organize, analyze, and present data, and write reports as assigned by the district biologist. Capture, band and equip wildlife with telemetry equipment, or for other purposes as needed.
- 5% Perform Marine Mammal capture, monitor, and survey activities in all marine waters of Washington and adjoining states and provinces.
- 5% Other duties as assigned.

The tasks Mr. Cyra performs are contained in his Position Description form and Position Review Request form. (Exhibits B-3 and B-4). During the review meeting, Mr. Cyra and DFW provided clarification of the tasks he performs.

DFW explained that many DFW sections conduct studies and request assistance with surveys. DFW further explained that the requests are compiled into a yearly matrix that is prioritized by staff in Olympia. DFW clarified that a study may require multiple surveys and surveys may require multiple days to conduct. DFW explained that staff in Olympia determines which requests will be moved forward for the year and the District and Regional Program Managers determine whether the work can be done.

Mr. Cyra explained that his supervisor reviews the list of survey requests and determines which surveys to assign to him. When he works with a team, the F&W Biologist 4 acts as the lead on the survey and directs the survey activities. Mr. Cyra also explained that the team has worked together for a long time and while they collaborate on the survey, they are familiar with what needs to be done and by whom. For example, when they are conducting a survey by aircraft, the F&W Biologist 4 would determine the survey route and direct the aircraft and he and the other F&W Biologist 2 would function as the observers doing the count.

Mr. Cyra explained that he and the team are aware of aircraft safety procedures and make recommendations to the Aircraft Safety Committee. And, he and another team member are working on a training module for over-water aircraft. He is also the radio communications trainer which seasonally accounts for approximately 2 days per month.

Mr. Cyra further explained that when doing surveys for other states or Canada, the team uses established methodologies though he and other team members may make recommendations.

When he is not doing survey work, Mr. Cyra conducts captures. When doing captures, Mr. Cyra works with a team to conduct capture and immobilization tasks but he would not be the person ultimately responsible. When doing telemetry work, Mr. Cyra generally works alone. Mr. Cyra explained that he decides his day-to-day activities and that when working alone he acts as the lead. When he works with a group or team it is a collaborative effort though he generally takes the lead on activities involving marine mammals.

Mr. Cyra also asserted that he is the district lead for boat operations and he recommends to others which boats to use and what they should and should not do so that species will not be disturbed. He also advises other staff on operating and safety procedures for watercraft.

Class Specifications

The following classification standards, in descending order, are the primary considerations in allocating positions:

- a) Category concept (if one exists).
- b) Definition or basic function of the class.
- c) Distinguishing characteristics of a class.
- d) Class series concept, definition/basic function, and distinguishing characteristics of other classes in the series in question.

In addition, while not allocating criteria, the typical work or examples of work statements provide support to the duties typically performed at each level within the class series and the Glossary of Classification Terms provides guidance for interpreting the language used in the class specifications.

The definition for the Fish and Wildlife Biologist 3 classification states, in relevant part:

In the Department of Fish and Wildlife, the Fish and Wildlife Biologist 3 is primarily responsible for planning, developing, and designing professional biological studies, research, or resource assessments, and providing the analysis, assessment, and interpretation of the results and preparation of final written reports,

AND

. . .

Is the Program specialist on issues affecting fish, wildlife, lands, or habitat in an area comprised of more than one District . . .

The State Human Resources Glossary of Classification Terms defines specialist work as: “[d]uties involve intensive application of knowledge and skills in a specific segment of an occupational area.”

While Mr. Cyra functions as a survey specialist, he does not plan, develop or design professional biological studies or research. He makes independent decisions when conducting surveys such as determining where and how survey equipment should be located within a survey area. However, determining where and how to locate survey equipment and observation areas is inherent in conducting surveying activities and does not rise to the level of planning, developing and designing resource assessments. In addition, he compiles data gathered during the surveys he conducts and provides the data, including a written summary of the data, to the study initiators. He does not analyze, assess and interpret the survey results or prepare final written reports for the study. Exhibit A-1, provided by Mr. Cyra, demonstrates that he is a contributor to presentations and publications. Mr. Cyra's position does not rise to the 3 level. His position is best described as using his expertise and experience as a biological surveyor to assist and support others conducting professional biological studies

The definition for the Fish and Wildlife Biologist 2 classification states:

In the Department of Fish and Wildlife, as a journey-level biologist under general supervision, independently conducts professional biological studies or research and provides analysis and assessment of fish, wildlife, lands, or habitat management data.

The Glossary of Classification terms defines journey-level work as: “[f]ully competent and qualified in all aspects of a body of work and given broad/general guidance. Individuals can complete work assignments to standard under general supervision. Also referred to as the working or fully-qualified level.”

Mr. Cyra performs journey-level work under general supervision and he works independently and as a team member to conduct biological surveys. The surveys are conducted at the request of others as part of specific studies and research projects. His position fits within the definition of F&W Biologist 2 class. And, he performs tasks consistent with the typical work for this class.

For example, the typical work statements for the F&W Biologist 4 state, in part:

- Organizes and conducts fish, wildlife, or habitat . . . research studies (*in this case, surveys*); determines extent of sampling necessary for prescribed standards of accuracy; performs independent . . . field investigations; (*Emphasis added.*)
- Selects standardized statistical and research procedures; evaluates and analyzes collected data; formulates conclusions and writes summaries; drafts technical report sections for review by supervisory biologists;
- . . . provides technical consultation to . . . agency personnel and others on wildlife interactions with commercial or industrial activities; consults with other agencies; land use planners and managers;
. . .
- Analyzes and interprets wildlife habitat relationships; evaluates potential impacts of developments to species of concern; . . .
- Maintains records and prepares report; prepares detailed summary reports;
- May supervise or lead staff.

I recognize that this class does not specifically address Mr. Cyra's and his team's recognized expertise in conducting surveys or Mr. Cyra's responsibilities as a radio trainer or safety advisor. However, it fully encompasses the majority of his duties and responsibilities and the activities he performs in regard to conducting and participating in survey and capture activities including compiling and providing data and writing summaries of survey results. Also, the typical work statements describe work consistent with his responsibilities as a radio trainer and safety advisor such as providing technical consultation and leading staff.

Each classification within the state personnel system encompasses a range of duties. 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).

The majority of Mr. Cyra's duties and responsibilities fit the definition of the Fish & Wildlife Biologist 2 classification. His position is properly allocated.

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 on the 3rd floor of the Raad Building, 128 10th Avenue SW, Olympia, Washington. The main telephone number is (360) 407-4101, and the fax number is (360) 586-4694.

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

c: Thomas Cyra
Michael Sanchez, DFW
Lisa Skriletz, SHR

Enclosure: List of Exhibits

THOMAS CYRA v DFW
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A. Thomas Cyra Director's Review request and attachments

1. Presentations and Publications
2. Position Description for Bio-3 Karen Arment
3. Position Description for Bio-3 James Selleck
4. Position Description for Vacant #170068281
5. Position Description for Bio-3 Jane Jenkerson
6. Position Description for Bio-3 Lori Salzer
7. Emails/Documents Regarding Role as Program Lead for Radio Training
8. American Pika Survey Examples
9. Black Oyster Catcher Survey Examples
10. Winter Marine Bird Flight Survey Examples
11. Aircraft Safety Training Protocols & Examples
12. North Sound Pelagic Cormorant Survey Examples

B. DFW Exhibits

1. Reallocation decision (5 pages)
2. Employee Portion Position Review Request (4 pages)
3. Supervisor Portion Position Review Request (2 pages)
4. Position Description submitted by employee and supervisor for review (5 pages)
5. Organization chart. (1 page)
6. Class Specifications Fish & Wildlife Biologist 2. (2 pages)
7. Class Specifications Fish & Wildlife Biologist 3 (2 pages)
8. Supervisor Portion Position Review Request signed by RPM (2 pages)
9. Position Description on file prior to reallocation request. (6 pages)
10. 2014-15 Map of Wildlife Management Districts and Game Management Units