WALTER P. LOVE, .

.

Grievant, .

.

v. . Docket No. 94-LC-145

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WEST VIRGINIA LIBRARY COMMISSION .

AND DEPARTMENT OF ADMINISTRATION, .

DIVISION OF PERSONNEL, .

.

Respondents. .

D E C I S I O N

This is a grievance by Walter P. Love (Grievant), an employee of the Respondent West Virginia Library Commission, challenging his classification as a "Duplicating Equipment Operator II" (DEO II) by the Respondent Division of Personnel (DOP). Grievant contends he should be properly classified to recognize his qualifications as a lithographer through retention of the classification of Lithographic Offset Operator which was eliminated during DOP's statewide reclassification project. After his grievance was denied at Levels I and II due to an inability to grant relief, the grievance was elevated to Level III where a hearing was conducted on March 28, 1994. At the conclusion of that hearing, DOP agreed to re-evaluate Grievant's classification. On April 7, 1994, DOP advised Grievant that "Duplicating Operator II is the most appropriate classification for your position." Thereupon, Grievant appealed to Level IVwhere DOP was joined as an essential party in accordance with Rule 4.11 of the Procedural Rules of the West Virginia Education and State Employees Grievance Board by an Order dated April 18, 1994. An evidentiary hearing was conducted in this Board's Charleston office on May 18, 1994. The parties waived written post-hearing submissions and this matter became mature for decision at the conclusion of the hearing.

Background

The facts in this case are not in dispute. Grievant's job involves the operation of large offset printing presses and other graphics equipment to complete various graphics-related projects for 187 member libraries supported by the West Virginia Library Commission (WVLC). Grievant is one of only two state employees who are qualified as lithographers. Both of those employees are presently classified as DEO II's. Prior to reclassification, Grievant was classified as a Lithographic Offset Operator. Grievant notes that lithography is a 400-year-old profession offering job progression from a neophyte or apprentice to a master lithographer. Grievant's duties focus upon the operation of a Heidelberg KORD printing press, a complex task which requires a standard seven-year apprenticeship in the printing industry before an operator can qualify as a lithographer. Operators must learn various principles of physics, chemistry and engineering in order to successfully maintain and operate this sophisticated equipment. Grievant also indicated that these complex presses are sometimes dangerous and can easily cause injuries, such as amputation offingers or hands, when operated by an inadequately trained, inexperienced or careless individual.

David Martin, Grievant's immediate supervisor, noted that WVLC employees the Heidelberg press as a lithographic tool for production of four-color graphics to include original art work, rather than to simply print forms. Mr. Martin expressed concern that a new employee hired under the DEO II classification would not have sufficient experience and expertise to successfully operate WVLC's press. Mr. Martin further opined that the salary range for DEO II was too low to attract someone qualified to operate a Heidelberg press. Grievant also complained that the current pay structure for DEO II does not adequately compensate him for his eighteen years of experience as a printer.

Lowell Basford, Assistant Director of the Division of Personnel for Classification and Compensation, indicated that the classification process focuses upon the job duties assigned by the employer and not the qualifications of the individual employee performing the job. Thus, while Grievant's training and experience may exceed that required of a DEO II, this is consistent with the classification of other employees in state government performing similar duties. Mr. Basford noted that no agencies had brought any problem involving recruitment or retention of personnel required to perform such duties to DOP's attention. Indeed, Grievant was the last Lithographic Offset Operator hired by the state over a decade ago. Moreover,

WVLC was consulted during the reclassificationprocess and did not register any objection to elimination of the Lithographic Offset Operator classification.

Classification Specifications at Issue

The relevant portions of the classification specification for the DEO II position and the previously existing position of Lithographic Offset Operator are reproduced herein as follows:

DUPLICATING EQUIPMENT OPERATOR II

Nature of Work

Under general supervision, performs advanced level work in the duplication of printed and photographic material neatly and accurately through the set up and operation of offset presses of all sizes that require advanced skills and work techniques. Desired results are reviewed for conformation with instruction, but technical aspects and the exact method of accomplishing objectives are left to the employee. Performs related work as required.

Distinguishing Characteristics

The Duplicating Equipment Operator I performs basic duplicating on offset presses of all sizes, while the Duplicating Equipment Operator II performs specialized duplications on offset presses of all sizes, which typically could include such operations as close registration and press color reproduction. The Duplicating Equipment Operator II may also function as a lead worker.

Examples of Work

Operates offset presses to produce specialized reproduction of forms, maps, letters, and pamphlets, reproducing both process or black and white illustrations.

Adjusts machine register and impression balance to insure accurate image reproduction on multi-impression, multi- color jobs.

Instructs and trains new employees in machine operation and work procedures.

Performs minor maintenance on machines.

LITHOGRAPHIC OFFSET OPERATOR

Nature of Work

This is highly skilled work in setting up and operating lithographic offset printing presses.

An employee in this class produces excellent quality printing of color jobs and black and white jobs where accurate register and the highest grade work are contemplated. These jobs will consist of fine lines and drawing, large fine screen halftones, fine BenDay or other screens, large reverse areas, large solid areas, and colors to print one over the other, such as duotones.

Employees in this class must be able to read and set up from technical dummy layouts for signature printing.

Employees in this class must be able to set up and operate various sizes of lithographic presses including offset presses with sheet capacities of 15" x 18" or larger.

An administrative superior outlines desired results and reviews completed materials for conformation with instruction, but the technical aspects and the exact method of accomplishing objectives are left to the employee.

Examples of Work Performed

Operates lithographic offset press to reproduce various types of printing.

Makes metal plates from negatives, which will include some step and repeat negatives for close register work.

Sets up and adjusts machine for job to insure accurate register.

May prepare proof copy

Instructs and trains new employees in machine operation and work procedures.

Performs related work as required.

Discussion

Generally, a Grievant seeking to prevail upon a claim of misclassification must prove by a preponderance of the evidence that his duties for the relevant period more closely matched another cited Personnel classification specification than the one under which he is currently assigned. See generally, Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). Personnel specifications are read in "pyramid fashion," i.e., from top to

bottom, going from the more general/more critical sections to the more specific/less critical sections, Captain v. W. Va. Div. of Health, Docket No. 90-H-471 (Apr. 4, 1991), Thus, the "Nature of Work" section of a classification specification is its most critical section. Atchison v. W. Va. Div. of Health, DocketNo. 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 the Grievant's current classification constitutes the "best fit" for his required duties. Simmons v. W. Va. Dept. of HHR/Div. of Personnel, 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 No. 89-DHS-606, 607, 609 (Aug. 31, 1990). Finally, Personnel's interpretation and explanation of the classification specifications at issue are given great weight unless clearly erroneous. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993).

The holding by the West Virginia Supreme Court of Appeals in Blankenship presents a formidable hurdle for an employee to overcome in attempting to establish that he has been misclassified by DOP. In this case, Grievant has not met his burden of demonstrating that his classification as a Duplicating Operator II is clearly wrong. Moreover, DOP has been delegated authority under W. Va. Code § 29-6-10 to develop a position classification plan for classified state employees. Under the Administrative Rules of the West Virginia Division of Personnel, § 4.02, DOP has specific authority to abolish classifications. In this matter, DOP exercised its discretion to eliminate a position classification based upon a determination that such a classification is no longer necessary for the efficient and effective operation of state government.

A comparison of the position classification specifications for the former Lithographic Offset Operator position and the remaining DEO II position clearly establishes that the DEO II position represents a diminution in the skill and experience levels required for the position. Likewise, Grievant's evidence indicates that certain work he presently performs on the Heidelberg press may not be accomplished by another employee who is not qualified as a lithographer. However, Grievant has not demonstrated that DOP's decision to consolidate classifications and eliminate the Lithographic Offset Operator classification is contrary to any law rule or regulation or, under the circumstances, was arbitrary and capricious. Thus, the

evidence of record establishes that the "best fit" for Grievant's current duties is the remaining DEO II classification. See Simmons v. Dept. of HHR/Div. of Personnel, Docket No. 90-H-433 (Mar. 28, 1991). Moreover, the predominant duties Grievant performs are included in the DEO II class specification and these duties provide a controlling basis for classifying his position in that class. See Broaddus v. W. Va. Div. of Human Services, Docket No. 89-DHS-606, 607, 609 (Aug. 31, 1990).

In addition to the foregoing discussion, the following findings of fact and conclusions of law are appropriate in this matter.

FINDINGS OF FACT

1. Grievant operates a large offset printing press to print various graphic-related products for the various member libraries supported by the West Virginia Library Commission (WVLC).

2. Grievant's work is focused on the operation of a Heidelberg KORD press, a complex offset press that normally requires a seven-year apprenticeship to master.

3. Grievant is one of only two state employees who currently operate a Heidelberg press. Both of these employees were classified as Lithographic Equipment Operators prior to reclassification.

4. WVLC uses their Heidelberg press to produce multi-color graphics, including original art work, rather than simply to print forms.

5. In the course of a recent statewide reclassification project, the Division of Personnel (DOP) decided to consolidate various classifications and eliminated the classification of Lithographic Equipment Operator.

6. As a result of the elimination of the Lithographic Equipment Operator classification, Grievant was reclassified as a Duplicating Equipment Operator II (DEO II).

7. The predominant duties Grievant performs are encompassed by the DEO II class specification.

CONCLUSIONS OF LAW

1. Grievant has not demonstrated that DOP acted contrary to any law, rule or regulation or in an arbitrary and capricious manner when it eliminated the classification of Lithographic

Offset Operator in the course of its statewide reclassification project. 2. DOP's determination that qualified employees may be recruited and retained to perform printing work required by state agencies, despite consolidation of classifications which eliminatedthe classification specification for the position of Lithographic Offset Operator, was not clearly erroneous and, therefore, should be accorded great weight. See W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W. Va. 1993).

3. Although Grievant is performing some duties that are outside his current classification as a DEO II, this does not render him misclassified. Dooley v. W. Va. Dept. of Health and Human Resources, Docket No. 90-H-498 (Mar. 19, 1991). See Div. of Personnel Administrative Rules, Series I (Amended), § 4.04(d) (1993); Broaddus v. W. Va. Div. of Human Services, Docket No. 89-DHS-606, 607, 609 (Aug. 31, 1990).

4. Grievant's job duties, as demonstrated by a preponderance of the evidence, best fit with the classification specification for DEO II.

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County 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: September 23, 1994