

STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT
STATE HUMAN RESOURCES | DIRECTOR'S REVIEW PROGRAM
P.O. Box 40911 · Olympia, WA 98504-0911 · (360) 407-4101 · FAX (360) 586-4694

August 27, 2014

Marlo Binkley

RE: Marlo Binkley v. Department of Transportation (DOT)
Director's Review Request RULE-14-002

Dear Ms. Binkley:

On May 12, 2014, State Human Resources (SHR) received your letter requesting a Director's review of the effective date of your position's reallocation. The reallocation was initiated by management and resulted in the reallocation of your unrepresented Human Resources Consultant 2 position to the represented Budget Analyst 3 classification. You were notified of the reallocation on April 16, 2014 with an effective date of January 16, 2014.

Your request for review raised a number of concerns about events that occurred in 2013 as background to your request. On June 19, 2014, Teresa Parsons, SHR Director's Review Program Supervisor, sent you a letter explaining the timelines for filing an appeal of actions occurring in 2013 and informing you that an appeal of those actions was untimely.

RCW 41.06.170(2) provides, in part, the following:

. . . any employee who is adversely affected by a violation of the state civil service law, chapter 41.06 RCW, or rules adopted under it, shall have the right to appeal . . ."

The Director's review of an alleged rule violation is the first step in the appeal process (WAC 357-49-017). Consistent with RCW 41.06.170(2), WAC 357-49-010(4), provides an employee the right to request a director's review of an alleged violation "within thirty calendar days of the date the employee could reasonably be expected to have knowledge of the action giving rise to a law or rule violation claim or the stated effective date, whichever is later."

You were aware of the duties being added to your position and the work assignment modifications taking place in 2013. A rule violation appeal concerning your position description in 2013 or the duties that were reassigned to you during this time is untimely. I agree with Ms. Parsons' determination regarding the timeliness of an appeal related to the events that occurred or did not occur in 2013.

Ms. Parsons also addressed your appeal of the effective date of the reallocation of your position to the Budget Analyst 3 classification and determined that no rule violation occurred. However, Ms. Parsons allowed you an opportunity to provide a written response to her determination. You provided a response on July 9, 2014. DOT provided a response on August 13, 2014 and you provided a final response on August 18, 2014.

I have carefully considered the arguments and documents provided by you and DOT. The reallocation of your position to the Budget Analyst 3 classification was initiated by management. In brief summary, you argue that you were performing the duties of this position long before the reallocation was requested and assert that you should be granted an exception to the rule and be paid retroactively to the time that you began performing the Budget Analyst 3 duties.

WAC 357-13-085 addresses how the effective date of a reallocation is determined. The rule provides, in relevant part:

The effective date of a reallocation is determined as follows:

. . .

(2) The effective date of an employer-initiated reallocation is determined by the employer. . . .

Your Budget Analyst 3 position is represented and governed by the provisions of the Collective Bargaining Agreement. However, because prior to your reallocation you were in an unrepresented position, I considered whether the civil service rules were violated. The reallocation of your unrepresented position was initiated by management. Therefore, DOT determined the effective date of your reallocation. The rule allows the employer discretion to determine the appropriate effective date. DOT did not violate the rule when it exercised its discretion and determined the effective date of the reallocation of your unrepresented position. Your request for an earlier effective date is denied.

Your Budget Analyst 3 position is represented. Therefore, any actions concerning your current position are governed by the provisions of the Collective Bargaining Agreement between the Washington Federation of State Employees and the employer.

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Appeal Rights

WAC 357-49-018 provides that either party may appeal the results of the Director's review to the Personnel Resources Board (board) by filing written exceptions to the Director's determination in accordance with Chapter 357-52 WAC.

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.

Sincerely,

Holly Platz, SPHR
Director's Review Investigator
Office of the State HR Director

c: Jennifer Wagner, Class/Comp Specialist, DOT

enclosure: List of Exhibits

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Exhibits

1. Letter requesting Director's review from Marlo Binkley, received May 12, 2014, with attachments 1-9:
 - 1) Reallocation letter to Budget Analyst 3 dated April 16, 2014
 - 2) WSDOT Human Resource Manual Chapter 18
 - 3) Position Description-unrepresented HRC2, February 2013
 - 4) Emails dated May 21, 2013 and April 10, 2014
 - 5) Position Description-represented Budget Analyst 3, January 2014
 - 6) Employee Performance Review March 1, 2013 through February 28, 2014
 - 7) Email from Marlo Binkley to supervisor Kathy Dawley March 20, 2013
 - 8) Email to Marlo Binkley from Ted Koska, WMS3 March 22, 2013
 - 9) Email to Marlo Binkley from Jeff Pelton, HR Director May 15, 2013
2. June 19, 2014 letter from Teresa Parsons, Director's Reviews Supervisor, responding to alleged rule violations
3. July 6, 2014 letter of response to Ms. Parson's letter from Marlo Binkley, received July 9, 2014
4. July 22, 2014 email from Karen Wilcox, Director's Reviews Coordinator, asking WSDOT for a final response
5. WSDOT final response dated August 13, 2014
6. Marlo Binkley's final response dated August 18, 2014