



STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT

STATE HUMAN RESOURCES DIVISION | DIRECTOR'S REVIEW PROGRAM
P.O. Box 40911 · Olympia, WA 98504-0911 · (360) 902-9820 · FAX (360) 586-4694

April 19, 2013

TO: Doreen Cardin

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

SUBJECT: Doreen Cardin v. Office of the Attorney General (AGO)
Director's Review Request RULE-12-007

On November 28, 2012, we received your request for a Director's review of an alleged rule violation of WAC 357-16-150, which addresses an employer's promotional policy. Specifically, you allege AGO violated its promotional policy when a co-worker was promoted prior to completing the six-month probationary period. You further allege that you and other promotional candidates interviewed for the position "may have been wrongfully passed over for this promotion" as a result (Exhibit 1).

On January 3, 2013, I asked the AGO's Human Resources (HR) Office to provide information regarding the recruitment as follows (Exhibit 3):

- The recruitment notice and clarification about whether it was a promotional only or general competitive recruitment.
- The list of applicants in the pool of eligible candidates and each individual's status.
- The list of candidates certified to the hiring manager and interviewed for the position.

On January 25, 2013, HR Operations Manager Renee Zirkle provided the above information. In addition, I subsequently asked Ms. Zirkle for information about the certification process to verify it had been followed correctly. She provided AGO's "Certification of Names for WA General Service Employees" and documents showing that AGO checked NEOGOV for Layoffs, General Government Transition Pool (GGTP) candidates, underrepresented, veteran's preference and veteran's spouse candidates (Exhibits 4-8).

The Director's review has been completed based on a review of the written documents in the record, and I have concluded that no violations have occurred.

Nature of Alleged Violation

You allege a violation of WAC 357-16-150, and you provided a copy of AGO's promotional policy.

Chapter 357-16 WAC provides rules regarding recruitment, assessment, and certification.

WAC 357-16-150 provides the following:

Each employer must have a written promotional policy which:

(1) Defines who is considered a promotional candidate, including whether probationary employees and permanent employees who have left the employer to accept project or nonpermanent appointments with other employers are considered as promotional candidates;

(2) Identifies the employer's promotional organizational units, if any;

(3) Identifies how promotional preference will be applied in recruitment and certification, if at all; and

(4) Specifies the duration of any promotional candidate lists or pools.

AGO Policy 1.39 – Promotional Policy for WA General Service Employees states, in part, the following (Exhibit 2):

When a manager or supervisor requests names of qualified candidates for a vacant permanent position from Human Resources staff, the names of all promotional candidates who have applied for the position and who meet the competencies and other requirements of the position will be given to the hiring manager or supervisor for consideration. This policy requires that at least three promotional candidates be interviewed, when available, for vacant positions when a manager or supervisor is interested in considering candidates other than internal transfers.

WAC 357-16-125 provides that the employer's certification procedure must specify the following:

(1) Specify how the employer determines the pool of eligible candidates to be certified to the employing official in accordance with WAC [357-16-130](#);

(2) Specify how the employer determines the number of names certified if the number of eligible candidates certified to the employing official is limited;

(3) Provide for veterans' preference in accordance with WAC [357-16-110](#);

(4) Provide for supplemental certification of affected group members in accordance with WAC [357-16-135](#);

(5) Require that employing officials consider all eligible candidates certified;

(6) Provide for optional consideration of employees who have completed employer-approved training programs and are determined by the employer to meet the competencies and other position requirements;

(7) For general government employers, must provide for consideration of transition pool candidates when a certified pool contains eligible candidates other than candidates from the employer's internal or statewide layoff list or the employer's internal promotional eligibles; and

(8) Address when the employer will certify qualified individuals seeking reemployment under the provisions of WAC [357-19-470](#).

Further, WAC 357-16-130 indicates the order in which eligible candidates are certified to the employing official for hiring consideration as follows:

(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.

(2) If there are no names on the internal layoff list, the employer:

(a) Must certify all statewide layoff candidates who satisfy the competencies and other position requirements.

(b) May then certify other available eligible candidates. Any preference granted to promotional candidates must be in accordance with the employer's promotional policies as required by WAC [357-16-150](#).

(3) General government employers must certify transition pool candidates, who satisfy the competencies and other position requirements, when a certified pool contains eligible candidates other than layoff or internal promotional candidates.

AGO Policy 1.05 – Certification of Names for WA General Service Employees states, in part, the following (Exhibit 10):

The following is the order in which names will be given to the manager or supervisor:

- All eligible internal layoff candidates and any internal promotional candidates.
- If there are no internal layoff candidates, then any statewide layoff and General Government Transition Pool (GGTP) candidates that meet the competencies for the position and any internal candidates.
- If there are no internal or statewide layoff candidates that meet the competencies for the position, then the manager or supervisor will then be given the names of all other eligible candidates.

Director's Determination and Rationale

The AGO's promotional and certification policies are consistent with the rules. The recruitment at the center of your request was an open competitive recruitment (Exhibit 5). Because the recruitment was not limited to promotional only candidates, the rules provide that hiring managers may consider candidates other than internal candidates, which is also consistent with AGO's policy. The AGO's policy does not require that promotional candidates be hired over other individuals, just that they be considered.

A list of seventeen applicants was identified through NEOGOV, including you. Five of the names on that list did not meet the competencies and requirements of the position (Exhibit 6). In accordance with rules and AGO policy, AGO's HR Office searched for but did not find candidates on the layoff list, GGTP, underrepresented, or veteran's and veteran's spouse lists (Exhibit 11).

Of the twelve candidates certified for consideration, you were the only candidate the hiring manager was required to consider because you were a promotional employee who met the competencies and requirements of the position (Exhibit 7). You were considered as a candidate as outlined in the policy and consistent with the rules. Therefore, you have not met your burden of proving the AGO violated any rules outlined in Chapter 357-16 WAC.

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 on the 4th floor of the Insurance Building, 302 Sid Snyder Avenue SW, Olympia, Washington. The main telephone number is (360) 902-9820, and the fax number is (360) 586-4694.

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

c: Renee Zirkle, AGO
Connie Goff, OSHRD

Enclosure: List of Exhibits

List of Exhibits

1. November 28, 2012 Director's Review Request
2. AGO Policy 1.39 – Promotional Policy for WA General Service Employees
3. January 3, 2013 letter from Teresa Parsons to parties asking AGO to provide additional documentation.
4. January 22, 2013 letter from Renee Zirkle, Human Resources Operations Manager, AGO, providing requested information.
5. Legal Secretary 1 Recruitment Announcement
6. Applicant List from NEOGOV
7. Candidate List NEOGOV
8. January 14, 2013 AGO internal email requesting recruitment information
9. April 9, 2013 email from Renee Zirkle to Teresa Parsons with follow-up information requested.
10. AGO Policy 1.05 – Certification of Names for WA General Service Employees
11. Eligible Candidate screens from NEOGOV