

March 6, 2008

Ms. Shelley Brandt
Cordes Brandt, PLLC
Attorneys at Law
2625 B Parkmont Lane SW
Olympia, WA 98502

RE: Jackie Jones-Hook v. Department of Transportation
Director's Review No. RULE-06-003

Dear Ms. Brandt:

On Feb 13, 2008, I conducted a Director's review meeting at the Department of Personnel, 2828 Capitol Boulevard, Olympia, Washington, concerning Ms. Jones-Hook's alleged rule violation. Present at the Director's review meeting were you, Ms. Jones-Hook, and Labor Relations Manager Jeff Pelton, representing the Department of Transportation (DOT).

Nature of Alleged Violation

Ms. Jones-Hook initially alleged DOT violated WAC 357-19-340 and WAC 357-16-130.

WAC 357-19-340 provides, in part:

At a minimum, an employer must provide a permanent employee who left a permanent position to accept an appointment to a project position access to the employer's internal layoff list.

...

During the Director's review meeting, you indicated there was no dispute about Ms. Jones-Hook being on the internal layoff list (Exhibits 6 a-c). Therefore, the remaining issue is whether or not DOT violated WAC 357-16-130, which provides, in part:

Only eligible candidates who satisfy the competencies and other requirements of the position to be filled will be certified. The order for certifying must follow these criteria:

- (1) If there are names on the employer's internal layoff list for the class, all eligible candidates on the internal layoff list are certified to the employing official. Internal promotional candidates as defined by the employer's promotional policy, may also be certified.

...

Ms. Jones-Hook alleges DOT violated WAC 357-16-130 by not certifying her as an eligible candidate for the following positions (Exhibit 10):

ITAS 6 Position # 06HQ-168
WMS Position # 06-016
ITAS 6 Position #06HQ-155
ITAS 5 Position #06-H1-189

In your January 30, 2008 letter, you also mention position # 06HQ-031. However, Ms. Jones-Hook applied for position # 06HQ-031 in 2007, after she had already filed the alleged rule violation.

Background

On May 17, 2006, Ms. Jones-Hook was placed on internal layoff lists for Information Technology Specialist 5 (ITS 5) positions (Exhibit 6 a, b, c). Although the documentation in exhibits 6 b and c reflects positions in the Information Technology Applications Specialist 5 (ITAS 5) and Information Technology Systems Specialist (ITSS 5) classes, those classes were in fact consolidated with the ITS 5 class, effective June 1, 2005. Therefore, Ms. Jones-Hook was, in effect, on the internal layoff list for ITS 5 positions.

Ms. Jones-Hook states that she emailed Mr. Pelton on October 6, 2006, requesting information about the candidates selected for position numbers 06HQ-155 and 06HQ-168, listed above. On October 30, 2006, Ms. Jones-Hook's previous attorney, Michael Hanbey, filed a notice of appeal from rule violation to the Personnel Resources Board, which was forwarded to the Director's Review Program (Exhibits 7 and 8). In a December 3, 2006 letter to Mr. Pelton, Mr. Hanbey clarified the positions for which Ms. Jones-Hook had interest in further included position numbers 06-016 and 06-H1-189, also listed above.

Summary of Ms. Jones-Hook's Perspective

Ms. Jones-Hook asserts she was a qualified candidate for the positions stated above. As a result, Ms. Jones-Hook contends she should have been certified first as a candidate on the layoff list for the positions in question. Ms. Jones-Hook contends she was not considered for most of the positions for which she applied, and she states she was not interviewed or provided an opportunity for employment when she was a well-qualified candidate. Ms. Jones-Hook asserts DOT violated WAC 357-16-130 by not certifying her as an internal layoff candidate and by not providing her permanent employment as an ITS 5 or 6.

Summary of DOT's Perspective

DOT acknowledges Ms. Jones-Hook was placed on internal layoff lists, as indicated by the Department of Personnel's notifications in exhibits 6 a, b, and c. However, DOT asserts those notifications specifically place Ms. Jones-Hook on the ITS 5 internal layoff list. DOT further asserts Ms. Jones-Hook has not held permanent status in an ITS 6 position. DOT points out the notifications for the layoff list do not indicate positions in Thurston County; however, DOT contends the department still considered Ms. Jones-Hook as an internal layoff candidate for position #06-H1-189, which was an ITS 5 position. DOT states Ms. Jones-Hook was considered as an external candidate for positions # 06HQ-168 and #06HQ-155, both ITS 6 positions, and for # 06-016, a WMS position.

With regard to the ITS 5 position (#06-H1-189), DOT contends Ms. Jones-Hook was in fact considered but asserts a candidate may be considered without being selected for an interview. Furthermore, DOT contends the ITS 5 position (#06-H1-189) for which the department considered Ms. Jones-Hook an internal layoff candidate was covered by a collective bargaining agreement, which governed the selection process. Therefore, DOT asserts no violation of WAC 357-16-130 occurred.

Director's Determination

As the Director's designee, I carefully considered all of the documentation in the file, including the Director's review request, the exhibits, and the verbal comments provided by both parties. Based on my review, I conclude Ms. Jones-Hook has failed to prove DOT violated WAC 357-16-130.

Rationale for Determination

Ms. Jones-Hook was placed on the internal layoff list for ITS 5 positions only. Therefore, the relevant position in question is position #06-H1-189. DOT has indicated that position #06-H1-189 is covered by a collective bargaining agreement (DOT exhibit A-2). Therefore, issues concerning layoff and recall are governed by the collective bargaining agreement, not the rules outlined in Chapter 357 WAC. However, even when considering WAC 357-16-130 for unrepresented positions, the language in the rule

provides that “[o]nly eligible candidates who satisfy the competencies and other requirements of the position to be filled will be certified.” The rule does not provide that internal layoff candidates will automatically be certified. Ms. Jones-Hook has not proven that DOT violated WAC 357-16-130.

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.

WAC 357-52-015 states that an appeal must be received in writing at the office of the board within thirty (30) calendar days after service of the Director's determination. The address for the Personnel Resources Board is 2828 Capitol Blvd., P.O. Box 40911, Olympia, Washington, 98504-0911.

If no further action is taken, the Director's determination becomes final.

Sincerely,

Teresa Parsons
Director's Review Program Supervisor
Legal Affairs Division

c: Jackie Jones-Hook
Jeff Pelton, DOT

Enclosure: List of Exhibits