ETHEL M. SAUNDERS and ERVIE E. MAYNE

v. Docket No.95-CORR-267

DIVISION OF CORRECTIONS

DECISION

Grievants, Ethel M. Saunders and Ervie E. Mayne, employed by the Division of Corrections (Corrections) as Correctional Officers II at the Pruntytown Correctional Center (PCC), filed a level one grievance on or about May 1, 1995, in which they complained of misclassification. Specifically, Grievants assert that they perform the same duties and responsibilities as a co-worker who was upgraded from CO II to CO III during the reclassification project. Following denials at all lower levels the grievance was advanced to level four on June 21, 1995. An evidentiary hearing was conducted on September 20, 1995, at which time the matter became mature for decision.

The West Virginia Division of Personnel (Personnel) classification specifications relevant to this matter are reproduced as follows:

CORRECTIONAL OFFICER II

Nature of Work: Under direct supervision, performs full-performance, journey level Correctional Officer work in enforcing rules, regulations and state law necessary for control and management of offenders and the maintenance of public safety. Employee may be assigned as a lead officer within a unit or shift or as an officer assigned to a post or a position requiring special technical skills. Performs related work as required.

Distinguishing Characteristics: This is the first full-performance level worker within the Correctional Officer class series. The employee may function as a field training officer, but most officers are assigned to a specific unit to oversee and direct the activities of inmates.

Examples of Work

Conducts/assists with orientation or on-the-job training for beginning Correctional Officers.

Reads and implements training materials; posts orders, administrative regulations; logs entries and memorandums[sic].

Obtains information from previous shift regarding activities occurring on that shift.

Conducts/assists with offender intake/discharge procedures; observes, monitors and supervises offenders to detect unusual or prohibited behavior and maintains custody and control within the correctional facility.

Performs counts at regular, or other, intervals to ensure offender accountability; transports offenders to and from correctional facilities; searches persons, personal property and areas; instructs and supervises offenders in performing assigned tasks.

Maintains public safety and control of offenders by enforcing rules, regulations and state law; reports violations.

Testifies at internal disciplinary hearings and in court.

Interacts with offenders in order to facilitate development or improvement of living and social skills; reinforces positive behavior; listens and responds appropriately to offender requests, problems and complaints.

Participates in staff, team and committee meetings.

Recognizes and responds to potential or actual emergencies such as, but not limited to fires, physical altercations, disturbances, or escapes in a manner which is consistent with policy, procedure and state law and ensures public safety.

Handles and operates security/communications equipment and/or firearms as directed in a manner which is consistent with policy, procedure and state law and which ensures public safety.

Inspects, inventories, maintains physical control of, and logs keys, tools, weapons and related equipment; reports damaged or missing items or other irregularities.

Performs safety and sanitation inspections; supervises cleaning of institutional areas and inmate hygiene activities.

Knowledge, Skills and Abilities

Knowledge of correctional security, treatment and support program operations.

Knowledge of rules, regulations and state law.

Knowledge of emergency procedures.

Ability to follow and issue written and oral direction within the chain of command.

Ability to interact positively with staff, inmates and the general public.

Ability to run, jump, climb stairs and physically restrain violent residents.

Ability to operate a motor vehicle.

Ability to use appropriate physical force to control offenders when necessary.

Ability to safely handle and use firearms, chemical agents and mechanical restraints and to obtain certification in the use of this equipment.

Ability to conduct correct contraband searches.

Ability to perform accurate offender counts.

CORRECTIONAL OFFICER III

Nature of Work: Under direct supervision, serves as a first-line supervisor of Correctional Officers. The officer is responsible for enforcing or supervising the enforcement of the rules, regulations and state law necessary for the control and management of offenders and the maintenance of public safety. The officer supervises and reviews the work of subordinates to ensure facility security or the functioning of a specialized post or unit. Performs related work as required.

Distinguishing Characteristics: This is first-line supervisory work. Holds the assigned rank of Corporal.

Examples of Work

Conducts, supervises the orientation and/or on-the-job training of subordinate officers.

Reads and implements training materials, post orders, administrative regulations, log entries and/or memoranda.

Provides guidance and direction to subordinate officers. Monitor the performance of subordinate officers, making recommendations for disciplinary action when necessary.

Counsels/prepares written evaluations of subordinates.

Obtains information from previous shift regarding activities occurring on that shift.

Conduct/assist with offender intake/discharge procedures.

Observes offenders to detect unusual or prohibited behavior and maintain custody and control within the correctional facility. Performs or supervises offender counts. Performs or supervises offender escort/transport security. Performs or supervises contraband searches.

Instructs and supervises offenders in performing assigned tasks.

Maintains public safety and control of offenders by supervising the enforcement of rules, regulations and state law. Reports violations.

Testifies in internal disciplinary hearings and in court.

Interacts with offenders in order to facilitate development or improvement of living and social skills; reinforces positive behavior; listens and responds appropriately to offender requests, problems and complaints.

Recognizes and supervises the response to potential or actual emergencies, such as but not limited to, fires, physical altercations, disturbances, or escapes in a manner which is consistent with policy, procedure and state law and ensures public safety.

Handles and operates security/communications equipment and/or firearms as directed in a manner which is consistent with policy, procedure and state law and ensures public safely.

Conducts incident inquiries/investigations as assigned.

Knowledge, Skills and Abilities

Knowledge of correctional security, treatment and support program operations. Knowledge of rules, regulations and state law.

Skill in locating and identifying contraband.

Ability to operate a motor vehicle.

Ability to supervise enforcement of rules, regulations and state law.

Ability to plan, organize and direct subordinate staff and offender activities and work details.

Ability to resolve offender and subordinate staff problems and conflicts.

Ability to follow and issue written and oral direction within a formal chain of command.

Ability to interact positively with staff, inmates and the general public.

Ability to run, jump, climb stairs and physically restrain violent residents.

Ability to use appropriate physical force to control offenders when necessary.

Ability to safely handle and use firearms, chemical agents and mechanical restraints and to obtain certification in the use of this equipment.

Ability to conduct correct contraband searches.

Ability to write routine reports and complete standard forms.

Ability to read and understand and apply training and directive materials.

Ability to complete tasks in a specialization such as Field Training Officer.

In order for Grievants to prevail upon a claim of misclassification, they must prove by a preponderance of the evidence that their duties for the relevant period more closely matched another cited Personnel classification specification than that under which they are 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 the classification specification is its most critical section. Atchison v. W.Va. Dept. 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 Grievants' current classification constitutes the "best fit" for their 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, 609 (Aug. 31, 1990). Finally, Personnel's interpretation and explanation of the classification specifications at is, 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 (W.Va. 1993).

Grievant Saunders testified that she works all units at PCC and has been the officer in charge of the gym and the officer in charge of Unit 24, the Mens' dorm. Apparently, both of these assignments involve two officers. She states that she also is qualified to transport inmates and to train new officers. On cross-examination Grievant stated that her primary duty is to provide security and not the supervision of other correctional officers. Grievant Mayne

testified that he works on Unit 25 predominately and is usually assigned with correctional counselors.

Captains James Bobela and James Reed testified at level four that Grievants have filled in as shift commanders, assuming responsibility for the entire institution. Captain Bobela further noted that Grievants had not been afforded the opportunity to perform certain other duties, but opined that they did not lack in ability. He recalled that Grievant Saunders had been discontinued from working as a shift commander after the reclassification was implemented, and that neither Grievant had been so assigned since March 1995.

Grievants also submitted into evidence a series of charts documenting the assignments and duties of eight sergeants, a corporal, and themselves, from 1991 through 1994. The charts indicate that Grievants performed comparably with the other, higher classified,employees while working as shift commanders and/or officers in charge; however, the source of this information was not identified. No information was provided relating to the co- worker who allegedly performed the same duties as Grievants and was promoted to CO III.

Personnel argues that Grievants are properly classified as CO II because their duties and responsibilities are those of a full- performance security officer. Lowell T. Basford, Assistant Director of Personnel's Classification and Compensation Section, concluded that CO III is the first level of supervision and that Grievants do not predominately function as supervisory personnel. Mr. Basford acknowledged Grievants' work as officers in charge and shift supervisors, but stated that such work on a fill-in or substitute basis does not qualify the employee for a higher classification.

Upon review of the record in its entirety it must be concluded that Grievants have failed to prove that they predominately function as first-line supervisors of other officers or that they are comparatively situated to another employee who is classified as a CO III.

In addition to the foregoing narration it is appropriate to make the following formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievants are employed by the Division of Corrections as Correctional Officers II at the

Pruntytown Correctional Center.

2. Grievants primarily function as full-performance correctional officers enforcing the rules and regulations necessary for control and management of offenders and maintaining public safety. 3. Grievants have served as officers in charge of units and as shift supervisors during the absence of their superiors. It appears that this practice has been discontinued since the implementation of the reclassification project.

CONCLUSIONS OF LAW

1. In non-disciplinary matters the grievants must prove all of the allegations constituting their grievance by a preponderance of the evidence. Crow v. W.Va. Dept. of Corrections, Docket No. 89-CORR-116 (June 30, 1989).

2. Personnel's interpretation of the two classification specifications at issue is not clearly wrong as applied to the facts in this case. W.Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W.Va. 1993).

3. Grievants have failed to prove by a preponderance of the evidence that they are improperly classified as Correctional Officers II.

Accordingly, the grievance is DENIED.

DATE: January 31, 1996

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE