

January 20, 2010

TO: Charles Wickham

FROM: Teresa Parsons, SPHR
Director's Review Program Supervisor

SUBJECT: Charles Wickham v. Department of Transportation (WSDOT)
Director's Review Request No. RULE-09-005

The Director's review regarding your allegations WSDOT violated civil service rules in Chapter 357-16 WAC has been completed based on a review of the written documents in the file.

Nature of Alleged Violation

You allege WSDOT violated WAC 357-16-010; WAC 357-16-120; WAC 357-16-125; WAC 357-16-130; and WAC 357-16-070. Specifically, you allege the pool of selected and interviewed employees for the recruitment of a Contract Manager position (WSDOT 09-HQ-035) was not comprised of eligible candidates and in violation with the above rules.

Background

On July 29, 2009, you interviewed for the Contract Manager position identified above (Exhibit A-6). After learning the position had been filled, you emailed Michaela Favre in WSDOT's Human Resources (HR) Office on August 18, 2009, alleging a wrong targeted recruitment had taken place. In your email to Ms. Favre, you asserted the wrong targeted recruitment occurred because you had understood that Project Management Professional (PMP) Certification was a requirement for the position. Ms. Favre responded to your email the same day, clarifying that PMP Certification was desired as part of the ideal candidate profile but not required (Exhibit A-4).

On August 25, 2009, you filed a request for a Director's review, alleging WSDOT violated civil service laws and rules regarding recruitment and certification under Chapter 357-16 WAC. The following summarizes your perspective as well as your employer's:

Summary of Mr. Wickham's Allegations

Mr. Wickham asserts the recruitment for the Contract Manager position, classified as a Transportation Planning Specialists 5, was advertised soliciting applicants with a set of eight competencies for the ideal candidate. Mr. Wickham notes that two of the eight competencies identified were a bachelor's or master's degree in Project Management or related field and a current PMP Certification. Mr. Wickham indicates that through his discovery of HR's response to another applicant, he learned the initial candidate pool was narrowed down to internal applicants meeting at least seven of the eight competencies listed for the ideal candidate. Mr. Wickham states that at the time of his interview, he was provided with a copy of an updated position description, which he asserts narrowed the competencies to seven by eliminating the requirement for a bachelor's or masters degree. He further asserts the essential job certifications still required PMP Certification. Mr. Wickham contends the candidate pool included candidates not holding a PMP Certificate or a bachelor's degree and that lowering the competencies appears as targeting an ineligible candidate pool. As a result, Mr. Wickham contends WSDOT violated rules, laws, policies, and procedures.

Summary of WSDOT's Response to Alleged Rule Violations

WSDOT contends no violations occurred during the recruitment process for the Contract Manager recruitment #09-HQ-035. WSDOT points out that the qualifications on the job announcement were listed as desirable and not mandatory. WSDOT asserts employers may use recruiting methods they determine to be the most appropriate for hiring needs, including narrowing qualifications. WSDOT further notes that after the recruitment was posted, a memo from the HR Director indicated that preference may be given to internal candidates in the interview and selection process to retain as many currently qualified staff as possible. In addition, WSDOT asserts the position description provided to Mr. Wickham prior to his interview was meant to supplement the advertised job description and that it was unsigned and in the process of being updated. WSDOT maintains that no violations occurred.

Director's Determination and Rationale

WAC 357-16-010 provides the following:

Under the authority of the director, general government employers may carry out the activities detailed in chapter [357-16](#) WAC including recruiting, creating and maintaining pools of eligible candidates, assessing candidates, and determining the certified pool. At anytime, the director may designate the department to carry out any of these activities on the employer's behalf.

Consistent with the above rule, WSDOT may carry out the activities relating to recruitment, assessment, and certification, including creating and maintaining pools of eligible candidates, assessing candidates, and determining the certified pool.

WAC 357-16-120 provides that "[e]ach employer must have a written certification procedure that specifies how the employer will determine the pool of eligible candidates to be certified to the employing official." WAC 357-16-125 outlines the specific items to be included in the employer's certification procedure. The Department of Personnel's Glossary of Recruitment and Assessment Terms and WAC 357-01-060 define certification as the "act of referring screened, eligible candidates to the employing authority for further consideration."

<http://www.dop.wa.gov/recruitment/RecruitmentAndOutreach/Pages/ToolsResources.aspx>.

In addition, WAC 357-01-065 defines a certified pool as "[t]hose eligible candidates determined by the employer to be among the best qualified for a position, based on position-specific criteria, who are certified to the employing official." The WSDOT Human Resources Desk Manual you provided discusses the process for recruitment, assessment, and certification, including consideration of all eligible candidates certified (Exhibit A-9).

WAC 357-16-130 provides, in part, that "[o]nly eligible candidates who satisfy the competencies and other requirements of the position to be filled will be certified. WAC 357-16-070 then provides, in relevant part, that "[e]mployers may use the screening methods that they determine best evaluate a person's competencies to perform the duties and responsibilities of a class and/or a position." Screening methods may include but are not limited to reviewing resumes, interviewing applicants, and developing supplemental questionnaires.

In reviewing the job announcement, the PMP certification is not identified as a requirement. Rather, the PMP certification is listed as one of the factors identified for the "ideal candidate profile" (Exhibit A-5). This is substantiated by Ms. Favre's and Mr. Koska's indications that PMP certification was desired but not required (Exhibits A-4 and B-1). In your request for review, you assert WSDOT lowered the competencies to target an ineligible candidate pool. You reference Ms. Favre's email to another internal candidate in which Ms. Favre wrote, "I went through all of the applications for review and narrowed the candidate pool down to all internal applicants who met at least 7 out of the 8 things we were looking for in our Ideal Candidate Profile as described in the job announcement" (Exhibit A-3). WAC 357-16-020 provides, in part, that "employers may use the recruiting methods that they determine to be most appropriate for their hiring needs when establishing pools of eligible applicants." In addition, in accordance with WAC 357-16-070, employers may use the screening methods they determine best evaluate the competencies needed to perform the duties and responsibilities of a position.

In this case, the WSDOT HR Office reviewed all of the applications and made the decision to narrow the pool of candidates to internal candidates having at least seven of the qualifications listed for the ideal candidate. You were included in this group of candidates and interviewed for the position. Although the Position Description Form (PDF) you were provided in preparation for your interview included PMP Certification in the essential job knowledge, skills, and abilities section of the PDF (Exhibit A-6), Mr. Koska explained that the PDF was in the process of being updated and was meant to supplement the advertised job description (Exhibit B-1). Mr. Koska further noted that "[t]he official position description . . . from which the job announcement was written and recruited for did not list the PMP as a 'must have'" (Exhibits B-1, B-6, and B-7).

There is no evidence WSDOT violated rules in Chapter 357-16 WAC. As a result, you have not met your burden of proving that WSDOT violated any of the rules you identified in your request.

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 mailing address for the Personnel Resources Board (PRB) is P.O. Box 40911, Olympia, Washington, 98504-0911. The PRB Office is located at 600 South Franklin, Olympia, Washington. The main telephone number is (360) 664-0388, and the fax number is (360) 753-0139.

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

c: Michaela Favre, WSDOT
Ted Koska, WSDOT
Connie Goff, DOP

Enclosure: List of Exhibits

Charles Wickham v. Dept. of Transportation (WSDOT)

ALLO-09-005

List of Exhibits

A. Charles Wickham Exhibits

1. Cover letter requesting review with list of exhibits, dated August 25, 2009.
2. Request for Director's Review Form, dated August 25, 2009.
3. August 19, 2009 email to Chuck Wickham forwarding response from HR to internal candidate.
4. August 18, 2009 email from Michaela Fare to Chuck Wickham regarding job announcement.
5. WSDOT Position Announcement for Contract Manager (Transportation Planning Specialist 5).
6. July 29, 2009 notice of interview to Chuck Wickham with attached Position Description for position #03398 (unsigned).
7. October 5, 2009 letter from Charles Wickham addressing WSDOT's responses to his claims.
8. Human Resources Desk Manual: Introduction.
9. Human Resources Desk Manual: Recruitment, Assessment, and Certification.
10. Position Description for position #03398 (unsigned) (included in A-6).
11. July 29, 2009 notice of interview to Chuck Wickham (copy of A-6).
12. November 4, 2009 letter from Mr. Wickham to Karen Wilcox, DOP.

B. Department of Transportation Exhibits

1. WSDOT'S response to Rule Violation Review Request.
2. Addendum 2: August 18, 2009 email from Chuck Wickham to Michaela Favre requesting further explanation.
3. Addendum 3: June 30, 2009 email from HR Director Kermit Wooden regarding Recruitment and Hiring Guidelines.
4. Addendum 4: Hire Plan.
5. Addendum 5: WSDOT Request for Hiring Activity.
6. Classification Questionnaire (position description) for position #03398 (signed and dated November 6, 2007).
7. Essential Job Knowledge and Skills for position #03398.
8. August 19, 2009 email to Chuck Wickham forwarding response from HR to internal candidate. (same as A-3).
9. July 29, 2009 notice of interview to Chuck Wickham (copy of A-6 and A-11).