KENNETH OVERBAY, et al.,

Grievants,

v.

DOCKET NO. 96-CORR-248

DIVISION OF CORRECTIONS

and DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievants, Kenneth Overbay, Charles Strickland, Calvin Maynus, William Shepherd, Verlin Adams, and Virgil Stephenson, filed the following grievance against their employer, the West Virginia Division of Corrections ("Corrections"), and the Division of Personnel ("DOP"), on or about April 4, 1996, alleging as follows:

> At least 3 Bldg. & Grounds managers at MOCC were (new) hired in at $30,000.00 (the approx. midpoint for their job class) apparently without regard to their differences in experience and education since these factors were different for each, and they were allowed to negotiate for this salary, more than twice my own. A similar grievance filed by MOCC Business Office employees, was granted and salary adjustments were made with back pay, one at the Level One.
>
> Relief sought: A salary adjustment to approximate midpoint for my job class with back pay (from date of hire), treatment already granted to other employees at MOCC.

This grievance was denied at level two by decision dated May 2, 1996, by Rita Albury, Grievance Evaluator. Grievants appealed to level three, but received no timely response, and advanced their appeal to level four on June 17, 1996. This matter was held in abeyance pending settlement negotiations for a lengthy period of time and was assignedto two other Administrative Law Judges prior to being assigned to the undersigned in February 1998. A level four hearing was held on March 4 and 10, 1998, at which time this grievance was substantially modified to the following amended statement of grievance:

> The Division of Personnel has failed to comply with the provisions of W. Va. Code 29-6A-1 et seq. requiring a position classification plan based upon similarities of duties and responsibilities assumed as well as the principle of equal pay for equal work; employer continues to work grievants outside of their proper classification.
>
> Relief: grievants' salary should be adjusted to reflect the unique nature of their duties and a new job classification created which reflects the correctional nature of the grievants' duties.

Corrections and DOP agreed to the modification conditioned upon their ability to submit additional evidence at the conclusion of the hearing. This matter became mature for decision on April 10, 1996, the deadline for the parties' proposed findings of fact and conclusions of law. (See footnote 1) Grievants were represented by George Surmaitis, Esq., of Crandall, Pyles & Haviland; Corrections was represented by Leslie Kiser, Esq.; and DOP was represented by Lowell D. Basford.

SUMMARY OF EVIDENCE

LIV Corrections Exhibit

Ex. 1 -

William R. Sharpe Jr. Hospital Performance Indicators.

Testimony

Grievants presented the testimony of Lowell Basford, Charles Reynolds, Calvin Maynus, Charles Strickland, Kenneth Overbay, Terry Frye, and James Stower. Corrections presented the testimony of Howard Painter, Celeste Frazier, Chip Garrison, and Kieth Ann Dressler. Lowell Basford testified on behalf of the Division of Personnel.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts.

1. Grievants are employed in the Maintenance Department of the Mt. Olive Correctional Complex, a maximum security facility. They carry the titles Electrician, Mechanic II, and Facilities Equipment Technician (“FEMT”).

2. The assigned pay grades are grade 9 for the Electricians, grade 8 for the FEMTs, and grade 6 for the Mechanic II.

3.

Correctional Officer Is are assigned to pay grade 8.

4. Grievants' primary duties are to perform electrical and maintenance work as defined in the relevant class specifications for their jobs.

5. Grievants applied for their respective advertised positions at Mt. Olive with the full knowledge that it was a maximum security prison, and the work would involve working with inmates.

6. Inmates are assigned to the Maintenance Department to perform a variety of duties.

7. Grievants supervise the inmates assigned to their respective areas of expertise, the majority of the time without the assistance or supervision of a Correctional Officer.

8. Grievant Calvin Maynus, FEMT, is responsible for conducting interviews, hiring and firing inmates, and supervision of inmates when he is alone with them, and has the authority to “write up” the inmates for various infractions.

9. Kenneth Overbay, Mechanic II, supervised inmates without the assistance of a Correctional Officer on his lawn crew and in the equipment shop. He also worked asa laundry supervisor over 25 inmates with no Correctional Officer present. (Mr. Overbay is no longer employed by Corrections).

10. Charles Strickland, Electrician, supervises inmates without the assistance of a Correctional Officer.

11. Grievants all attended the Corrections Academy for 3 weeks of training.

12. Correctional Officers must serve a minimum of 6 weeks at the Corrections Academy.

DISCUSSION

In a non-disciplinary grievance, Grievants bear the burden of proving their claims by a preponderance of the evidence. W. Va. Code § 29-6A-6. Grievants have made two arguments. They allege they are misclassified or, in the alternative, their present salaries do not compensate them for supervising inmates.

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 match 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 a 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 isto ascertain whether Grievants' current classification constitutes the "best fit" for their required duties. Simmons v. W. Va. Dept. of Health and Human Res./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 Serv., Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

Additionally, class specifications are descriptive only and are not meant to be restrictive. Mention of one duty or requirement does not preclude others. W. Va. Admin. Rule, § 4.04(a); Coates v. W. Va. Dept. of Health and Human Res., Docket No. 94-HHR- 041 (Aug. 29, 1994). Even though a job description does not include all the actual tasks performed by a grievant, that does not make the job classification invalid. W. Va. Admin. Rule, § 4.04(d). Finally, Personnel's interpretation and explanation of the classification specifications at issue, if the 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).

Grievants allege the description of duties in the Correctional Officer class specification more closely fits their job duties than their current classifications, or, in the alternative, a new classification should be created to reflect the supervisory nature of their duties, taking into account the risk factor involved in supervising inmates. Pertinent provisions of those class specifications read as follows:

ELECTRICIAN

Nature of Work: An employee in this class performs skilled electrical work in the installation, alteration, repair, and maintenance of electrical equipment and wiring used in communication, light, and power systems. Assignments, supervision, and review are received from BuildingMaintenance

Supervisor. The employee may supervise maintenance staff on a project by project basis. Performs related work as required.

Examples of Work

Installs and maintains security detection and fire alarm systems, distribution systems, cable systems, air conditioning and heating systems, lighting fixtures, ballasts, and timing clocks.

Removes, disassembles, repairs, or replaces electrical units and components such as motors, generators, voltage regulators, control panels, fuses, circuit breakers, switches, wiring, and pumps.

Inspects for damage, tests, analyzes, and repairs electrical circuits, tools, and equipment.

Completes connection of utility electricity to power, lighting, heating, refrigeration, alarm and control equipment, machinery, and circuits.

Plans layout, methods, materials, scope of work, and sequence of operations.

FACILITIES/EQUIPMENT MAINTENANCE TECHNICIAN

Nature of Work: Under general supervision, performs experienced journey level work maintaining and repairing a variety of equipment used in heating, cooling and general operation of public buildings. Uses OHM meters, volt meters, AMP meters, thermometers, hydrometers, conductivity meters, light meters, sound meters, dial indicators, micrometers, and calipers. Calculates and orders material. May be required, with proper training, to work in asbestos or other environmental issues. Must have a valid drivers license. Shift work and call-back work may be required. Performs related work as required.

Examples of Work

Installs, operates, maintains and repairs building environmental control equipment such as centrifugal and reciprocating chillers and associated control equipment, steam and hot water boilers and associated equipment, and air handling and ducting systems.

Installs, operates, maintains and repairs high and low voltage electrical distribution equipment such as high voltage switch gear, power distribution transformers, motor control centers and power distribution panels, gas and diesel powered emergency generators.

Installs, operates, maintains and repairs building plumbing and piping systems such as steam, hot water, heating, cooling, gas, freon, pneumatic, fresh water, waste water and sewage piping; rest room equipment; kitchen and ice making equipment.

Installs, operates, maintains, and repairs interior and exterior lighting systems, electrical circuits and portable equipment.

Operates, maintains, installs, and overhauls pumps for fluid systems.
Uses dial indicators to align pumps, motors and compressors.

Performs chemical analysis of water in chilled water, cooling tower water, hot water and steam closed loop systems according to prescribed instructions; adds needed chemical agents to the water as indicated by test results.

Performs preventive maintenance on heating and cooling equipment such as tightening fan belts, changing filters, and providing lubrication.

Effects routine repairs to equipment by replacing motors, belts, seals, bearing blades, fuses, contractors and packing.

Records data such as temperature, hours of operation and fuel consumed; requests supply of fuel in advance of running out, may use computer information for

data.

Practices safety techniques and procedures on the job and in the shop to prevent fires and provide safety for self and others in the area; applies knowledge of the trade, knowledge of safety standards, signs, barricades and safety equipment (glasses, shoes, belts and masks).

Uses and interprets non-destructive predictive maintenance equipment.

Maintains necessary materials and time-man-hour accounting records of work performed; enters information on time card and job/work order.

Uses computerized work station to determine status of the heating and cooling systems and at regular intervals to insure continuous, proper temperature throughout buildings or complexes and takes appropriate action to correct deficiencies when discovered.

Uses electrical or gas welding, brazing and cutting equipment to accomplish various plumbing and structural repairs or modifications.

Inspects heating and cooling equipment such as meters, safety valves, and pipes for loose connections, corrosion, or other defects and makes necessary repairs.

Reads meters and gauges to verify specified operating conditions.

Orders parts and materials necessary for installation, preventive maintenance, and repair of equipment.

Fabricates and installs basic HVAC ducts and fixtures.

Completes preventive, predictive, and scheduled maintenance records.

May occasionally participate in the snow removal plan by removing snow and ice from building entrances, walks, runways, taxiways, roadways, parking areas, and other designated areas assigned by supervisor using motorized equipment and hand tools.

May occasionally perform grounds maintenance including grass cutting and sod repair; uses hand mowers, riding mowers, backhoe, and dozer to complete assigned duties.

MECHANIC II

Nature of Work: Under general supervision performs full- performance level work in the maintenance, lubrication, repair and overhaulof light equipment, automobiles, trucks and other motor driven equipment. Performs related work as required.

Distinguishing Characteristics: The incumbent in this classification has at least two years of mechanic experience and performs at the full- performance level. This position is not assigned project and team leader responsibility.

Examples of Work

Performs maintenance, repair and minor overhaul on gasoline powered equipment.

Repairs hydraulic brake system, (i.e. rebuild wheel cylinders, install brake shoes, rebuild disc brake calipers, install disc brake pads, replace master cylinders, etc.).

Repairs, replaces and balances tires.

Replaces equipment components such as exhaust systems, cooling systems, universal joints, fuel filters, oil filters, transmission filters, spark plugs, etc.

Repairs minor electrical defects (i.e. wire splices, add on lights, etc.).

Replaces body parts such as locks, lights, windshield wipers, bumpers, adjusts doors, door glasses, and performs minor body adjustments.

Repairs or replaces body parts damaged by collision/corrosion.

Pulls damaged body parts and applies body filler.

Primers, sands, seals, and paints automotive body components.

Performs oil changes and chassis lubrication.

Assists other mechanics in performing major repair work.

Drives vehicle after repairs to test operation.

CORRECTIONAL OFFICER I

Nature of Work: Under direct supervision, performs beginning level Correctional Officer work. The employee is responsible for enforcing rules, regulations and state law necessary for the control and management of offenders and the maintenance of public safety. Performs related work as required.

Distinguishing Characteristics: This is the entry level into the Correctional Officer series. The employee is considered as having trainee status until the apprenticeship program is completed and the supervising officer determines that the Correctional Officer I can function independently.

Examples of Work

Reads and implements training materials, post orders, administrative regulations, log entries and/or memoranda. Obtains information from previous shift regarding activities occurring on that shift.

Observes and monitors offenders to detect unusual or prohibited behavior and maintain custody and control within the correctional facility.

Performs counts at regular, or other, intervals to insure offender accountability. Escorts offenders to and from various facility areas. Searches persons, personal property and areas. Supervises offenders in performing assigned tasks. Conducts/assists with intake/discharge procedures for offenders. Maintains public safety and control of offenders by enforcing rules, regulations and state law. Reports violations. Testifies at internal disciplinary hearings and in court. Transports offenders to and from correctional facilities.

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 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.

Participates in staff, team and committee meetings.

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

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

Performs safety and sanitation inspections. Supervises cleaning of facility areas and inmate hygiene activities.

While there is no dispute that Grievants are responsible for the supervision of inmates in their respective areas, Grievants are not Correctional Officers. The primary purpose and function of their jobs is maintenance work. Grievants have not attended the minimum 6-week Corrections Academy, are not authorized to use firearms, do not perform searches, and are not responsible for the apprehension or control of the inmates in the event of a security breach. While security is involved in their positions, it is not the purpose of their positions. Nevertheless, this Grievance Board has awarded relief to grievants in similar circumstances in Reed v. W. Va. Div. of Corr., Docket No. 97-CORR-127 (May 22, 1998). In that case, grievants were cooks at Pruntytown Correctional Center, and were responsible for supervising inmates. The Administrative Law Judge found that, while the grievants were not misclassified as cooks, they were entitled to compensation for performing duties outside their classification, and ordered them to be compensated the difference between their salary and the starting salary of a Correctional Officer I.

The undersigned takes administrative notice that cooks are assigned to pay grade 4, and Correctional Officer Is are assigned to pay grade 8. The Administrative Law Judge in Reed clearly felt some sort of equitable solution was needed to reward the cooks for their additional duties.

In the instant case, with one exception, Grievants are assigned to pay grades 8 and 9, and some are already being paid higher than the starting salary for Correctional Officer Is. Thus, there is not the same need for equitable relief in this case as there was in Reed.

Furthermore, Grievants have requested, and are pursuing, receiving a pay differential to

compensate them for the dangerous nature of their jobs. West Virginia Division of Personnel Administrative Rule 5.04(f)(4), Pay Differentials, provides that:

> [t]he [State Personnel] Board, by formal action, may approve the establishment of pay differentials to address circumstances such as class- wide recruitment and retention problems, regionally specific geographic pay disparities, apprenticeship program requirements, shift differentials for specified work periods, and temporary upgrade programs. In all cases, pay differentials shall address circumstances which apply to reasonably defined groups of employees (i.e. by job class, by participation in a specific program, by regional work location, etc), not by individual employees.

This Grievance Board has held that the granting of a pay differential in order to address recruitment and retention problems which are limited to a specific group of employees in a specific program is within DOP's discretion and authority. Pishner v. W. Va. Dept. of Health and Human Resources, Docket No. 97-HHR-478 (May 21, 1998); Travis v. W. Va. Dept. of Health and Human Resources, Docket No. 96-HHR-518 (Jan. 12, 1998).

However, the authority to establish a pay differential lies with the State Personnel Board, and the undersigned believes it is more prudent to give the State Personnel Board a chance to remedy this situation, rather than give piecemeal awards through the grievance process.

Grievants presented no other evidence of any other employees within the State classification system who receive a pay differential due to the dangerous nature of their jobs. Indeed, DOP and Corrections presented evidence quite to the contrary. Employees who work with dangerously ill psychiatric patients in State facilities do not receive any type of pay differential for the performance of their duties within that environment.

Unfortunately, Grievants have pointed to no legal authority which would allow the undersigned to grant them a pay differential or a different classification for their duties, even though it is clear that, while the dangerous nature of their jobs does not entitle them to any relief, the evidence does establish that the Grievants perform supervisory duties which are not part of their current classification specifications.

CONCLUSIONS OF LAW

1. In a non-disciplinary grievance, Grievants bear the burden of proving their claims by a preponderance of the evidence. W. Va. Code § 29-6A-6. 2. Grievants have failed to prove they should be reclassified to the position of Correctional Officer I.

3. Grievants have failed to prove the are entitled to a pay differential in accordance with

Division of Personnel Administrative Rule 5.04(f)(4) for the dangerous nature of their positions with the Mt. Olive Correctional Complex.

Accordingly, this grievance is **DENIED**.

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.

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MARY JO SWARTZ

Administrative Law Judge

Dated: June 17, 1998

Footnote: 1

Only DOP submitted proposed findings of fact and conclusions of law.