

BEFORE THE PERSONNEL RESOURCES BOARD
STATE OF WASHINGTON

LYNNE WALDHER, AL FIROUZI,
AZIZ MAKARI, and HENRY
KORNDORFER,
Appellants,
vs.
DEPARTMENT OF TRANSPORTATION,
Respondent.

CASE NOS. R-ALLO-08-026, R-ALLO-09-005,
R-ALLO-09-006, and R-ALLO-09-009

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

Hearing on Exceptions. These appeals came before the Personnel Resources Board, JOSEPH PINZONE, Chair; LAURA ANDERSON, Vice Chair; and DJ MARK, Member, for a consolidated hearing on Appellants' exceptions to the director's determinations dated December 5, 2008 for Appellant Waldher and March 3, 2009 for Appellants Firouzi, Makari and Korndorfer. The hearing was held at the office of the Personnel Resources Board in Olympia, Washington, on July 15, 2009.

Appearances. Appellants were present and were represented by Vincent Oliveri, union representative with IFPTE, Local 17. Respondent Department of Transportation (DOT) was represented by Niki Pavlicek, Manager of Classification, Compensation and Operations.

Background. Appellant Waldher's position was allocated to the Transportation Technician 3 (TT3) classification. On May 18, 2007, she submitted a Classification Questionnaire (CQ) asking DOT to reallocate her position to the Transportation Engineer 3 (TE3) classification. By letter dated January 9, 2008, DOT reallocated her position to the Transportation Engineer 2 (TE2) classification.

On February 8, 2008, Appellant Waldher filed a request for a director's review of DOT's allocation determination. By letter dated December 5, 2008, the director's designee determined that Appellant's position was properly allocated to the TE2 classification. On December 18, 2008, Appellant Waldher filed exceptions to the director's determination.

Appellants Fiouzi's, Makari's, and Korndorfer's positions were allocated to the TE2 classification. On August 7, 2007, Appellant Fiouzi submitted a CQ asking DOT to reallocate his position to the TE3 classification. On June 7, 2007, Appellant Makari and Appellant Korndorfer submitted their CQs asking DOT to reallocate their positions to the TE3 classification. By letter dated January 9, 2008, DOT denied Appellants Fiouzi's, Makari's, and Korndorfer's reallocation requests.

On January 22, 2008, Appellants Fiouzi, Makari, and Korndorfer filed requests for a director's review of DOT's allocation determinations. By letter dated March 3, 2009, the director's designee determined that Appellants' positions were properly allocated to the TE2 classification. On March 17, 2009, Appellant Fiouzi filed exceptions to the director's determination. On March 18, 2009, Appellant Makari filed exceptions to the director's determination. On March 23, 2009, Appellant Korndorfer filed exceptions to the director's determination.

Appellants' exceptions are the subject of this proceeding.

Appellants work in the Northwest Region, Region Programs and Services Division, Utilities Office of DOT. Mr. Ahmad Wehbe is Appellants' immediate supervisor. Appellants' working titles are Utility Accommodation Engineer. Appellants independently perform transportation engineering work to review and recommend utility accommodation and utility permit/franchise approvals. They review all supporting designs and drawings for the permit/franchise, meet with representatives of the various utilities and DOT specialists, and make recommendations as to whether the permits or franchises should be approved. They make recommendations for utility placement/accommodation for projects impacting state roads and right of ways in the Northwest Region. Their work requires them to apply local, state and federal regulations and engineering principles while working with projects involving challenges such as the aging infrastructure of bridges, geotechnical concerns and hydrogeologic issues.

1 **Summary of Appellants' Arguments.** First, Appellants argue the director's designee misapplied the
2 decision in Mikitik v. Dept's of Wildlife and Personnel, PAB (Personnel Appeals Board) No. A88-
3 021 (1989). Appellants assert that Mikitik addressed specific duties found in the definition of a
4 classification as opposed to a more general classification. Appellants contend that this concept
5 should not be applied to the distinguishing characteristics found in a classification.

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7 Second, Appellants argue that the director's designee failed to recognize that they perform
8 advanced engineering work. Appellants explain that they provide utility permits and franchises to
9 utility companies wishing to utilize DOT's right of way in the Northwest Region which requires
10 them to perform the role of staff specialists in a complex area of limited scope. Appellants also
11 contend that they work under limited supervision and that they perform advanced engineering
12 work. Appellants explain that their positions have changed significantly since 2005 and that rather
13 than their focus being on reviewing paperwork and completing a checklist, they now process
14 applications, review drawings and specifications, attend and speak at meetings with customer
15 representatives, interact with specialists in various fields such as hydrology, traffic, and
16 geotechnology, and make recommendations for whether a permit or franchise should be granted.
17 Appellants assert that their positions should be reallocated to the TE3 classification.

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19 **Summary of Respondent's Arguments.** Respondent argues that the positions are properly allocated,
20 that the level of work Appellants perform is encompassed by the TE2 classification, and that the
21 reporting structure within the region supports that these positions should remain allocated to the TE2
22 classification. Respondent contends that Appellants' work does not meet the level of creativity and
23 advanced engineering required for allocation to the TE3 class. Respondent asserts that a TE3 is typically
24 in charge of a functional area with staff supervision or functions as a staff specialist in an area of limited
25 scope such as a recognized engineering discipline, and performs advanced level engineering work as
26 described in the typical work of the TE3 classification. Respondent contends that Appellants are not in
27 charge of a functional area and that they do not function as staff specialists performing advanced
28

1 engineering work in an area of limited scope, therefore, their positions do not fit within the TE3
2 classification.

3
4 **Primary Issue.** Whether the director's determination that Appellants' positions are properly allocated
5 to the Transportation Engineer 2 classification should be affirmed.

6
7 **Relevant Classifications.** Transportation Engineer 2, class code 530L (formerly 66140);
8 Transportation Engineer 3, class code 530M (formerly 66160).

9
10 **Decision of the Board.** Appellants take exception, in part, to the director's designee's reference to
11 Mikitik v. Dept's of Wildlife and Personnel, PAB (Personnel Appeals Board) No. A88-021 (1989).
12 In Mikitik, the appellant's position title was specifically included in the definition of the
13 classification to which his position was allocated. Mikitik states, in relevant part:

14 The proper allocation of a position is determined by comparing the class
15 specifications to the duties of the position. When there is a class definition that
16 specifically includes a particular assignment and there is a general classification that
17 has a definition which could also apply to the position, the position will be allocated
18 to the class with the definition that includes the position.

19 The director's designee did not err in her reliance on the concept discussed in Mikitik. The concept
20 of allocation to a specific rather than a general classification has been applied in numerous cases.
21 This concept is not limited to the definitions found in the classifications at issue.

22 For example, in Cerna v. Employment Security Dept., PAB No. ALLO-03-0014 (2003), the board
23 stated that "[i]t is not intended for a more generic classification to be used to allocate a position
24 where the duties and responsibilities of the position are more precisely described by a more specific
25 classification." [See also Nance v. Eastern Washington University, PAB No. 3769-A2 (1995)].

26
27 The purpose of a position review is to determine which classification best describes the overall duties
28 and responsibilities of a position. A position review is neither a measurement of the volume of work

1 performed, nor an evaluation of the expertise with which that work is performed. A position review is a
2 comparison of the duties and responsibilities of a particular position to the available classification
3 specifications. This review results in a determination of the class that best describes the overall duties
4 and responsibilities of the position. See Liddle-Stamper v. Washington State University, PAB Case No.
5 3722-A2 (1994).

6
7 The definition for the TE2 classification states, “[p]erforms transportation engineering work under
8 general supervision.”

9
10 Incumbents who work under general supervision perform “recurring assignments within established
11 guidelines without specific instruction. Deviation from normal policies, procedures, and work methods
12 requires supervisory approval. Supervisory guidance is provided in new or unusual situations. The
13 employee’s work is periodically reviewed to verify compliance with policies and procedures.” (See the
14 Department of Personnel Glossary of Classification, Compensation, and Management terms).

15
16 Appellants exercise a level of independence in the performance of their work that goes beyond general
17 supervision. Rather, Appellants level of supervision is best described as working under general direction
18 which is defined as:

19 Performs assignments within established policies and objectives. Incumbents plan
20 and organize the work, determine the work methods, and assist in determining
21 priorities and deadlines. Completed work is reviewed for effectiveness in producing
22 expected results.

23 The distinguishing characteristics for the TE2 classification state:

24 Work at this level is characterized by the independent application of standard
25 engineering procedures and techniques to accomplish a wide variety of work in the
26 office, laboratory, and/or field. Incumbents generally serve as full production staff
27 or crew leaders. Work is assigned through general instructions and the setting of
28 deadlines by a supervisor who engages in ongoing spot-check review, provides
assistance when problems are encountered and reviews completed work. This role
may include the leadership of technical support staff and entry level engineers such
that incumbents are called upon to direct and train staff.

1
2 In some of their work, Appellants independent apply standard engineering procedures and techniques.
3 However, the nature of their work requires them to utilize creativity in making recommendations
4 for utility placement/accommodation. In addition, their work requires them to apply local, state
5 and federal regulations and engineering principles while working with specialized, complex issues
6 and projects involving challenges such as the aging infrastructure of bridges, geotechnical concerns
7 and hydro-geologic issues. Appellants' work goes beyond the scope of work described in the TE2

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9 The definition for the TE3 classification states, "[p]erforms advance transportation engineering work
10 under limited supervision."

11
12 Appellants receive general direction and perform their work independently. Their positions meet
13 the level of supervision found in the TE3 definition.

14
15 The distinguishing characteristics for the TE3 classification state, in relevant part:

16 At this level, incumbents . . . serve as a staff specialist in a complex area of limited
17 scope (this may include serving as a staff specialist consultant to Local Agencies).
18 Incumbents are expected to possess a thorough working knowledge of agency
19 policies, standards and procedures as well as engineering principles, methods and
20 practices. Assignments require judgments in selecting and adapting techniques to
21 solve transportation problems. Incumbents may represent the Department at public
22 meetings, open houses, to local agencies, contractors, consultants, etc., for specific
23 projects. While work is occasionally spot-checked and reviewed upon completion,
24 incumbents are responsible for planning and carrying out projects with only minimal
25 supervision. Staff at this level are often called on to assign, train and evaluate
26 engineers and technicians.

27
28 The scope of Appellants' work is limited to utility permits and franchises. The nature of their work
29 requires them to utilize creativity and judgment when making recommendations for utility
placement accommodation. In addition, their work requires them to apply local, state and federal
regulations and engineering principles while working with specialized, complex issues and projects
involving challenges such as the aging infrastructure of bridges, geotechnical concerns and hydro

1 geologic issues. Further, they represent DOT at meetings with representatives of the various
2 utilities, their contractors and other DOT specialists. Appellants function as specialists in utility
3 placement and accommodation and in utility permits and franchises. Due to the many variables and
4 specialized engineering components involved in determining whether utilities can be
5 accommodated and whether utility permits and franchises should be granted, Appellants' work
6 meets the complexity of work encompassed at the TE3 level.

7
8 In a hearing on exceptions, the appellant has the burden of proof. WAC 357-52-110. Appellants have
9 met their burden of proof. Therefore, the appeal on exceptions should be granted, and the director's
10 determinations, dated December 5, 2008 and March 3, 2009, should be reversed.

11
12 **ORDER**

13 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeals on exceptions by Lynne Waldher,
14 Al Firouzi, Aziz Makari, and Henry Korndorfer are granted and their positions are reallocated to the
15 Transportation Engineer 3 classification

16 DATED this ____ day of _____, 2009.

17 WASHINGTON PERSONNEL RESOURCES BOARD

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19 _____
20 JOSEPH PINZONE, Chair

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22 _____
23 LAURA ANDERSON, Vice Chair

24
25 _____
26 DJ MARK, Member