

1 **BEFORE THE PERSONNEL RESOURCES BOARD**

2 **STATE OF WASHINGTON**

3 SUSAN BERGER, CYNTHIA FLEENER,)
4 JAY JOHNSON, JENNIFER JUN,)
5 HEATHER MATHISEN, MARA SOBEL,)
6 MAUREEN VAN DEUREN, YASUSHI)
7 YAMAMOTO)

CASE NO. R-ALLO-040; 041; 042; 043; 044;
045; 046; 047

8 Appellants,

ORDER OF THE BOARD
FOLLOWING HEARING ON

9 vs.

EXCEPTIONS TO THE
DETERMINATION OF THE DIRECTOR

10 WASHINGTON STATE LOTTERY,

11 Respondent.

12 **Hearing on Exceptions.** This appeal came before the Personnel Resources Board, NANCY
13 HOLLAND YOUNG, Chair, SUSAN MILLER, Vice Chair, and VICKY BOWDISH, Member.
14 The hearing was held on March 9, 2016, at Capitol Court, Olympia, WA.

15 **Appearances.** Appellants Susan Berger, Cynthia Fleener and Yasushi Yamamoto were present and
16 were represented by Sherri-Ann Burke, Labor Advocate with the Washington Federation of State
17 Employees (WFSE). Respondent Washington State Lottery (Lottery) was represented by Kelly
18 Woodward, Assistant Attorney General, and Debbie Robinson, Human Resource (HR) Director,
19 Lottery.

20
21 **Background.** Appellants are Lottery District Sales Representatives (DSRs) in Washington’s Lottery
22 Regional Operations Division. Appellants submitted position review requests (PRRs) to Lottery’s
23 Human Resource (HR) Office on November 18, 2014, requesting reallocation to Commerce
24 Specialists 2 (CS 2).

25
26 By letter dated January 8, 2015, Respondent notified Appellants their positions were not reallocated
27 to CS 2s and remained as Lottery DSRs.

1 On February 3, 2015, Appellants submitted requests to OFM State HR for a review of the director's
2 determination.

3
4 By letter dated October 12, 2015, the director's designee determined that Appellants' positions
5 should remain allocated to Lottery DSRs.

6
7 On November 4, 2015, Appellants filed timely exceptions to the director's determination. In their
8 exceptions, Appellant indicated the scope of their work best fits the duties of the CS 2 job class.
9 Appellants' exceptions are the subject of this proceeding.

10
11 As summarized in the director's review, Appellants are responsible for licensing retailers so they
12 may offer "games of chance that generate revenue for the benefit of the people of Washington." The
13 majority of Appellants' work entails maximizing sales, expanding the number of retailers licensed to
14 sell Lottery products, and managing the scratch ticket inventory for assigned retailers to maximize
15 sales and avoid overstocks and outages.

16
17 **Summary of Appellant's Arguments.**

18
19 Appellants argue the Commerce Specialist 2 best fits the nature and scope of their positions.
20 Appellants contend that, consistent with the class series concept of CS 2, the duties of their positions
21 directly affect the revenue contributed to programs that impact communities, businesses and citizens
22 of the state. Appellants state money from ticket sales go to various education, cultural and
23 community beneficiaries, including the General Fund, SAFECO field and the Economic
24 Development Reserve account.

25
26 Appellants assert the director's designee did not understand the nature and scope of their work.
27 Appellants contend their work is comparable to the definition of Commerce Specialist 2, as they
28 work with retailers to develop marketing strategies that produce revenue for Washington

1 communities. Appellants state they analyze sales to develop retailers' lottery plans, analyze data to
2 measure service and impact, and provide input into policy, all of which are consistent with the
3 definition of the CS 2.

4
5 Appellants contend the director's designee compared their positions to Commerce Specialists with
6 the Department of Commerce (Commerce), but argue Commerce contains roughly one-fourth of all
7 Commerce Specialists in state service. Appellants further contend a CS 2 position in the
8 Washington Department of Fish and Wildlife (DFW), responsible for dealer recruitment, consulting
9 and development performs tasks similar to those of their positions.

10
11 Since Lottery DSR's salary plan is based on sales incentives, Appellants assert reallocation to CS 2
12 is not only a better fit, but would provide a stable salary and a career ladder within the series.
13 Appellants further assert that, compared to District Sales Representatives, Commerce Specialists
14 aren't recognized by other employers.

15
16 **Summary of Respondent's Arguments.**

17
18 Respondent contends that although there are commonalities between CS 2s and Lottery DSRs,
19 previous Board decisions show that primary consideration is given to agency-specific job classes,
20 rather than general job classes. Respondent argues that DFW's allocation for a CS 2 is irrelevant
21 because allocating criteria does not include comparing positions with one another, especially given
22 the other position may be misallocated. Respondent further argues that although CS 2s may be
23 recognized by more employers than Lottery DSRs, and while Appellants would like a stable salary,
24 job titles and salaries are not allocating criteria. Regarding the positions giving input into policies,
25 Respondent asserts many employees have an obligation to contribute to policy changes if their
26 knowledge and experience is relevant to the policy. Respondent recognizes Appellants' excellent
27 work and their important contribution to the agency.

1 **Primary Issue.** Whether the director's determination should be affirmed in that Appellant's position
2 should remain in the Lottery District Sales Representative job class.

3
4 **Relevant Classifications.** Lottery District Sales Representative; Commerce Specialist 2.

5
6 **Decision of the Board.** The purpose of a position review is to determine which classification best
7 describes the overall duties and responsibilities of a position. A position review is neither a
8 measurement of the volume of work performed, nor an evaluation of the expertise with which that
9 work is performed. A position review is a comparison of the duties and responsibilities of a
10 particular position to the available classification specifications. This review results in a
11 determination of the class that best describes the overall duties and responsibilities of the position.
12 See *Liddle-Stamper v. Washington State University*, PAB Case No. 3722-A2 (1994).

13 Most positions within the civil service system occasionally perform duties that appear in more
14 than one classification. However, when determining the appropriate classification for a specific
15 position, the duties and responsibilities of that position must be considered in their entirety and
16 the position must be allocated to the classification that provides the best fit overall for the majority
17 of the position's duties and responsibilities. (Emphasis added). *Dudley v. Dept. of Labor and*
18 *Industries*, PRB Case No. R-ALLO-07-007 (2007).

19
20 We have carefully reviewed the documentation submitted during the director's review and
21 considered the arguments presented by the parties at the hearing before the Board. While the DFW
22 CS 2 has duties similar to the Lottery DSRs, the Board cannot make allocation decisions based on
23 the duties of other positions. Appellants contend by reallocating their positions to CS 2 they
24 would have a career ladder within the CS series, a more stable salary, and a job title that
25 employers recognize. Allocating criteria does not include considering salaries, career paths or job
26 titles. Allocating criteria consist of the class specification's class series concept (if one exists), the
27 definition and the distinguishing characteristics. Typical work is not an allocating criterion, but
28 may be used to better understand the definition or distinguishing characteristics.

1
2 The class series concept for Commerce Specialist 2 is found in the Commerce Specialist 1 class
3 specification:

4 Positions in this series perform professional level work in developing, implementing and
5 monitoring state, federal or local community, trade and/or economic enhancement or
6 development programs or projects impacting communities, businesses and citizens of the
7 state.

8
9 The definition for the Commerce Specialist 2 states:

10 Positions at this level independently perform a wide variety of professional, journey-level
11 work such as developing and implementing program evaluation plans, developing and
12 maintaining program-specific data tracking systems, designing and analyzing surveys,
13 analyzing data to measure service and impact, performing economic analysis, and
14 integrating results into overall evaluation reports. Incumbents exercise decision-making
15 authority, resolve issues, represent the agency within their assigned area of program
16 responsibility and provide input into policy development. Incumbents independently
17 provide assistance, consultation and training to clients in areas such as program planning,
18 financing, grants management, contract development, market development, emergency
19 preparedness, community revitalization, or other areas necessary to the success of
20 program(s) or portions of a program(s) or project(s).

21 There are no distinguishing characteristics for Commerce Specialist 2.

22 The definition for the Lottery District Sales Representative classification states:

23 For the Washington State Lottery, serves as a marketing and sales representative for an
24 assigned geographic territory. Solicits new accounts and negotiates sales and placement of
25 Lottery products with retail outlets. Independently performs inventory management
26 activities for instant ticket products and point-of-sale materials to assigned retail outlets;
27 provides redistribution of products and materials as necessary to achieve maximum market
28 penetration and sales potential. Develops, presents, implements, and evaluates marketing

1 and sales strategies to determine best method to reach sales goals for individual retail
2 outlets. Serves as a direct communication link between Lottery management and retail
3 outlets.

4 There is no class series concept and distinguishing characteristics for Lottery District Sales
5 Representative.

6
7 The Board recognizes the similarity between Appellants' duties and the work stated in the CS 2
8 class specification. However, as stated in the director's review decision, allocation to the specific
9 classification must take primary consideration over allocation to a general classification. (See
10 *Alvarez v. Olympic College*, PRB No. R-ALL0-08-13). Since the Lottery DSR is specific to the
11 Department of Lottery and incorporates the incumbents' duties and responsibilities, allocation to
12 the specific class must be considered first.

13 Consistent with the definition of Lottery DSR, Appellants serve as marketing and sales
14 representatives for an assigned geographical territory. Appellants solicit new accounts and
15 negotiate sales and placement of Lottery products with retail outlets. Appellants develop, present,
16 implement and evaluate marketing and sales strategies to determine the best method to reach sales
17 goals for individual retail outlets.

18
19 The scope of work in the Lottery DSR class specification encompasses Appellants' duties and
20 responsibilities specific to Lottery. Therefore, consistent with prior Board decisions for similar
21 cases, allocation of the positions to the agency specific Lottery District Sales Representative is
22 most suitable.

23
24 Since classification revisions are outside the Board's jurisdiction, the Board recommends
25 Washington State Lottery work with the Classification and Compensation staff at OFM State HR
26 during the biennial classification proposal process.

1 RCW 41.06.150 states, in relevant part:

2 Job classification revisions, class studies, salary adjustments—Limitations.

3 (1) The director shall adopt only those job classification revisions, class studies, and salary
4 adjustments under RCW [41.06.157](#) that:

5 (a) As defined by the director, are due to documented recruitment or retention difficulties,
6 salary compression or inversion, classification plan maintenance, higher level duties and
7 responsibilities, or inequities...

8 ...

9
10 In a hearing on exceptions, the Appellant has the burden of proof (WAC 357-52-110). Appellants
11 have not met their burden of proof.

12
13 **ORDER**

14 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Susan Berger,
15 Cynthia Fleener, Jay Johnson, Jennifer Jun, Heather Mathisen, Mara Sobel, Maureen Van Deuren,
16 and Yasushi Yamamoto is denied, the director’s determination dated October 12, 2015, is upheld,
17 and Appellants’ positions remain allocated to the Lottery District Sales Representative.

18 DATED this ____ day of _____, .

19
20 WASHINGTON PERSONNEL RESOURCES BOARD

21
22 _____
23 NANCY HOLLAND YOUNG, Chair

24
25 _____
26 SUSAN MILLER, Vice Chair

27
28 _____
29 VICKY BOWDISH, Member