STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT
STATE HUMAN RESOURCES DIVISION | DIRECTOR'S REVIEW PROGRAM
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April 27, 2015

TO: Franklin Plaistowe
Reviews and Appeals Section Chief

FROM: Kris Brophy
Director's Review Program Investigator

SUBJECT: James Botaitis et al. v. Employment Security Department (ESD)
Allocation Review Request ALLO-14-058 thru - 071

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

James Botaitis	ALLO-14-058	Diane Mollet	ALLO-14-065
Tim Carrothers	ALLO-14-059	Melenie Motto	ALLO-14-066
Lorraine Craig	ALLO-14-060	Thao Nguyen	ALLO-14-067
James Dahlen	ALLO-14-061	Marilee Rehfield	ALLO-14-068
Paul Dean	ALLO-14-062	John Sem	ALLO-14-069
Inna Dykes	ALLO-14-063	Peter Serrano	ALLO-14-070
Melissa Hartung	ALLO-14-064	Phuong Shaw	ALLO-14-071

Director's Determination

This position review was based on the work performed for the six-month period prior to the date ESD's Human Resources (HR) Office received the employees' request for a position review. 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 the employees' duties and responsibilities, I conclude their positions are properly allocated to the Tax Specialist 3 – ES (TS 3) classification.

Background

The employees' submitted Position Review Request (PRR) forms for their positions requesting that their TS 3 positions be reallocated to the Revenue Agent 2 class (Exhibit B-7).

ESD HR conducted a position review and notified the employees' on June 4, 2014 that their positions were properly allocated to the TS 3 class (Exhibit B-1).

On July 2, 2014, the employees' filed an appeal with State HR requesting reallocation to Revenue Agent 2 class.

On March 3, 2015, I conducted a review conference with the parties. Present for the conference were James Botaitis, Tim Carrothers, James Dahlen, Melissa Hartung, Marilee Rehfield, and John Sem.

Also in attendance were, Tony Jones, Council Representative, WFSE; Teresa Parsons, Human Resource Specialist, WFSE; Gary Kolonjna, Revenue Agent 4, LNI, Teresa Eckstein, HR Manager, ESD; Megan Eason, Human Resource Consultant, ESD; Kelly Moore, Human Resource Consultant, ESD; and Rita Lingle, Human Resource Consultant, ESD.

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

The employees' in this appeal are assigned to the Account Management Center within the Tax & Wage Administration Branch of ESD.

The employees explain in the Position Review Request (PRR) form that their positions exist to generate revenue by applying collection procedures to delinquent employer accounts where the employer has not paid taxes due to the agency.

Their duties are described in the PRR (exhibit B-7) as follows:

95% **Duty**

Conducting Collection Activities.

Tasks

- Collect delinquent taxes and late tax and wage reports from employers.
- Determine appropriate collection actions to obtain payment of delinquent accounts.
- Conduct complex collection activities and perform investigations to locate and secure assets.
- Prepare, file or serve legal documents.
- Following agency determinations of successor liability pursue successor for collection of predecessor outstanding tax balance due.

- Negotiate deferred payment contracts, possible settlements or offers in compromise; make recommendation for approval or denial.
- Assist employers in preparation or adjustments to their agency reports.
- Explain appeal rights and applicable laws and policies.
- Assist employers in the use of electronic fling and payment methods.
- Access the ESD Tax Central Database, UBI and Department of Revenue, L&I database, Department of Licensing database and Secretary of State database and skip-tracing database tools.

5% **Duty**

Other duties as assigned.

Summary of the Employee's Comments

The employees stated during the review conference that the agency reorganized to a centralized collections model and they now spend all of their time performing complex collections activities consistent with the Revenue Agent 2 class. The employees stated their positions exist to generate revenue by applying collection procedures to delinquent employers who have not paid their Unemployment Insurance (UI) taxes to the agency. The employees' explained this involves performing the full range of collection activities which includes collecting money, filing legal documents and using collection tools to assist employers in maintaining their accounts. For example, they negotiate Deferred Payment Contracts.

They also file legal documents including Notices of Assessment, Liens, Warrants, Notices to Withhold and Deliver, and Notices to Furnish Bond. They also serve subpoenas, file Contractor Bond Requests, establish predecessor/successor liability, ensure compliance with laws, and explain and educate employers regarding complex laws and agency rules to ensure compliance.

The employees believe the Revenue Agent 2 class better describes the specific complex duties they perform than the more generic TS 3 class used for multiple positions within ESD.

For these reasons the employees' believe the Revenue Agent 2 is the appropriate allocation for their positions.

Summary of ESD's Reasoning

ESD acknowledges the employees perform a full range of collection activities; however the activities they perform are specific to UI tax collections at ESD, rather than the type of revenue collections typically performed at the Department of Revenue.

ESD asserts the Tax Specialist series is specific to the Employment Security Department and was developed for the UI tax functions, which includes collections. Therefore, the Tax Specialist series specifically encompasses the collections functions performed at ESD and as a result, believes the TS 3 class is a better fit than the Revenue Agent 2 class.

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.

Comparison of duties to Revenue Agent 2

The Definition for the Revenue Agent 2 class reads as follows:

> Performs the full range of revenue collection activities.

The Distinguishing Characteristics for this class state:

> At the journey level, independently performs routine to difficult collection activities that includes (but not limited to) seizures, successorships, revocations, delinquent claims accounts, mainstream delinquent accounts, tax discovery investigations, compliance corporate officer liability assessments, and prime contractor liability. Incumbents are experienced in utilizing professional compliance methods and have a detailed understanding of program goals.

Positions allocated to the Revenue Agent 2 class perform the full range of routine to difficult revenue collection activities.

It is uncontested the employees perform routine to difficult collection activities as the primary focus of their positions and the distinguishing characteristics describe many duties which are the same or similar to the work activities performed by the employees.

However, while the employees duties generally fall within the scope of work identified in the Revenue Agent 2 classification, this class addresses performing revenue collections work. This includes performing such tasks as conducting revocations of registration certificates, and conducting tax discovery investigations which involves investigating unregistered businesses and assessing evaded and avoided taxes on businesses as well as personal property including aircraft, watercraft, and vehicles. This class does not address the specific UI tax functions performed by positions working in the Employment Security Department. The Tax Specialist 3 class specifically addresses performing complex collection activity and investigations utilizing Employment Security rules and regulations.

Therefore, while the Revenue Agent 2 class generally describes much of the work performed by the employees' in their positions, allocating positions to specific rather than general classifications has been applied in numerous Board cases: Waldher; Firouzi; Makari; Korndorfer v. Department of Transportation, PRB Nos. R-ALLO-08-026; R-ALLO-09-005, R-ALLO-09-006, and R-ALLO-09-009 (2009).

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)].

Additionally, the PRB has concluded that while one class appeared to cover the scope of a position, there was another classification that not only encompasses the scope of the position,

but specifically encompassed the unique functions performed. Alvarez v. Olympic College, PRB No. R-ALLO-08-013 (2008). The Board has also consistently 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 with the definition that includes the position" Mikitik v. Depts. of Wildlife and Personnel, PAB No. A88-021 (1989).

Therefore, if there is another class that specifically encompasses the body of work, allocation to the specific class must take primary consideration. There is another class series which specifically address the body of work under review in this appeal. Since the other class series specifically describes the scope of work and specific duties performed, allocating the employees positions to the Revenue Agent 2 class is not appropriate.

For these reasons the employees' positions should not be reallocated to the Revenue Agent 2 class.

Comparison of Duties to Tax Specialist 3 - ES

The Definition for the Tax Specialist 3 – ES level, states:

> Provides senior-level professional unemployment insurance (UI) tax services, requiring a high level of technical skill and program knowledge, to the Washington State business community, reporting agents, legal representatives, out-of-state businesses, unemployment benefit recipients, and other state and federal agencies. Performs program administration and/or provides direct services for inter-related tax programs (Status, Tax Accounting, Redetermination, Compliance, Audit, Experience Rating/Benefit Charging and Unified Business Identifier).

The Distinguishing Characteristics for this class states:

> This is the fully skilled level of the series, and incumbents work independently with only general directions.

The employees' duties and responsibilities fit the TS 3 classification. They perform professional unemployment insurance tax work requiring a high level of technical skill and program knowledge.

Further, 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 typical work statements that most closely align with the employees' duties and responsibilities include:

> …
>
> In Central Office, reviews Deferred Payment Contracts for conformity with RCW's and policy;
>
> Conducts complex collection activity and investigations utilizing Employment Security rules and regulations;
>
> Reviews employment contracts and performs fact-finding interviews to determine independent contractor status utilizing Employment Security rules, laws, regulations, policies and procedures;

Provides expert technical assistance to internal and external constituents;
Reviews and researches Offers-in-Compromise;

Secures bankruptcy information from employers and their attorneys; works within federal bankruptcy laws to determine appropriate collection action;

Makes recommendations for Predecessor/Successor corrections and/or tax rate adjustments;

Issues soft warrants as required;

Researches and reviews legal documents for compliance and conformity to RCW's, WAC's and policies;

The employees' positions duties are fully consistent with these statements. They perform complex collection activities utilizing Employment Security rules and regulations. Their duties include collecting delinquent taxes and late tax and wage reports from employers. They determine appropriate collection actions and perform investigations to locate and secure assets. They prepare, file or serve legal documents, and pursue successor businesses for outstanding tax balances due.

Their duties also include negotiating deferred payment contracts, possible settlements or offers in compromise. They make recommendations to their supervisors for approval or denial.

Their duties also include providing direct services to clients including assisting employers in preparing or making adjustments to their agency reports, explaining appeal rights and applicable laws and policies, and assisting employers in the use of electronic fling and payment methods.

The employees' duties and levels of responsibilities best fit within the scope, intent and level of responsibility found in the TS 3 class. This includes performing complex collections functions specific to UI tax services.

Therefore, the overall duties and responsibilities assigned to their positions best fit the Tax Specialist 3 – ES 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 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: James Botaitis, Tim Carrothers, Lorraine Craig, James Dahlen, Paul Dean, Inna Dykes, Melissa Hartung, Diane Mollet, Melenie Motto, Thao Nguyen, Marilee Rehfield, John Sem, Peter Serrano, Phuong Shaw, Appellants
Tony Jones, WFSE
Teresa Eckstein, ESD

Enclosure: List of Exhibits

ALLO-14-058 thru ALLO-14-071

WFSE Exhibits

A. Collection Documents/ Tools
   1) Uncollectable Account Form
   2) Agreement to Assume Responsibility Form
   3) Withholding Order Form
   4) Deferred Payment Form
   5) Contractor Bond Action Referral
   6) Successor Notice Assessment
   7) Notice of Assessment
   8) Offer-In-Compromise Agreement
   9) Settlement
   10) Lien
   11) Warrant
   12) Subpoena
B. Tax Documents
   1) Estimated Tax Report
C. Agency Procedures, Tools
   1) Collections Manual
   2) Appeal Request Process
   3) Predecessor/Successor Instructions
   4) Skip-Training Tools
D. Other
   1) RCW's
   2) Correspondence
E. Additional RCW's
F. ATG Briefing Slide
G. Email 6/5/14
H. ATG Email 9/18/14
   1) Declaration of Revenue Agent
I. Position Description

ESD Exhibits

1) Allocation Determination Letter Dated June 4, 2014
2) Position Description 0450
3) Organizational Chart March 3, 2014
4) Class Specification for Revenue Agent 2
5) Class Specification for Tax Specialist 3 – ES
6) Position Review Request – Supervisor Portion March 12, 2014
7) Position Review Request – Employee Portion Received March 6, 2014

   Position Review Request – (Tim Carrothers) Employee Portion Received - March 10, 2014
8) NOTE: Documents submitted by employee (John Sem) during April 10, 2014 Meeting