



STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT

STATE HUMAN RESOURCES | DIRECTOR'S REVIEW PROGRAM
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February 20, 2015

TO: Connie Goff, PHR
Rules and Appeals Program Manager

FROM: Kris Brophy
Director's Review Program Investigator

SUBJECT: Arthur Fluharty v. Department of Agriculture (AGR)
Allocation Review Request ALLO-14-013

A consolidated Director's review has been completed regarding the allocation of the following positions:

Arthur Fluharty v Department of Agriculture ALLO-14-013
Steven Nelson v Department of Agriculture ALLO-14-017

Director's Determination

Mr. Fluharty's position was reallocated effective January 1, 2014, following a management-initiated position review based upon an updated online Position Description form received by the AGR Human Resources (AGR-HR) office.

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. Fluharty's assigned duties and responsibilities, I conclude his position should be reallocated to the Weights and Measures Inspector 2 class.

Background

On January 21, 2014, AGR - HR issued determinations for these positions indicating the positions were being reallocated from the Weights and Measures Inspector 2 class to the Program Specialist 2 (PS 2) class.

On February 20, 2014, Mr. Fluharty filed an appeal with State HR requesting reallocation to a Weights and Measures Inspector 3 class, or to similar Weights and Measures Inspector classes in other jurisdictions. (Note: During the review conference Mr. Fluharty requested that the Program Specialist 3 class be considered for reallocation purposes.)

On January 20, 2015, I conducted a combined review conference with the parties. Mr. Fluharty was represented by Inti Tapia, Council Representative, WFSE. Mr. Nelson was represented by

Phyllis Alexander, Council Representative, WFSE. Barbara Hoff, Human Resources Consultant, AGR also participated in the review conference as the AGR representative.

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

As stated in the PDF (Exhibit B-1) for his position, Mr. Fluharty serves in a regulatory enforcement position responsible for inspecting weighing and measuring devices used in commercial transactions. He examines package bulk commodities to determine compliance with weight and measure and count requirements. He also conducts price verification inspections and evaluates motor fuel quality which includes gathering samples for laboratory evaluation. Mr. Fluharty may take immediate action to stop the sales of nonconforming commodities or stop the use of noncompliant devices and he recommends enforcement actions to his supervisor or manager. His position is responsible for receiving and investigating complaints against businesses.

Mr. Fluharty also educates businesses, service companies and licensed weighmasters on regulatory requirements and advises them on best industry practices. Mr. Fluharty has an assigned area of responsibility and is responsible for determining his inspection schedule within that area. He is also responsible for coordinating certain statewide inspection program activities.

Mr. Fluharty's duties are described in detail in the PDF submitted for reallocation. His major job duties are summarized from the PDF as follows:

- 70% Interpret, apply and explain state laws, regulations and National Institute of Standards and Technology (NIST) Handbooks. Inspect and test volume measuring devices, mass measurement devices and miscellaneous measuring devices for compliance with laws, regulations and NIST Handbook 44 specifications and tolerances. Advise device owners and operators on device requirements and usage. Record results, document observations and take appropriate regulatory actions.
- 13% Test and evaluate motor fuels for quality standards to ensure compliance with state laws, regulations and ASTM standards. Record results, document observations and take appropriate regulatory actions.
- 2% Interpret, apply and explain state laws, regulations and National Institute of Standards and Technology (NIST) Handbooks. Examine and evaluate packaged items for correct net weight, volume or count using NIST Handbook 133 methods and standards. Conduct price verification tests to ensure accuracy of charges between advertised or posted prices and point of sale system charges using NIST Handbook 130 methods and standards. Examinations and tests are conducted to

assure compliance with laws, regulations and applicable NIST Handbooks.
Record results, document observations and take appropriate regulatory actions.

- 10% Organize the collection and transportation of motor fuel quality samples to the laboratory. Review laboratory results, coordinate follow up sampling activities and when indicated recommend enforcement actions. Maintain and monitor fuel quality sampling supplies and equipment.
- 5% Other duties – Special short term projects as assigned by the Program Manager. Examples are conducting special studies on test methods, identifying requirements for IT System, participating in LEAN teams and coordinating emphasis inspections or special studies.

Summary of Employee's Perspective

Mr. Fluharty asserts the PS 2 class does not fit his position due to the unique and specialized nature of the work he performs.

In addition, during the review conference Mr. Fluharty indicated that if his position was to be allocated to the Program Specialist series, it should be reallocated to the PS 3 class to more accurately reflect the level of responsibility and complexity of scope of duties assigned to his position which includes responsibility for coordinating certain statewide departmental weights and measuring activities.

Mr. Fluharty asserts his position should be considered for reallocation to a Weights and Measures Inspector 3 class, or to similar weights and measures inspector classes in other jurisdictions. As was explained in the meeting, the allocation review process involves comparing a classified position's assigned duties and responsibilities to the available job specifications within the classification plan.

The Personnel Resources Board (PRB) previously addressed this subject in the following decision:

While 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**. Byrnes v. Dept's of Personnel and Corrections, PRB No. R-ALLO-06-005 (2006).

[Emphasis added]

Therefore, the allocation review process involves comparing a classified position's assigned duties and responsibilities to the available job specifications within the classification plan, not placement to class specifications in other jurisdictions or to class specifications that are not part of the classification system at the time of the position review.

Summary of AGR's reasoning

During the review conference Ms. Hoff acknowledged that the regulatory enforcement work Mr. Fluharty performs involving the inspection of weighing and measuring devices used in

commercial transactions is more specifically addressed in the Weights and Measures Inspector 2 class. However, Ms. Hoff asserts the agency is moving toward the use of more generic classes to describe the work performed by employees and the PS 2 class addresses the nature and scope of the specialized duties and functions performed by Mr. Fluharty in support of the Weights and Measures Inspection Program.

In total, AGR contends Mr. Fluharty's position meets the requirements of the PS 2 class.

Comparison of Duties

When comparing the assignment of work and level of responsibility to the available class specifications, the Class Series Concept (if one exists) followed by the 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 Program Specialist series

The Class Series Concept for the Program Specialist series states:

Positions in this series coordinate discrete, specialized programs consisting of specific components and tasks that are unique to a particular subject and are separate and distinguished from the main body of an organization. Positions coordinate program services and resources; act as a program liaison and provide consultation to program participants and outside entities regarding functions of the program; interpret, review and apply program specific policies, procedures and regulations; assess program needs; and develop courses of action to carry out program activities. Program coordination also requires performance of tasks and application of knowledge unique to the program and not transferable or applicable to other areas of the organization.

Examples of program areas may include, but are not limited to: business enterprises, fund raising, volunteer services, community resources, election administration and certification, juvenile delinquency prevention, recreational education and safety, energy education, aeronautic operations and safety, student housing, financial aid, and registration.

Allocation to the Program series requires an assignment of work that is unique and specific to a particular program and not work that is specifically described by another existing class specification. If there is a class that encompasses the body of work, allocation to the specific class must take primary consideration. Allocation to a "Program" class should only occur when there are no other viable options for allocation.

The Weights and Measures Inspector series specifically addresses the body of work under review in this appeal. This includes the inspection and testing of weighing and measuring devices used in commercial transactions. Because these classes specifically describe the scope of work and specific duties performed by Mr. Fluharty, allocating his position to a class within the Program Specialist series is not appropriate.

This is further supported by Personnel Resources Board (PRB) decisions in which the Board has concluded that while one class appeared to cover the scope of a position, there was

another classification that not only encompassed the scope of the position, but specifically encompassed the unique functions performed. In Alvarez v. Olympic College, PRB No. R-ALLO-08-013 (2008), the Board held that “[w]hen there is a definition that specifically includes a particular assignment and there is a general classification that has a definition which could also apply to the position, the position will be allocated to the class that specifically includes the position. [Mikitik v Depts. of Wildlife and Personnel, PAB No. A88-021 (1989)].

When there is a definition that specifically includes a particular assignment and there is a general classification that has a definition which could also apply to the position, the position will be allocated to the class with the definition that includes the position [Mikitik v Depts. of Wildlife and Personnel, PAB No. A88-021 (1989)].

In Cerna v. Employment Security Dept., PAB No. ALLO-03-0014 (2003), the board stated that “[i]t is not intended for a more generic classification to be used to allocate a position where the duties and responsibilities of the position are more precisely described by a more specific classification.” [See also Nance v. Eastern Washington University, PAB No. 3769-A2 (1995)]. Board quoted above in Waldher; Firouzi; Makari; Korndorfer v. DOT; R-ALLO-08-026, R-ALLO-09-005, R-ALLO-09-006, and R-ALLO-09-009.

For these reasons Mr. Fluharty's position should not be allocated to a class within the Program Specialist series.

This is further clarified for specific classes within the Program Specialist series as follows.

Comparison of Duties to Program Specialist 3

The Definition for Program Specialist 3 class states:

Positions at this level work under general direction and typically have organization-wide program responsibility. For programs with statewide impact, incumbents are specialists who manage one component or assist higher levels in two or more components of the program. Programs include but are not limited to voter registration programs; boating, concession, or winter recreation programs; minority and women's business enterprise programs; and aeronautics programs.

Program components are comprised of specialized tasks (e.g., reservations, administration, and budget coordination) within a specialty program. Incumbents assist higher-level staff by coordinating all aspects of program services, providing technical assistance and specialized, consultation to program participants, staff and outside entities, and recommending resolution for complex problems and issues related to the program.

Incumbents assess program participants' needs and develop specialized services and training unique to the program and are responsive to the needs of participants.

Positions at the PS 3 level work under general direction and typically have organization-wide program level responsibilities. Programs at this level often have statewide impact, and incumbents are specialists who manage one component or assist higher levels in two or more components of these larger scale programs. Incumbents assess program participants' needs and develop specialized services and training unique to the program and are responsive to the

needs of participants. The thrust of Mr. Fluharty's position and the specific technical nature of the duties he performs do not reach this level of responsibility. His duties consist of performing journey level inspection and testing of various capacity scales using certified known weights.

During the review period Mr. Fluharty was given an assignment to assist the department in organizing the collection and transportation of motor fuel quality samples to the laboratory for the western region of the state which involved reviewing laboratory results, coordinating follow up sampling activities and when indicated recommending enforcement actions. However, while this portion of his work during the review period involved performing a broader scope of coordination activities than he normally performs, the overall thrust of his position and the majority of his duties as a whole do not require him to function within a program specialist context and his position does not have responsibility for managing one or more program activities as required.

For these additional reasons Mr. Fluharty's position should not be allocated to the Program Specialist 3 class.

Comparison of Duties to Program Specialist 2

The Definition for Program Specialist 2 class states:

Positions at this level work under general supervision and plan, organize, direct and coordinate operations for programs such as the business enterprise, volunteer services and community resources, elections examination/administration programs. Incumbents oversee day-to-day program operations, function as the program representative and resource, have extensive contact with program participants and outside entities, and resolve problems within a delegated area of authority. Unusual problems, probable outcomes and solutions are presented to higher levels for resolution. Incumbents may be delegated limited authority to approve budget expenditures and may assist higher-level staff with developing and coordinating statewide program activities.

Positions at the PS 2 level work under general supervision and plan, organize, direct and coordinate operations for programs. This involves performing various administrative tasks and functions as the program representative and resource such as providing information and technical assistance to program participants, staff and outside entities regarding program content, policies and activities, promoting the program with outside organizations and resources; attending meetings and/or conferences as the program representative; and developing and making public presentations on program related topics.

Incumbents in this class also confer with staff and outside entities regarding the interpretation and implementation of program policies. They participate in establishing program standards and identify areas for program development.

While aspects of Mr. Fluharty's work can be generally be described by this class, the thrust of Mr. Fluharty's position and the specific technical nature of the duties he performs do not meet its intent. Mr. Fluharty does not have responsibility for planning, organizing, directing and coordinating operations for the department's weights and measures inspection activities and functions as a whole. His duties consist of performing specialized journey level inspection and testing of various capacity scales using certified known weights within an assigned area of responsibility. The general administrative work he performs in support of these activities is secondary to the specific technical inspection duties he performs. In addition, there is another

classification that specifically encompasses the scope of the position and the unique functions he performs as a weights and measures inspector.

For these reasons his position should not be allocated to the Program Specialist 2 class.

Comparison of Duties to Weights and Measures Inspector 2

The definition of the Weights and Measures classification states:

Enforces state and federal laws through the inspection and testing of any weighing and measuring devices used in commercial transactions. Inspects package and bulk commodities to determine compliance with weight, measure, and count requirements. Conducts price verification inspections and motor fuel quality sampling. May serve as a leadworker and/or assist in the training of other inspection staff.

The Distinguishing Characteristics for this class state:

Employees in this class are fully qualified, journey-level inspectors. In addition to performing any or all of the duties of a Weights and Measures Inspector 1, incumbents are also assigned responsibility for at least four of the following functions:

1. Inspection and testing of large capacity scales involving the use of specialized weight handling equipment including 10,000 pounds or more of known test weights;
2. Inspection and testing of railroad track scales;
3. Inspection and testing of liquid petroleum (propane) meters;
4. Inspection and testing of FGIS scale systems at export grain elevators;
5. Serving as an assistant and back-up to the State Meteorologist;
6. Inspection and testing of high flow rate petroleum meters using a trailer mounted prover having at least 1,000 gallons of capacity.

Mr. Fluharty's position closely aligns with the requirements of the Definition and Distinguishing Characteristics of this class. The focus of his position and the majority of his work involves enforcing state and federal laws through the inspection and testing of weighing and measuring devices used in commercial transactions. His duties include inspecting commodities to determine compliance with weight, measure, and count requirements. His duties also include conducting price verification inspections and motor fuel quality sampling.

In addition, Mr. Fluharty's duties and responsibilities closely align with the typical work statements which describe the nature and scope of work performed at this level. They state:

Inspects and tests small, intermediate and large capacity scales using certified known test weights;

Inspects motor fuel stations for advertising, product delivery documentation,

pricing and labeling, and safety/environmental requirements; test retail motor fuel dispensers for accuracy;

Conducts motor fuel sampling and testing in support of the State Motor Fuel Quality Act;

Enforces package and labeling laws; inspects packaged items for weight, count and volume; inspects bulk commodities such as cordwood, sand and gravel, and beauty bark;

Conducts price verification to determine pricing consistency between advertised and UPC scanned price;

Approves, certifies and seals correct and accurate devices or rejects, condemns or confiscates devices that are inaccurate or misused; may impose civil penalties based upon the results of inspection and testing;

Inspects and tests taxi, cordage and fabric meters;

Checks public weighmasters' licenses and inspects their records;

Gathers evidence of fraud by short weight, volume, or count; turns evidence over to prosecuting attorney; testifies as expert witness; investigates consumers' complaints;

Prepares and maintains accurate records and reports; schedules and plans inspections;

Responsible for operator and scheduled maintenance on assigned vehicles and maintenance of measurement standards used during the course of inspections;

Performs more difficult and/or hazardous inspections which includes operating the large vehicles and specialty equipment required to conduct the inspection;

Provides oversight and training for other inspectors as assigned;

Mr. Fluharty's duties are fully consistent with these statements. For example, as stated in the PDF, Mr. Fluharty inspects and tests volume measuring devices, mass measurement devices and miscellaneous measuring devices for compliance with laws, regulations and NIST Handbook 44 specifications and tolerances. He advises device owners and operators on device requirements and usage. He records results, documents his observations and takes appropriate regulatory actions. He also tests and evaluates motor fuels for quality standards to ensure compliance with state laws, regulations, and ASTM standards. In addition, he conducts price verification tests to ensure accuracy of charges between advertised or posted prices and point of sale system charges.

While this class may not fully reflect the level of responsibility he has in his position for occasionally assuming broader responsibility for coordinating certain departmental weights and measuring activities for the department such as assisting in the organization of collection and transportation of motor fuel quality samples to the laboratory for the western region of the state, as a whole, this class more accurately describes the overall focus, scope, and level of responsibility Mr. Fluharty has in performing his duties.

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. See Dudley v. Dept. of Labor and Industries, PRB Case No. R-ALLO-07-007 (2007).

Mr. Fluharty's position duties closely align with the scope and level of responsibility stated at the Weights and Measures Inspector 2 level. For each of the reasons stated above, his position should be reallocated to the that class.

Appeal Rights

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

The mailing address for the Personnel Resources Board (PRB) is P.O. Box 40911, Olympia, WA 98504-0911. 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 PO 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: Arthur Fluharty
Inti Tapia, WFSE
Barbara Hoff, AGR

Enclosure: List of Exhibits

List of Exhibits

A. Arthur Fluharty Exhibits

1. Request for Director's Review from Arthur Fluharty received by State HR on February 20, 2014
2. Allocation Determination letter approving reallocation by Barbara Hoff, dated January 21, 2014
3. Memorandum Of Understanding between The State of Washington and the WFSE, dated September 25, 2012
4. State HR Class Specification Weights and Measures Inspector 2
5. State HR Class Specification for Program Specialist 2

B. AGR Exhibits

1. Position Description for position #0127, dated December 18, 2013 by supervisor
2. State HR Class Specification for Program Assistant
3. State HR Class Specification for Program Specialist 2
4. State HR Class Specification for Program Specialist 3
5. Allocation Determination letter approving reallocation by Barbara Hoff, dated January 21, 2014

C. Class Specifications

1. State HR Class Specification Weights and Measures Inspector 1
2. State HR Class Specification Weights and Measures Inspector 2
3. State HR Class Specification Weights and Measures Supervisor