RUFUS WARE

v. **Docket No. 94-T&P-539**

DIVISION OF TOURISM AND PARKS

and DIVISION OF PERSONNEL

D E C I S I O N

Grievant, Rufus Ware, grieves his classification as a Building Maintenance Supervisor I ("BMS I") and states he should be classified as a Building Maintenance Supervisor II ("BMS II") as he is performing the duties of that classification. Grievant is a BMS I in charge of the maintenance of all systems at Stonewall Jackson State Park ("SJSP") including a three hundred and seventy-four slip marina. This grievance was waived at Levels I and II and denied at Level III. The case was appealed to this Grievance Board and a hearing was held on December 21, 1994. The case became mature for decision on that date as the parties elected not to submit further legal argument or proposed findings of fact and conclusions of law.

Prior to the reclassification, Grievant was classified as a BMS II. The class specification for this position and how it relates to the current specifications is unknown. The pertinent sections of the current classifications at issue are represented below:

BUILDING MAINTENANCE SUPERVISOR I

Nature of Work

Under general supervision at the full-performance level, directs the upkeep and management of buildings for a small institution or state facility. The work is reviewed through visual observation and written reports. Performs related work as required.

Distinguishing Characteristics

This level of the class series is differentiated from Building Maintenance Supervisor II by a lesser managerial role and less authority to decide which projects will take priority. Normally the incumbent is responsible for upkeep of one building or works under the supervision of a

higher level Building Maintenance Supervisor in a large building complex.

Examples of Work

Issues instructions to subordinates concerning cleaning, repair and maintenance of mechanical and electrical equipment, plumbing, and building structure.

Plans renovations and decorating of office areas.

Maintains adequate safety protection for public and building occupants by insuring the elimination of fire and other safety hazards.

Participates in building maintenance functions using carpentry, electrical, plumbing, roofing and other maintenance skills.

Makes arrangements for additional lighting, heating, and ventilating equipment as necessary.

Purchases maintenance and cleaning supplies from local suppliers.

May supervise an automotive repair shop.

Knowledge, Skills and Abilities

Knowledge of the various phases of janitorial work, janitorial supplies, and office furniture repair and maintenance.

Knowledge of building maintenance.

Knowledge of a variety of maintenance trade skills.

Knowledge of safety regulations and precautionary measures.

Ability to recognize maintenance needs and determine appropriate action to meet these needs.

Ability to direct and instruct subordinates in carrying out assignments.

Ability to maintain an adequate supply inventory.

BUILDING MAINTENANCE SUPERVISOR II

Nature of Work

Under general supervision, at the full-performance level, plans, organizes, and directs the upkeep and management of buildings for a large institution. Organizes and directs the work of skilled and semiskilled trades-workers performing facilities maintenance and repair. Performs related work as required.

Distinguishing Characteristics

This class is distinguished by a greater amount of time spent in direct supervision of building maintenance staff and by responsibility for maintenance of a larger facility or institution.

Examples of Work

Organizes and directs the work of crews cleaning buildings, repairing and maintaining mechanical and electrical equipment, plumbing systems, and building structure.

Ensures compliance with fire, electrical, OSHA, and other applicable laws, rules, and regulations.

Develops, interprets, and revises blueprints for specific maintenance projects.

Inspects building facilities continuously to ensure proper maintenance.

Maintains supply inventory and requisitions supplies and materials as needed.

Reviews, evaluates, and verifies employee performance by inspecting completed assignments, and reviewing work product and work performance.

Establishes schedules and priorities for maintenance, repair, and construction projects.

Analyzes and prepares budgets, cost estimates, material and labor estimates, equipment requirements, and delivery schedules.

Maintains employee time records for payroll purposes; writes activity reports as necessary.

Plans renovations and other special projects.

Establishes procedures for carrying out maintenance responsibilities.

Determines the need and arranges for additional lighting, heating, ventilation, and other needed equipment.

Knowledge, Skills and Abilities

Knowledge of the standard methods, practices, tools, and equipment used in building maintenance.

Knowledge of employee policies, procedures, and supervisory techniques.

Knowledge of local, state, and federal building safety codes.

Knowledge of a variety of maintenance trade skills.

Knowledge of the principles and techniques of administrative management.

Ability to plan, organize, and direct the work of skilled and semiskilled building maintenance workers.

Ability to read, interpret, and revise blueprints and building plans.

Ability to make material and labor estimates and computations.

Ability to prepare plans, specifications, schedules, and cost estimates.

Ability to keep accurate records such as inventory and time sheets.

Ability to set goals, monitor progress, and adjust resources to accomplish objectives.

Ability to communicate effectively orally and in writing.

Grievant testified he performs the majority of the duties of a BMS II. He states he has three employees he supervises directly and four other employees he supervises indirectly. He spends approximately five hours every week assigning tasks to subordinates and also assesses and assigns other jobs as the need arises. Grievant spends the majority of his day doing "hands-on" maintenance and repairs himself because he is qualified to perform the work and because of the limited number of employees at the park.

Grievant also makes sure the park is in compliance with all state and federal regulations, and he is particularly concerned with safety aspects. He maintains the electric, sewage, and water systems. He maintains the marina and the facilities associated with it. Additionally, because the Grievant has multiple qualifications and certifications he is occasionally asked by hissupervisor to assist maintenance people at other state parks and facilities.

Mr. Lowell Basford, Assistant Director of Classification and Compensation with the Division of Personnel ("DOP"), testified that the decision to classify Grievant as a BMS I was made by assessing the complexity of the position, identifying the number of people supervised and the time spent in supervision, and comparing Grievant's position and park setting in relation to other maintenance personnel, especially those in the Building Maintenance Supervisor ("BMS") series. He noted Grievant spent a minority of his time supervising and the majority of his time engaged in "hands-on" work. He also noted that SJSP had no cabins or lodging facilities which are considered to increase the complexity of

the work required of the BMS. Mr. Basford noted the Grievant was in charge of the marina, but this duty did not increase the level of his position to a BMS II. Mr. Basford stated Grievant was properly classified, especially in light of his predominant duties, time spent in supervision, and number of employees supervised.

Mr. Caplinger, Deputy Chief of Parks, testified that he and all the District Administrators worked very closely with DOP when the BMS' were reclassified. All the parks and their number of structures, facilities for lodging, and special needs were closely examined by this group. He stated that Grievant was properly classified, and that his classification was based on the facilities at SJSP. Mr. Caplinger stated one of the primary considerations in whether a BMS was classified as a I or a II was whether the parkhad cabins or a lodge. Because of the high degree of maintenance required by these structures with the plumbing fixtures, water and power lines, and other facilities, these positions were considered more complex. SJSP has no facilities for lodging. Mr. Caplinger stated that although the Grievant was in charge of the marina, this duty did increase his classification to a BMS II.

Mr. Caplinger compared at length the parks which had BMS Is with those which had BMS IIs. Some examples are listed below:

<u>BMS IIs</u>

1. Babcock State Park

55 structures, 5 employees, 26 cabins, 1 swimming pool.

2. Hawks Nest

14 structures, 5 employees, 31 room lodge, 1 swimming pool, 1 tram.

3. Cass Railroad

83 structures (58 of which are residences), 17 employees (plus prison crew), plus depots and shops.

BMS I (See footnote 1)

1. Twin Falls (See footnote 2)

41 structures, 21 room lodge, 12 cabins, 1 swimming pool.

2. Bluestone State Park

49 structures, 18 employees (includes housekeeping), 17 cabins, 1 marina (small).

3. Stonewall Jackson State Park

25 structures, 7 employees, 1 marina (374 slips).

Discussion

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 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 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 of a classification specification is 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 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 Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Additionally, class specifications are descriptive not restrictive. The fact that a specific duty performed by employees is not listed in the specification does not necessarily mean the person is misclassified. W. Va. Div. of Personnel Admin. Rules, § 4.04(a) &(b). 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).

Under the forgoing legal analysis, the West Virginia Supreme Court of Appeals' holding in Blankenship presents employees contesting their current classification with a substantial obstacle to overcome in attempting to establish that they are currently misclassified. A review of the two class specifications reveals the Grievant is properly classified. The Nature of Work section of the BMS I identifies this individual as directing the upkeep and management of a small state facility such as SJSP. The "Examples of Work" for BMS I's are consistent with the type of work Grievant performs. Although he occasionally performs duties of a BMS II, the predominant duties of a position are class controlling. Broaddus, supra. The Grievant has not met his burden of proving that the BMS II job description constitutes the "best fit" for his required duties.

The following above discussion will be supplemented with the Findings of Fact and Conclusion of Law.

Findings of Fact

1. Grievant supervises the maintenance of a small state facility, SJSP. He spends the majority of his time in "hands-on" work and only a small portion of his time in supervisory duties.

2. Grievant does perform some duties outside his class specification such as reading blueprints, occasionally "trouble shooting" at other parks, and prioritizing maintenance and repair.

Conclusion of Law

Grievant has not demonstrated by a preponderance of the evidence that he is misclassified or the position of BMS II is the "best fit" for his normal duties.

Accordingly, this grievance is DENIED.

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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JANIS I. REYNOLDS

Administrative Law Judge

Dated: January 31, 1995

Footnote: 1*Greenbrier State Park also has a BMS I but the only testimony about the park was that it had 12 cabins and a swimming pool.*

Footnote: 2*Mr. Caplinger stated that he thought this position was misclassified, and the Department is requesting DOP to review this classification.*