

BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

DAVID BORTZ, GALE ALLEN, RICH
SCRIVNER, AND RODNEY RENNIE,

Appellants,

vs.

DEPARTMENT OF NATURAL
RESOURCES,

Respondent.

CASE NO. R-ALLO-07-012

ORDER OF THE BOARD
FOLLOWING HEARING ON
EXCEPTIONS TO THE
DETERMINATION OF THE DIRECTOR

Hearing on Exceptions. This appeal came on for hearing before the Personnel Resources Board, LAURA ANDERSON, Chair, and MARSHA TADANO LONG, Vice Chair, on Appellant's exceptions to the director's determination dated June 22, 2007. The hearing was held at the office of the Personnel Resources Board in Olympia, Washington, on October 24, 2007.

Appearances. Appellants David Bortz, Gale Allen, Rich Scrivner, and Rodney Rennie were present and were represented by Herman Gilman, Senior Field Representative with the Washington Federation of State Employees. The Department of Natural Resources (DNR) was represented by Thomas Hoffer and Marty Graf, Senior Human Resources Consultants.

Background. Appellants are assigned to DNR's Real Estate Group. In August 2005, Appellants were seeking a salary adjustment and reallocation to the position of Lands Program Coordinator. Appellants' managers supported the reallocation, and it appeared funding for the request would be approved. On December 16, 2005, Position Description Forms (PDFs) were submitted to DNR's Human Resources Department, requesting the positions be reallocated to the Property Acquisition Specialist 6, the class scheduled to

1 replace the Lands Program Coordinator as part of the Department of Personnel's (DOP's)
2 class consolidation, effective January 1, 2006.

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4 On June 28, 2006, Senior Human Resources Consultant Marty Graf informed Appellants
5 the Human Resources Department had reviewed their positions and concluded the Property
6 and Acquisition Specialist (PAS) 4 classification best described their duties and
7 responsibilities. After reviewing the Property, Acquisition, and Appraisal Occupational
8 Category, DNR had determined that positions within DNR allocated to the PAS 5 level
9 must be unit supervisors. Since Appellants did not have supervisory duties, DNR did not
10 believe they met the distinguishing characteristics of either the PAS 5 or PAS 6 levels.
11 DNR concluded the PAS 4 level was the best fit for Appellants' positions because they
12 performed duties in "asset management, property acquisitions and exchanges, and
13 consulting on the statewide urban and transition lands program, which is both specialized
14 and complex." Appellants appealed DNR's decision to the director of the Department of
15 Personnel (DOP).

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17 On May 17, 2007, Holly Platz, the director's designee, conducted a review of Appellants'
18 request. By letter dated June 22, 2007, Ms. Platz determined that Appellants' positions
19 were properly allocated to the PAS 4 classification, concluding their duties and
20 responsibilities were specialized and complex but did not reach the level of a PAS 5
21 because they did not provide technical expertise in a state-mandated program.

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23 On July 20, 2007, Appellants filed exceptions to the director's determination. Appellants'
24 exceptions are the subject of this proceeding.

25
26 **Summary of Appellant's Arguments.** Appellants argue their positions were approved for
27 reallocation to the Lands Program Coordinator classification in 2005 by DNR's Lands
28 Steward, who had delegated authority from the Commissioner of Public Lands. Appellants
29

1 acknowledge their positions do not have supervisory responsibilities but argue the dual
2 track option of considering technical expertise or supervision applies to their situation.
3 Appellants assert their unique positions provide technical expertise involving financial
4 analysis and commercial real estate in a program dealing with approximately 120,000
5 acres of urban-characterized land. Further, Appellants contend they manage nine
6 portfolios involving approximately 100 million to 150 million dollars in property
7 management. Appellants assert the work they perform is highly-technical and complex,
8 including value enhancements leading up to land transactions that require specialized
9 knowledge in areas such as city zoning or infrastructure in relation to cash flow analysis.

10
11 Additionally, Appellants argue they provide technical expertise in a state-mandated
12 program. Appellants contend their positions directly link to the state and federal mandate
13 that DNR manage lands held in trust. They assert the Transition Lands Policy Plan created
14 by the DNR Board provides guidance to their positions to carry out the specialized,
15 technical functions assigned. As a result, Appellants assert those assignments meet the
16 distinguishing characteristic of providing technical expertise in a state-mandated program
17 providing financial and/or valuation analysis in the area of real property. Therefore,
18 Appellants argue their positions should be reallocated and compensated to reflect the level
19 of work they perform.

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21 **Summary of Respondent's Arguments.** Respondent acknowledges promises had been
22 made to Appellants concerning the reallocation of their positions but contends allocating
23 authority resides with the Human Resources Department. While Respondent acknowledges
24 the PAS series is not an exact match due to extra language not pertaining to DNR, the
25 department argues the PAS 4 class is the best fit. Respondent further acknowledges
26 Appellants perform highly-technical, complex work but asserts the nature and complexity
27 of work is consistent with the PAS 4 classification. Respondent contends other DNR
28 positions performing the same complexity of work, such as positions in right-of-way

1 programs, are also allocated at the PAS 4 level. Respondent asserts positions allocated to
2 the PAS 5 level within DNR also have the added responsibility of supervising a unit and
3 are considered “section administrators with the authority to review or evaluate a program
4 and make changes to the program.”

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6 Respondent argues Appellants do not provide technical expertise in a state-mandated
7 program. Rather, Respondent contends Appellants perform duties in commercial real
8 estate for the transition lands program, a program derived from the Transition Lands Act
9 giving DNR limited flexibility to manage its land portfolio. Respondent argues
10 Appellants’ positions perform the work, which may be highly-technical, complex work,
11 and make recommendations but do not have the authority to change direction or speak on
12 behalf of the program. Respondent argues Appellants’ positions do not meet the
13 distinguishing characteristics of either the PAS 5 or 6, noting the dual track option did not
14 apply to this interim-phase occupational category. Therefore, Respondent argues the PAS
15 4 classification is the best possible fit.

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17 **Primary Issue.** Whether the director’s determination that Appellants’ positions are properly
18 allocated to the Property and Acquisition Specialist 4 classification should be affirmed.

19
20 **Relevant Classifications.** Property and Acquisition Specialist 4, class code 177L, and
21 Property and Acquisition Specialist 5, class code 177M, Property and Acquisition
22 Specialist 6, class code 177N.

23
24 **Decision of the Board.** The purpose of a position review is to determine which
25 classification best describes the overall duties and responsibilities of a position. A position
26 review is neither a measurement of the volume of work performed, nor an evaluation of the
27 expertise with which that work is performed. A position review is a comparison of the
28 duties and responsibilities of a particular position to the available classification

1 specifications. This review results in a determination of the class that best describes the
2 overall duties and responsibilities of the position. See Liddle-Stamper v. Washington State
3 University, PAB Case No. 3722-A2 (1994).

4
5 We concur with the previous Board that a position review is not based on an incumbent's
6 level of expertise, and our conclusion in this case is not meant to contradict or expand the
7 previous Board's decision. However, the Appellants' technical expertise in this case is
8 relevant because differing levels of "expertise" are specifically required in the PAS 4, 5,
9 and 6 classes. The PAS 4 distinguishing characteristics reference the application of
10 "advanced technical knowledge," while the PAS 5 distinguishing characteristics note
11 "[s]ome positions provide technical expertise in state-mandated programs." The
12 evaluation of Appellants' expertise in this case specifically relates to the assignment of
13 work and responsibility and ties to the distinguishing characteristics at each classification
14 level.

15
16 The distinguishing characteristics for the Property and Acquisition Specialist 6
17 classification require supervision. Since Appellants have not been assigned supervisory
18 responsibilities, the positions do not meet the intent of the PAS 6 class. Therefore, we
19 reviewed the distinctions between the PAS 4 and 5 classes.

20
21 The distinguishing characteristics for the Property and Acquisition Specialist 4 note that
22 "positions perform specialized and complex duties in real estate services, project
23 management, appraisals, audits, and/or land pricing and funding." They also "apply
24 advanced technical knowledge when planning and conducting complex tasks . . ."

25
26 At the Property and Acquisition Specialist 5 level, positions are not limited to the
27 distinguishing characteristic of supervising or leading employees in real estate activities. We
28 further note the Uniform Relocation Act language referenced in this class specification does
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1 not apply to positions in DNR; however, DNR has allocated positions to this class on a best fit
2 basis.

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4 The distinguishing characteristics for the PAS 5 specifically state that positions may provide
5 “technical expertise in state-mandated programs such as . . . financial and/or valuation
6 analysis” in areas that include “real property.” Prior management’s analysis of the
7 Appellants’ level of expertise resulted in their recommendation for allocation to the PAS 6
8 level. This is supported by the Authorization for Position Reallocation and Position
9 Description Forms signed by management (Exhibits C and D). While we do not agree
10 with the PAS 6 recommendation, we find their reasoning persuasive as to the PAS 5 class.
11 During the hearing, Respondent acknowledged the Appellants in this case are considered
12 subject matter experts in the area of real estate. The Appellants here apply advanced
13 technical knowledge when performing their specialized duties. Appellants provide
14 technical expertise with their financial analyses, land use planning, and recommendations
15 regarding the state’s urban and transitional trust properties.

16
17 Finally, we must determine whether the Appellants’ expertise is in a “state-mandated”
18 program. Appellants’ positions are responsible for implementing and managing the statewide
19 urban and transition lands program, also known as the Commercial Lands Program (CLP),
20 under the direction of the Assistant Division Manager. As such, the Appellants market, sell,
21 or exchange state trust lands; acquire commercial and industrial real estate investments; and
22 manage the assets of DNR’s real estate portfolio. While there is not a specific mandate
23 requiring the Commercial Lands Program, RCW 43.30.215(2) charges DNR with establishing
24 policies “to ensure that the acquisition, management, and disposition of all lands and resources
25 within the department’s jurisdiction are based on sound principles designated to achieve the
26 maximum effective development and use of such lands . . .” In this particular case,
27 Appellants’ distinctive positions carry out the mandate as it applies to the urban lands their
28 positions have been assigned to manage.

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2 Based on a preponderance of the evidence, the PAS 5 classification best exemplifies the
3 level of work and responsibility assigned to Appellants' positions. The positions in this
4 case are unique, and this decision should be narrowly interpreted on the facts before the
5 Board in this matter only. On a best fit basis, Appellants' positions should be reallocated.

6
7 **ORDER**

8 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by David
9 Bortz, Gale Allen, Rich Scrivner, and Rodney Rennie is granted, the director's
10 determination is reversed, and Appellants' positions are reallocated to the Property and
11 Acquisition Specialist 5 classification.

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13 DATED this ____ day of _____, 2007.

14 WASHINGTON PERSONNEL RESOURCES

15 BOARD

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17 _____
18 LAURA ANDERSON, Chair

19
20 _____
21 MARSHA TADANO LONG, Vice Chair