RANDALL L. SAMPLES, .

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Grievant, .

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v. . Docket No. 94-HHR-196

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WEST VIRGINIA DEPARTMENT OF HEALTH .

AND HUMAN RESOURCES / OFFICE OF .

INCOME MAINTENANCE .

and DIVISION OF PERSONNEL, .

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Employer. .

D E C I S I O N

Randall Samples (hereinafter Grievant) filed a grievance on September 24, 1993, pursuant to the provisions of the Grievance Procedure for State Employees, West Virginia Code §29-6A-1 et seq., as a direct result of the Division of Personnel having reclassified his position in December 1992 from the title of Section Chief IV to Supervisor II. The lower two levels of the grievance procedure were waived by Grievant and a level three hearing was held on March 31, 1994 in Charleston, West Virginia. The Division of Personnel was not represented at this hearing. After receiving a negative response at level three, Grievant appealed to this Grievance Boardon May 12, 1994. A level four hearing was subsequently scheduled but Grievant then notified the undersigned that a decision could be based upon the record developed at level three. The parties were allowed to file briefs in support of their positions and the case became mature for decision on July 8, 1994. The Division of Personnel also declined the opportunity to file any written briefs in this matter.

The following findings of fact have been properly deduced from the evidentiary record developed in the case.

Findings of Fact

1. Grievant is employed as a Supervisor II within the Department of Health and Human Resources' Office of Income Maintenance. Grievant's in-house title is Director of Food Stamp Unit and he reports directly to the Director of the Office of Income Maintenance.
2. Grievant is responsible for the two sections within the Food Stamp Unit, Accountability and Issuance.
3. Grievant appears in court proceedings as a representative of the Unit.
4. Grievant is responsible for writing the manual for the State Food Stamps Program and also interprets the Code of Federal Regulations, upon demand, when questions arise in relation to the Federal Food Stamp Program.
5. Grievant supervises six employees. These employees hold positions ranging from Supervisor to Accounting Assistant to Clerk.
6. Grievant is responsible for the TRIP Program. (See footnote 1)
7. Grievant interviews and hires new employees.
8. Grievant occupies a position on the Office's Administrative Team. (See footnote 2)
9. On the Office of Income Maintenance flow chart, Grievant is on the same level as the Director of Donated and Surplus Foods, Director of Policy Unit, Director of Rapids Project and Director of Projects Unit. Three of these individuals are classified as Program Managers.

Discussion

Grievant claims that he should be classified as a Health and Human Resources Program Manager I instead of a Supervisor II. He bases this argument on a comparision of his duties to the classification specification at issue and also in comparision to the duties of other employees classified as a Program Manager I. The Respondent has simply deferred to Personnel's expertise in the area of classification of employees in contending that it (Personnel) has not abused its descretion in classifying Grievant as a Supervisor II or acted upon a clearly erroneously.

The relevant portions of the classification specifications at issue herein are reproduced below:

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 Supervisor 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.

Examples of Work

Plans, assigns, and coordinates the work of subordinates; trains new employees in work methods.

Interprets and applied departmental policies and regulations for employees and other in state government.

Advises subordinates of changes in policy and procedure.

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

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

Represents the unit before agency management, administrative 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 mandates time frames in an effort to solve problems.

Areas of Assignment

Arts and Humanities

Auditing

Bookkeeping

Budget and Budget Planning

Clerical

Education, Training, Library

General Supervision

Health

Inspection

Law Enforcement, Investigation

Natural Resources

Office Management

Security

Taxation

HEALTH AND HUMAN RESOURCES PROGRAM MANAGER I

Nature of Work

Under general direction, performs complex administrative and professional work at the advanced level in managing a major program component within an office or organizational unit in the Department of Health and Human Resources. Programs are managed over a specified geographic region of the state, or statewide, and are of equivalent size and complexity. Responsibilities include planning, policy development, direction, coordination and administration of the operation of a major program component in the area of health or human services. Complexity level is evidenced by the variety of problem-solving demands and decisions for the assigned area. Issues may be controversial in nature and work requires the ability to persuade or dissuade others on major policy and program matters. Performs related work as required.

Distinguishing Characteristics

Positions representative of the kind and level of work intended for the class include program areas such as Health Statistics, Health Promotion, Mental Retardation/Developmental Disabilities, Alcohol and Drug Abuse, Government Donated Foods, and other organizational units with similar size, scope and complexity.

Examples of Work

Supervises professional, technical and clerical staff; make assignments and reviews and approves plans of operation.

Provides administrative and program direction; enforces agency objectives, policies and procedures.

Responsible for management of recruitment/selection process, staff development, disciplinary matters, and other related actions in assigned area.

Responsible for developing collaborative efforts among health or human services agencies.

Performs research and analysis of legislation, work activities or other issues to develop policies, standards and procedures.

Monitors and evaluates program administration, and the delivery to services to clients.

Provides technical consultation and policy interpretation to staff, supervisor, public officials, and advocacy groups.

Plans and implements programs for the training of professional, technical and clerical staff.

AREAS OF ASSIGNMENT

Behavioral Health

Community Health

Environmental Health

Health

Health Facilities Licensure and Certification

Health Planning

Health Promotion

Investigation

Legal

Rural Health

Social Services

Volunteer Services

In order for Grievant to prevail upon a claim of misclassification, he must prove by a preponderance of the evidence that his duties for the relevant period more closely matched another cited Personnel classification specification than that 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 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 the Work" section of a classification specification is its most critical section. See generally, Dollison v. W.Va. Dept. ofEmployment 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 his required duties. Simmons v. W.Va. Dept. of HHR/Division 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.s. 89-DHS-606, 607, 609 (Aug. 31, 1990). Finally, Personnel's interpretation and explanation of the classification specifications at issue, if said language is determined to be ambiguous, should be given great weight unless clearly erroneous. See, W.Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (1993).

Grievant performs duties generally referenced in the examples of work sections of both classification specifications at issue. It is clear that he is responsible for supervising a group of employees engaged in technical work. However, Grievant provided uncontradicted testimony that he plans and coordinates the Food Stamp Program within the Office of Income Maintenance. He also interprets policies, regulations and laws for various individuals and entities. The key issue herein is whether the record can support the conclusion that he manages a "major program component" as well as supervises a section of employees.

There was little evidence concerning the size and complexity of Grievant's program as compared to the programs managed by the other Directors within the Office of Income Maintenance. It is clear that all of these positions report directly to theAdministrator of the Office. Further, three of the individuals in charge of separate projects are classified as Program Managers. Therefore, it can be determined that there are at least three projects of similar size and complexity found on the same level of the organizational chart as Grievant. It is also apparent that this determination is not based upon the number of employees supervised.

As noted earlier, classification specifications are to be read from top to bottom. In this case, one clear distinction between the two positions in question is that they refer to different levels of administrative organization and function. The supervisor's position must necessarily be associated with the internal workings of an office or section while the manager's position can normally be associated with the operation of a group of sections or offices which interact with various organizations in differing fashions. This distinction is based, in part, on the common and ordinary

meaning given to the terms "supervisor" and "manager."

In this case, Grievant is in charge of two sections which are responsible for implementing the State's Food Stamp Program. He is in charge not only of the staff in his two sections but also for the direction, development and coordination of the program and his only superior is the Director of the Office of Income Maintenance. The undersigned hereby concludes that it is more likely than not that Grievant performs "complex administrative and professional work" which includes "planning, policy development, direction,coordination and administration of the operation of a major program component in the area of health or human services." In other words, Grievant functions as a Program Manager as opposed to simply supervising a group of clerical or technical employees.

The foregoing discussion of the case is hereby supplemented by the following appropriately made conclusions of law.

Conclusions of Law

1. Grievant has proven by a preponderance of the evidence that he is misclassified as a Supervisor II as the duties and responsibilities of his position "best fit" the classification specification of Program Manager I. Simmons v. W.Va. Dept. of HHR/Division of Personnel, Docket No. 90-H-433 (Mar. 28, 1991).

Therefore, this grievance is hereby **GRANTED** and the Division of Personnel is hereby **ORDERED** to reallocate Grievant's position to that of **HEALTH AND HUMAN RESOURCES PROGRAM MANAGER I**. Further, the Department of Health and Human Resources is hereby **ORDERED** to pay Grievant back pay in the amount of the difference, if any, between the salary he earned while classified as a Supervisor II and the salary he would have earned as a Program Manager I retroactive to the date of the Division of Personnel's reclassification of his position.

Any party or the West Virginia Division of Personnel 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.

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ALBERT C. DUNN, JR.

Administrative Law Judge

October 17, 1994

Footnote: 1 The record does not clarify what the TRIP acronym stands for.

Footnote: 2 Again, no testimony was provided which would explain the function or importance of this team.