LINDA S. PAGE, .

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Grievant, .

.

v. . Docket No. 94-DMV-240

.

WEST VIRGINIA DEPARTMENT OF .

TRANSPORTATION/DIVISION OF .

MOTOR VEHICLES AND DEPARTMENT .

OF ADMINISTRATION/DIVISION OF .

PERSONNEL, .

.

Respondents. .

D E C I S I O N

Linda S. Page (Grievant) filed a grievance on December 20, 1993, alleging that she was improperly classified as a Supervisor I by the Division of Personnel (DOP). Grievant contends that her proper classification should be that of a Supervisor II. After receiving an adverse decision at Level III, Grievant submitted an appeal to this Board on June 10, 1994. Pursuant to Rule 4.11 of the Procedural Rules of the West Virginia Education and State Employees Grievance Board, DOP was joined as an indispensable party under an Order dated June 17, 1994. A Level IV hearing was held in the Board's office in Charleston, West Virginia, on August 8, 1994. (See footnote 1) **At the conclusion of the hearing, all parties waived theopportunity to make written submissions and this case became mature for decision at that time.**

Background

There is no dispute regarding the facts in this case. Grievant supervises the Resident Violator Section in the Driver Improvement Unit of the Transportation Systems Division within the Division of Motor Vehicles (DMV). Grievant's section administers suspension of drivers' licenses for noncompliance with criminal complaints and traffic citations. Enforcement of the mandatory student attendance law established in W. Va. Code § 17B-3-6 is also included within Grievant's area of responsibility. G Ex 1. Grievant functions as a working supervisor, with responsibility for handling most of the external contacts with hearing examiners, magistrates and personnel outside DMV regarding the activities of her unit. Grievant is responsible for working with DMV data entry personnel in the Information Services Division regarding coding of various actions in individual driving records. She also works to resolve issues through the DMV Legal Services Division. Grievant's personnel must have collateral knowledge of all aspects of DMV operations in order to deal with customer inquiries.

Evidence was presented that Grievant's section has been historically understaffed, given the workload assigned. This has required extensive overtime work by Grievant as well as considerable time devoted to training temporary personnel. In addition, the volume of suspensions processed through Grievant's section is significantly larger than the number handled by the DUI andInsurance sections on an annual basis. G Ex 24. Unfortunately, these factors have no bearing on the proper classification of the position at issue.

Grievant normally provides direct supervision to four subordinate employees, three Office Assistant II's and a Data Entry Operator II. Another employee responsible for non-resident violators and revocation for points in DMV's Driver Improvement Unit, Vivian Liptok, supervises five subordinates, including three Office Assistant II's, a Customer Service Representative and a Data Entry Operator II. A second supervisor responsible for DUI suspensions, Agnes Kawash, directly supervises nine employees including seven Office Assistant II's and two Office Assistant III's. A third supervisor over insurance suspensions, Debbie Combs, directly supervises six employees, all of whom are classified as Office Assistant II's. These other supervisors all report to the same immediate supervisor as Grievant and are currently classified by DOP as Supervisor II's. (See footnote 2)

Mr. Greg Vasilou, Grievant's former immediate supervisor for over four years, testified at Level III that the work Grievant performs in the Resident Violators Section is equally technical

in nature to that which is performed by personnel who work in the Safety and Compulsory Insurance Section. Mr. Vasilou further testified that Grievant's section had more walk-in customers than any other section which dealt with drivers' license suspensions andat least as many telephone inquiries as any of the other sections that deal with driving suspensions. Grievant is called in to take over dealings with the most irate or difficult call-in or walk-in customers who have a problem with their license status.

Ms. Combs, who supervises the Safety and Compulsory Insurance Section, and Ms. Kawash, who supervises the DUI Suspension Section, testified for Grievant at Level III. Both were reclassified as Supervisor II's under DOP's statewide reclassification project. Both testified that Grievant's work was similarly technical to that performed in their sections. However, Ms. Kawash testified at Level III that the DUI suspension process was somewhat more complex due to provisions for penalty enhancement and computer coding necessary to match the basis for suspension with the particular facts in each case. Ms. Combs indicated that the mandatory suspension period for lack of insurance is somewhat more technical than the license surrender provisions which Grievant administers.

Classification Specifications at Issue

The relevant portions of the classification specifications for the Supervisor I and Supervisor II positions at issue in this case are reproduced herein as follows:

SUPERVISOR I

Nature of Work

> **Under general supervision, performs full-performance supervisory work overseeing the activities of clerical support staff, semi-or-fully-skilled trade workers, or inspectors. Completes annual performance appraisals, approves sick and annual leave, makes recommendations and is held responsible for the performance of the employees supervised. Work is reviewed by superiors through results produced or through meetings to evaluate output. Performs related work as required.**

Distinguishing Characteristics

Supervisor I is usually a working supervisor who makes work assignments, reviews employees' work, and compiles reports on section activities in addition to performing tasks similar to their employees. In some instances, may be a working supervisor performing related work of a more advanced level than subordinates.

Examples of Work

Performs duties that are similar or related to the work performed by subordinates.

Makes work assignments to employees; reviews the work of subordinates to ensure accuracy.

Trains employees in proper work methods.

Ensures that equipment, supplies, and materials are available to complete work.

Inspects work areas to ensure that tasks are completed in a timely manner.

Evaluates employees' performance; counsels employees and recommends corrective action.

Answers inquiries from employees; relays information from management.

Updates and compiles reports outlining the unit's activities, including other factors such as amount of work produced, monies spent or collected, or inventory.

Discusses personnel issues with employees; answers grievance issues within mandated time frames in an effort to solve problems.

R Ex 1.

SUPERVISOR II

Nature of Work

Under general supervision, performs full-performance supervisory work overseeing a section of employees engaged in technical work requiring advanced training. Work is reviewed by superiors through results produced or obtained in meetings. May represent the agency before committees and the general public. Performs related work as required.

Distinguishing Characteristics

Supervisor II is distinguished from Supervisors (sic) I by the nature of the work supervised and by the level of collateral work assigned to the position. The nature of work supervised is typically of a technical nature as opposed to clerical at the Supervisor I level. May be a working supervisor performing related work of a more advanced level than the subordinates supervised.

Examples of Work

Plans, assigns, and coordinates the work of subordi nates; trains employees in work methods .

Interprets and applies departmental policies and regulations for employees and others in state government.

Advises subordinates of changes in policy and proce dure.

Responds to questions or problems of subordinates; restructures work procedures to align with changes in state or federal laws and programs.

Performs field visit inspections and spot checks records to document activities and evaluate the performance of the unit.

Ensures that equipment, supplies, and materials are available to complete work.

Represents the unit before agency management, adminis trative hearings, business or civic groups, or other forums.

Performs employee performance evaluations, approves annual and sick leave, and recommends hiring, disciplinary actions and other employee activity.

Discusses personnel issues with employees; answers grievance issues within mandated time frames in an effort to solve problems.

G Ex 11.

Discussion

In order for Grievant to prevail upon a claim of misclassification, she must prove by a preponderance of the evidence that her duties for the relevant period more closely matched another cited Personnel classification specification than that under which she is currently assigned. See generally, Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038

(Mar. 28, 1989). Personnel specifications are to be read in "pyramid fashion," i.e., from top to bottom, with the different sections to be considered as going from the more general/more critical to the more specific/less critical, Captain v. W. Va. Div. of Health, Docket No. 90-H-471 (Apr. 4, 1991); for these purposes, the "Nature of Work" section ofa classification specification is generally its most critical section. Atchison v. W. Va. Div. of Health, Docket No. 90-H-444 (Apr. 22, 1991).; See generally, Dollison v. W. Va. Dept. of Employment Security, Docket No. 89-ES-101 (Nov. 3, 1989). The key to the analysis is to ascertain whether Grievant's current classification constitutes the "best fit" for her required duties. Simmons v. W. Va. Dept. of Health & Human Resources, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of the position in question are class-controlling. Broaddus v. W. Va. Div. of Human Services, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Finally, Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993).

In applying the foregoing general principles for adjudicating classification appeals as adopted by this Grievance Board and the Supreme Court of Appeals, it is noted that there is substantial overlap between the classification specifications for Supervisor I and Supervisor II. This is particularly apparent in reviewing the Nature of Work and Examples of Work portions of the specifications at issue here. Since Grievant was already classified as a Supervisor I, it is apparent that she performs all of the classic functions expected of a supervisor. Thus, in order to determine that the Supervisor II classification is the "best fit" for her duties, Grievant must meet the Distinguishing Characteristicsprovision for Supervisor II. See Simmons v. W. Va. Dept. of Health & Human Resources, Docket No. 90-H-433 (Mar. 28, 1991).

Grievant presented ample documentation that she performs work that is more than merely clerical, thus meeting the stipulation in the class specification that the work supervised must be technical in nature. Grievant presented numerous samples of work performed to illustrate the technical nature of the work she and her subordinates perform on a regular basis. Grievant's most recent immediate supervisor confirmed that the work Grievant's section performs is similarly technical to that performed in other DMV units headed by employees

classified as Supervisor II. The fact that these other DMV employees may supervise work that is even more technical is irrelevant since the class specification at issue only purports to delineate between work that is essentially clerical in nature as opposed to work that is considered technical. There was no evidence or persuasive argument presented which demonstrated that the work Grievant supervises is merely clerical.

Likewise, Grievant presented substantial documentary evidence to support her contention that much of the work of her position involves collateral matters which involve other areas of DMV, the remaining stipulation contained in the Distinguishing Characteristics portion of the class specification for Supervisor II.

Notwithstanding the substantial deference given to DOP in interpreting their classification specifications under Blankenship, supra, here, Grievant presented substantial evidence that the duties which she routinely performs fall within the distinguishingcharacteristics of a Supervisor II. Indeed, it appears that DOP classified Grievant based upon information in a position description which had not been accurately updated by Grievant's supervisors in DMV. Although DOP appears to have acted in good faith when it reclassified Grievant as a Supervisor I, the undersigned is persuaded by a preponderance of the evidence presented at Levels III and IV, for the reasons previously discussed, that this decision was clearly in error.

The foregoing discussion of the facts of the case and of the applicable law to those facts is hereby supplemented by the following appropriate findings of fact and conclusions of law.

Findings of Fact

1. Grievant is employed by Respondent DMV to supervise the Resident Violator/Student Attendance Suspension Section in the Driver Improvement Unit of the Transportation Systems Division.

2. The unit Grievant supervises is responsible for suspending and reinstating motor vehicle operators' licenses for failure to resolve traffic citations and drivers under 18 years of age who fail to attend school on a regular basis.

3. Grievant normally provides direct supervision to four employees, three Office Assistant II's and a Data Entry Operator II. Grievant frequently supervises one or more temporary employees who are classified as Office Assistant I's.

4. The work performed by Grievant's unit involves work that is technical in nature, based upon the requirement to interpret andapply state laws to a variety of actions in various courts and secondary schools throughout the state.

Conclusions of Law

1. Grievant has proven by a preponderance of the evidence that she is performing the duties of a Supervisor II based upon the principle that the predominant duties of a position are class-controlling. Broaddus v. W. Va. Div. of Human Services, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). See Fuller v. Cabell-Huntington Health Dept., Docket No. 90-H-169 (Nov. 29, 1990).

2. The Division of Personnel's interpretation of the classification specifications for the positions of Supervisor I and Supervisor II as they relate to Grievant's required job duties are clearly wrong in light of the probative evidence of record. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993); Propst v. W. Va. Dept. of Health & Human Resources, Docket No. 93-HHR-351 (Dec. 3, 1993).

Therefore, this grievance is GRANTED and the Division of Personnel is hereby ORDERED to classify Linda Page as a Supervisor II retroactive to November 15, 1993 when her position was misclassified as a Supervisor I, and the Department of Transportation, Division of Motor Vehicles is hereby ORDERED to pay her damages in the form of the difference between the salary she would have received had she been properly classified and the salary she didreceive while classified as a Supervisor I, if any, (See footnote 3) **less any appropriate set-off, for the period in question.**

Any party may appeal this decision to the circuit court of the county in which the grievance occurred and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

LEWIS G. BREWER

Administrative Law Judge

Dated: November 23, 1994

Footnote: 1*The Respondent DMV waived its right to appear at the Level IV hearing.*

Footnote: 2*Ms. Liptok's classification was changed from Supervisor I to Supervisor II as a result of a grievance decision at Level III.*

Footnote: 3*No evidence was presented regarding any difference in pay between the Supervisor I classification and the Supervisor II classification as it would pertain to the Grievant.*