TIMOTHY LEE,

Grievant,

v. Docket No. 02-ADMN-014

WEST VIRGINIA DEPARTMENT OF ADMINISTRATION/

GENERAL SERVICES DIVISION and

WEST VIRGINIA DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievant, Timothy Lee, filed this grievance against the Department of Administration/ General Services Division ("GSD"), on December 17, 2001, alleging the failure to reclassify him from an Assistant Services Manager 2 ("ASM") to an Assistant Services Manager 3 was incorrect. He requested as relief to be reclassified to an Assistant Services Manager 3 with back pay from April 1, 1999, and a ten percent pay increase. (See footnote 1) After discussion at the Level IV hearing, Grievant amended this requested relief to either the date Grievant first requested DOP to reclassify the position or to ten days before he filed this grievance. This grievance was denied at all lower levels, and Grievant appealed to Level IV on January 22, 2002. The Level IV hearing was held on March 14, 2002. This grievance became mature for decision on May 2, 2002, after receipt of the parties' proposed findings of fact and conclusions of law. (See footnote 2)

Issues and Arguments

Grievant argues he performs the duties of an Assistant Services Manager 3, and West Virginia Division of Personnel's ("DOP") action in denying his request for reclassification was incorrect. Grievant also asserts he performs similar and/or greater duties than two individuals who are currently classified as Assistant Services Manager 3. Respondents argue Grievant cannot be reclassified for two reasons. First, there has been no substantial change in his duties since the date he assumed them, and two, the Assistant Services Manager 2

classification is the "best fit" for his duties. Respondents also aver that each classification is based on the duties of the position, and comparison of individuals should not be allowed as a specific individual could be misclassified. Additionally, Respondents assert Grievant's duties are significantly less than the two employees whom Grievant lists as Assistant Services Manager 3. Respondents note DOP's interpretation and explanation of class specifications must be given great weight unless clearly wrong. Respondents also argue that if this grievance is granted, the relief should be limited to ten days prior to filing the grievance.

After a detailed review of the record in its entirety, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant is currently classified as an Assistant Services Manager 2.

2. Grievant was hired in April 1999, with the classification of Assistant Services Manager 2 as the Director of Environmental Services for GSD. This position is currently titled Grounds/Custodial Manager. 3. On January 1, 2001, Grievant was transferred into his current position, then titled Assistant Director of Operations and Maintenance for GSD. Recently this working title has changed to Manager of Operations and Maintenance.

4. His duties are in the area of Operations and Maintenance for the Capitol Complex, the Tax and Revenue Building in Charleston, and several outlying buildings, in Beckley, Fairmont, Parkersburg, and Clarksburg.

5. For the outlying buildings, he is also responsible for the grounds, security, and vendor contracts.

6. These outlying buildings have building supervisors, and Grievant visits these buildings and supervisors every couple of weeks to check on their situation. He supervises approximately nineteen technical employees and one clerical employee.

7. Jim Bumpus is the current Grounds/Custodial Manager, and Jim Casto is the current Crafts Manager for GSD at the Capitol Complex. These gentlemen are also classified as Assistant Services Manager 2's, and are on the same organizational level as Grievant.

8. Greg Nicholson is employed by the Department of Health and Human Resources

("DHHR") as an Assistant Services Manager 3. He is in charge of all aspects of the Operations and Maintenance of the Diamond Building and the adjacent parking building. He is also in charge of the grounds, vendor contracts, security, and custodians. He also oversees DHHR's statewide mailings. In essence, he is a "mini Director of General Services." Test. Lowell Basford, Level IV Hearing.

9. On an as needed basis, Mr. Casto sends crafts workers to the buildings Grievant supervises. 10. GSD asked DOP to classify a new position, and it suggested the classification of Assistant Services Manager 3 for this new position. This position was to supervise Mr. Bumpus, and be in charge of the Capitol Complex garage and special events.

11. After DOP reviewed the duties of the position and consulted with the appointing authority, the position was classified as an Assistant Services Manager 3.

12. In November 2001, Bill Thaxton was hired for this position.

13. Some of the duties originally assigned to the position, such as overseeing the Capitol Complex Parking Garage, were subsequently reassigned.

14. Mr. Thaxton is currently Mr. Bumpus' supervisor, as well as the coordinator for Capitol Complex special events. (See footnote 3)

The pertinent sections of the two job classifications at issue are reprinted below:

ADMINISTRATIVE SERVICES MANAGER 2

Nature of Work

Under administrative direction, manages an organizational unit providing administrative and support services (i.e., budgeting, accounting, purchasing, personnel, business operations, etc.) in a division. The operations, policy, work processes, and regulatory requirements of the unit are moderately complex, varied and dynamic, requiring some depth of analysis and interpretation of theory, principles, practices, and regulations of a professional or administrative field. Involves the supervision of professional, technical, and clerical employees. The scope of responsibility includes planning the operations and procedures of the unit; directing the work of employees; developing employees; evaluating unit operations; developing budget needs; researching new procedures and improvements;

interpreting statutes, regulations, and policies. Performs related work as required.

Distinguishing Characteristics

The Administrative Services Manager 2 is distinguished from the Administrative Services Manager 1 by the responsibility to manage a complex secondary mission or unitof a primary statewide mission of the department. The allocation of positions to this class is determined by the higher complexity of the work performed relative to that assigned to the Administrative Services Manager 1 class.

Examples of Work

Plans, develops, and executes through professional, technical, and clerical staff, a complex mission of a statewide program or a primary department-wide program.

Directs the daily operations of the staff and may direct regional or other field staff.

Develops and implements operating procedures within regulatory and statutory guidelines; develops and approves forms and procedures.

Renders decisions in unusual or priority situations; consults with supervisors and other state managers in reviewing same.

Evaluates the operations and procedures of the unit for efficiency and effectiveness.

Recommends the selection and assignment of staff to supervisors; conducts interviews and background evaluations for prospective employees.

Determines need for training and staff development and provides training or searches out training opportunities.

Assists in the development of the division and/or agency budget for personnel services, supplies, and equipment.

Researches professional journals, regulations, and other sources for improvements to agency and unit programs and procedures.

Compiles a variety of data related to the operation of the unit and/or the agency.

Interprets statutes, regulations and policies to staff, other managers, and the public.

May serve as a witness in grievance hearings or other administrative hearings.

Prepares reports reflecting the operational status of the unit and or agency programs.

May participate in local conferences and meetings.

ADMINISTRATIVE SERVICES MANAGER 3

Nature of Work

Under administrative direction, manages an organizational section providing administrative and support services in a division. The operations, policy, work processes, and regulatory requirements of the section are complex, varied, dynamic, and requiring substantial depth of analysis and interpretation of theory, principles, practices, and regulations of a professional or administrative field. Involves the supervision of professional, technical and clerical employees. The scope of responsibility includes planning the operations and procedures of the unit; directing the work of employees; developing employees; evaluating unit operations; developing budget needs; researching new procedures and improvements; interpreting statutes, regulations, and policies. Performs related work as required.

Distinguishing Characteristics

The Administrative Services Manager 3 is distinguished from the Administrative Services Manager 2 by responsibility to manage a statewide administrative support function of the department. Positions having responsibility to manage a department-wide support function involving an established professional field (i.e., accounting) including the supervision of a significantly large staff of professional, technical, and clerical employees may also be allocated to this class.

Examples of Work

Plans, develops and executes through professional, technical, and clerical staff, a statewide administrative support program or a primary department-wide program of considerable complexity.

Directs the daily operations of the staff and may direct regional or other field staff.

Develops and implements operating procedures within regulatory and statutory guidelines; develops and approves forms and procedures.

Renders decisions in unusual or priority situations; consults with supervisors and other state managers in reviewing same.

Evaluates the operations and procedures of the unit for efficiency and effectiveness.

Recommends the selection and assignment of staff to supervisors; conducts interviews and background evaluations for prospective employees.

Determines need for training and staff development and provides training or searches out training opportunities.

Assists in the development of the division and/or agency budget for personnel services, supplies, and equipment.

Researches professional journals, regulations, and other sources for improvements to agency and unit programs and procedures.

Compiles a variety of data related to the operation of the unit and/or the agency.

Interprets statutes, regulations and policies to staff, other managers, and the public.

Represents the division or department in grievance hearings and serves as a witness in same.

Prepares reports reflecting the operational status of the unit and or agency programs.

May participate in local conferences and meetings.

Discussion

This grievance raises two issues. One, should Grievant's position be reallocated; and two, is Grievant currently misclassified? Reallocation is defined as "[r]eassignment by the Director of Personnel of a position from one classification to a different classificationon the basis of a significant change in the kind or difficulty of duties and responsibilities assigned to the position or to correct a position misclassification." W. Va. Admin. Rule 3.00(78). Personnel's rules define reclassification as "revision by the State Personnel Board of a class or class series which results in redefinition of the nature of the work performed and a reassignment of positions based on the new definition and may include a change in the title, pay grade, or minimum qualifications for the classes involved." W. Va. Admin. Rule 3.00(77).

Accordingly, in order for Grievant to prevail upon a claim dealing with reallocation he must

demonstrate "a significant change in the kind or difficulty of duties and responsibilities assigned to the position" or establish a need "to correct a position misclassification." W. Va. Admin. Rule 3.00(78). Since all the parties agree there had been no change in Grievant's duties prior to his request for a classification change, the first portion of this definition need not be examined.

To meet his burden of proof on misclassification, Grievant must prove by a preponderance of the evidence that his duties for the relevant period more closely match another cited Personnel classification specification than the one to which he is currently assigned. See generally, Hayes v. W. Va. Dep't of Natural Resources, Docket No. DNR- 88-038 (Mar. 28, 1989). Personnel specifications are to be read in "pyramid fashion," i.e., 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). 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. Dep't of Employment Security,Docket No. 89-ES-101 (Nov. 3, 1989). The "Distinguishing Characteristics" Section is used to differentiate between or among class specifications within a series.

The key to the analysis is to ascertain whether Grievant's current classification constitutes the "best fit" for his required duties. Propst v. W. Va. Dep't of Health and Human Resources/W. Va. Div. of Personnel, Docket No. 93-HHR-371 (Dec. 3, 1993); Simmons v. W. Va. Dep't of Health and Human Resources/W. Va. 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 No. 89-DHS-606, 607, 609 (Aug. 31, 1990). Additionally, class specifications are descriptive only and are not meant to be restrictive. Mention of one quality or requirement does not exclude others. W. Va. Div. of Personnel Rules § 4.04(a). Even though a job description does not include all the actual tasks performed by a grievant it does not make that job classification invalid. Id. at § 4.04(d). Finally, Personnel's interpretation and explanation of the classification specifications should be given great weight unless clearly erroneous. W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993). The West Virginia Supreme Court of Appeals' holding in Blankenship,

supra, presents employees contesting their classification, and the process by which it occurred, with a substantial obstacle to overcome.

Although the positions are similar, the Distinguishing Characteristics Sections of the Assistant Services Manager 2 and 3 class specifications differentiate these positions. The Administrative Services Manager 2 is distinguished from the Administrative Services Manager 1 by "the responsibility to manage a complex secondary mission or unit of a primary statewide mission of the department. The allocations of positions to this class isdetermined by the higher complexity of the work performed relative to that assigned to the Administrative Services Manager 1 class." The Administrative Services Manager 3 is distinguished from the Administrative Services Manager 2 by "responsibility to manage a statewide administrative support function of the department. Positions having responsibility to manage a department-wide support function involving an established professional field (i.e., accounting) including the supervision of a significantly large staff of professional, technical, and clerical employees may also be allocated to this class."

Lowell Basford, DOP's Assistant Director for Classification and Compensation, testified the Assistant Services Manager 2 position was the best fit for Grievant's duties, and he was properly classified. The duties Grievant performs are those expected to be accomplished by an Assistant Services Manager 2. Grievant does not manage a statewide support function of a Department. Rather, he manages a portion of administrative support function for a Division. Grievant also asserted an equal pay for equal work argument. Since Grievant is not misclassified and is paid within his pay grade, this argument is without merit.

Mr. Basford also stated Mr. Nicholson is properly classified as he performs all the support functions for the major building and parking area for Department of Health and Human Resources, as well as overseeing the statewide mail room. Mr. Basford viewed Mr. Nicholson as a "mini Director of General Services." Mr. Basford also testified the Assistant Services Manager 3 classification was the proper classification for the job duties described in the posting for Mr. Thaxton's Assistant Director position, and the position is properly placed within the organizational chart. Mr. Basford also pointed to the coordination ofspecial events at the Capitol Complex, and the necessity for the position to interact with multiple agencies and employees in the planning and scheduling of these activities.

There was some indication that Mr. Thaxton's position, with the current duties and the changes since the posting, might be misclassified. (See footnote 4) The Grievance Board will generally not compare positions, as it cannot be assumed that the position to which a grievant compares himself is properly classified. When a grievant compares himself to others who are employed in a higher classification and are performing similar work, but the others are misclassified, the remedy is not to similarly misclassify the grievant. Akers v. W. Va. Dep't of Tax and Revenue, 194 W. Va. 456, 460 S.E.2d 702 (1995). Kunzler v. Dep't of Health and Human Serv., Docket No. 97 HHR-287 (Jan. 18, 1996). Accordingly, the undersigned Administrative Law Judge cannot base Grievant's classification request on Mr. Thaxton's current duties.

A review of the class specifications reveals Mr. Basford's interpretation that Grievant is properly classified is not arbitrary and capricious or clearly wrong. Thus, according to Blankenship, supra, Grievant cannot be classified as an Assistant Services Manager 3. Grievant has failed to demonstrate DOP is "clearly wrong" in its interpretation of the duties and differences between the two class specifications at issue.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. In a classification grievance, a grievant is required to prove his allegations by a preponderance of the evidence. Crow v. W. Va. Dep't of Corrections, Docket No. 89- CORR-043 (Mar. 29, 1989).

2. Reclassification is defined as "revision by the State Personnel Board of a class or class series which results in redefinition of the nature of the work performed and a reassignment of positions based on the new definition and may include a change in the title, pay grade, or minimum qualifications for the classes involved." W. Va. Admin. Rule 3.00(77).

3. Reallocation is defined as "[r]eassignment by the Director of Personnel of a position from one classification to a different classification on the basis of a significant change in the kind or difficulty of duties and responsibilities assigned to the position or to correct a position misclassification." Id. at (78).

4. The predominant duties of the position in question are class controlling. Collier v. W. Va. Dep't of Health and Human Resources/Off. of Maternal and Child Health and Div. of

Personnel, Docket No. 94-HHR-039 (Sept. 19, 1994); Broaddus v. W. Va. Div. of Human Servs., Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

5. DOP's interpretation and explanation of classification specifications and DOP's rules governing reclassification should be given great weight unless clearly wrong. See W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

6. Personnel's interpretation of the class specifications for the position in question, as they apply to the duties Grievant performs, is not clearly erroneous and, therefore, should be accorded great weight. Blankenship, supra; Kyte v. Dep't of Healthand Human Resources and Dep't of Admin./Div. of Personnel, Docket No. 94-HHR-030 (Sept. 21, 1994).

8. A review of the evidence demonstrates Grievant has not met his burden of proving the Assistant Services Manager 3 position constitutes the "best fit" for his required duties.

9. When a grievant compares himself to others who are employed in a higher classification and are performing similar work, but the others are misclassified, the remedy is not to similarly misclassify the grievant. Akers v. W. Va. Dep't of Tax and Revenue, 194 W. Va. 456, 460 S.E.2d 702 (1995). Kunzler v. Dep't of Health and Human Serv., Docket No. 97 HHR-287 (Jan. 18, 1996).

Accordingly, this grievance is DENIED.

Any party, or the West Virginia Division of Personnel, may appeal this decision to the Circuit Court of Kanawha County, or to the "circuit court of the county in which thegrievance occurred." Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 29-6A-7 (1998). 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

JANIS I. REYNOLDS

ADMINISTRATIVE LAW JUDGE

Dated: May 30, 2002

Footnote: 1

April 1, 1999, was the date Grievant was originally hired by GSD in another position, Director of Environmental Services.

Footnote: 2

Grievant was represented by Attorney H. H. Roberts, Respondent Division of personnel was represented by Assistant Attorney General Robert Williams, and Respondent GSD was represented by Assistant General Counsel Amy Haynie.

Footnote: 3

Grievant would assist in the coordination of any special events that could occur in his outlying buildings, but the parties were not aware of any time that there had been special events scheduled for these buildings.

Footnote: 4

The position was also undergoing changes at the time of the Level IV hearing.