WEST VIRGINIA PUBLIC EMPLOYEES

GRIEVANCE BOARD

MARION BRADLEY,

Grievant,

v. **Docket No. 06-DOH-420**

DEPARTMENT OF TRANSPORTATION/

DIVISION OF HIGHWAYS,

Respondent.

D E C I S I O N

Marion Bradley ("Grievant"), employed by the Division of Highways ("DOH") as a Transportation Crew Supervisor 2, filed a level one grievance on March 29, 2006, in which he alleged "[i]n accordance with the DOH Administrative Rule, my EEO rights have been violated due to the selection of the Monroe County Supervisor position." Roger Martin, Highway Administrator 2, was not authorized to grant the requested relief at level one. The grievance was denied at level two. The complaint was clarified at the level three hearing when Grievant confirmed that he was actually claiming to have been misclassified for a period of time. For relief, Grievant seeks a salary upgrade equal to that of the County Administrator 2 position from March 1, 2004, to March 16, 2006, with back pay, plus interest. The grievance was denied at level three, and appeal to level four was made on November 13, 2006. An evidentiary hearing was conducted by ALJ Janis Reynolds in the Grievance Board's Beckley office on March 26, 2007. Grievant was represented by David Hedrick, and DOH was represented by counsel, Barbara Baxter. The parties agreed to submit proposed findings of fact and conclusions of law by no later than April 26, 2007; however, neither party elected to do so. For administrative reasons, the case was transferred to the undersigned on July 17, 2007, for decision. The following facts have been derived from a preponderance of the evidence made part of the level four record, including a transcript of the level three proceedings.

Findings of Fact

1. Grievant has been employed by DOH, and has held the classification of Transportation Crew Supervisor 2 in Monroe County, at all times pertinent to this grievance.

2. Monroe County Highway Administrator Danny Ellis passed away in early 2004.

3. District Nine Engineer Jim Lagos appointed Nathan Thomas, a Maintenance Engineer Assistant, as Acting Monroe County Administrator on April 15, 2004. Mr. Thomas assumed these duties in addition to his regular assignment which included responsibilities in Summers and Fayette counties. Although he was not in Monroe County on a daily basis, Mr. Thomas was responsible for the overall operations in Monroe County.

4. Grievant approved leave applications, attended a DOH Maintenance Seminar at the Canaan Valley Resort Park in June 2005, scheduled work crews, and signed payroll documents during the period of time in question.

5. The position of Monroe County Administrator was permanently awarded to Roger Martin on March 16, 2006.

Discussion

Grievant argues that he was, in fact, acting as Highway Administrator 2 from March 2004 to March 2006, as evidenced by the fact that he completed the daily duties of assigning work crews, completing payroll forms, and approving leave. He also attended a Maintenance Seminar in June 2005, as Monroe County representative. DOH assertsthat Mr. Thomas was acting County Administrator, and that his presence was not required in Monroe County on a daily basis to oversee operations. DOH further asserts that the duties performed by Grievant during this period of time were within the classification description for Crew Supervisor 2, therefore, he was not entitled to an upgrade.

In a misclassification grievance, the focus is upon the grievant's duties for the relevant period, and whether they more closely match those of another cited classification specification than the classification to which he is currently assigned. *See generally, Hayes v. W. Va. Dep't of Natural Res.*, Docket No. NR-88-038 (Mar. 28, 1989). Personnel job specifications generally contain five sections as follows: first is the "Nature of Work" section; second, "Distinguishing Characteristics"; third, the "Examples of Work" section; fourth, the "Knowledge, Skills and Abilities" section; and finally, the "Minimum Qualifications" section. These 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. Dep't of Employment Security*, Docket No. 89-ES-101 (Nov. 3, 1989).

The key to the analysis is to ascertain whether the employee's current classification constitutes the "best fit" for his required duties. *Simmons v. W. Va. Dep't of Health and Human Res.*, 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). Importantly, Personnel's interpretation andexplanation of the classification specifications at issue 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).

The Division of Personnel classification descriptions for the two positions in question are as follows.

TRANSPORTATION CREW SUPERVISOR 2

Nature of Work

Under limited supervision, an employee in this class supervises all field operations for a county maintenance organization, including organization of crews, assignment of crew chiefs, allocation of equipment, assignment of overtime, and related matters. May be exposed to hazardous working conditions and inclement weather. Performs related work as required.

Distinguishing Characteristics

Supervisory responsibility at this level includes supervision of all subordinate crew supervisors and/or crew chiefs in the county/area. At the lower level, such responsibility is for a subgroup of crew chiefs within the county/area.

Examples of Work

Schedules maintenance or repair projects for the week, assigns crews, coordinates equipment, and determines materials needed on the projects.

Oversees and checks the progress and quality of work performed by the crews through direct observation or review of crew leader reports.

Reviews crew supervisor and leader records of time, equipment, and materials and Incorporates into reports of individual projects.

Identifies equipment for repairs through review of employee records.

Checks complaints on roads and inspects highways to determine repair work needed.

Oversees the progress and checks the quality of work performed by crews.

Keeps records of materials and equipment used on the project.

Keeps time and attendance records of the crew.

Completes a daily report on the assigned project and submits to supervisor.

Trains crew members on individual tasks of maintenance and repair projects.

Knowledge, Skills and Abilities

Knowledge of highway or bridge maintenance techniques.

Knowledge of the standard safety procedures of the Division of Highways.

Knowledge of the maintenance standards of the Division of Highways.

Knowledge of the capabilities of construction and maintenance equipment.

Knowledge of the standard safety procedures used in structural steel construction.

Knowledge of welding principles and techniques for inspections of welds.

Ability to operate equipment used in highway and bridge maintenance and repair.

Ability to read and write.

Ability to understand and follow oral and written instructions.

Ability to maintain routine records.

Ability to perform basic arithmetic calculations to determine amounts of materials needed.

Ability to maintain effective working relationships with others.

Ability to schedule and coordinate work crews and equipment to meet project deadlines and to train and lead a crew in the tasks of a project.

Ability to supervise highway maintenance work crews.

Ability to compile routine reports from the records of individual projects.

Ability to climb high steel structures.

Minimum Qualifications

Training: Graduation from a standard high school or equivalent

Experience:

Five years of full-time or equivalent part-time experience in highway construction or maintenance, or

bridge or structural steel construction, one year of which must have been in a supervisory capacity.

Special Requirement:

A valid West Virginia Motor Vehicle Operator's License or a Commercial Driver's License may be required after employment.

HIGHWAY ADMINISTRATOR 2

Nature of Work

Under general direction performs full performance level work administering highway maintenance operations in a county in accordance with established procedures andpolicies of the Division, national highway standards, and legal requirements set forth by regulatory agencies such as the U. S. Environmental Protection Agency, the West Virginia Divisions of Environmental Protection and Natural Resources, the U. S. Army Corps of Engineers and the West Virginia Department of Agriculture. Performs related work as required.

Distinguishing Characteristics

The distinction between the levels of incumbents in this class series is based on the level of complexity of the assignment and/or responsibility for all maintenance activities in a specific county. A level 2 administrator is responsible for a specialized maintenance function of advanced complexity, or is responsible for all maintenance activities in a county, while Level 3 the administrator is responsible for a district wide maintenance function requiring expert technical knowledge and skill, or may supervise lower level Highway Administrators.

Examples of Work

Directs and implements a scheduled highway maintenance program within operating annual budget, including the security of materials and equipment.

Ensures maximum utilization of equipment, personnel and materials.

May estimate requirements of paving projects in assigned area.

Schedules or approves weekly maintenance activities, work crew assignments, equipment and materials.

Supervises subordinate staff.

Conducts performance reviews of subordinate staff.

Ensures compliance with Division of Highways established schedules, procedures, and policies as

well as any federal regulations applied.

Responds and resolves citizen or employee complaints.

May appear as witness for Division in legal actions.

May prepare projected budget, expenditure schedule.

Serves as a member of a District Equipment Review Board.

Attends safety meetings, management conferences.

Plans and implements SRIC (Snow Removal Ice Control) program for area.

Performs field inspections of bridges, roads and crews.

Knowledge, Skills and Abilities

Knowledge of the maintenance standards and procedures of the Division of Highways.

Knowledge of highway equipment and its capabilities; the material and parts used in roadway maintenance.

Knowledge of standard safety procedures and internal operating policies and procedures of the Division of Highways.

Knowledge of OSHA and EEO regulations. Ability to schedule and organize maintenance crews, supervise personnel.

Ability to estimate manpower, materials, and equipment to complete a scheduled maintenance activity.

Ability to read blueprints.

Ability to maintain effective working relationships.

Minimum Qualifications

Training: Bachelor's degree from an accredited college or university with a degree in engineering, business or public administration, or related field.

Substitution: Experience as described below may be substituted for the required training on a year for year basis.

Experience: Four years of full-time or equivalent part-time paid professional or managerial experience in business administration, public administration, transportation, construction, manufacturing, mining or the armed services.

Special Requirement: A valid West Virginia driver's license is required.

Because Mr. Thomas was not always present in Monroe County, and because he was responsible for ensuring the completion of the day-to-day functions of DOH, it is understandable why Grievant believes he is entitled to a temporary upgrade. However, the Transportation Crew Supervisor 2 classification description specifically provides that he shall supervise all field operations, including organizing and assigning crews, scheduling maintenance or repair projects for the week, checking the progress and quality of work performed by the crews, and keeping the time and attendance records of the crew. The only matter raised by Grievant which falls within the Highway Administrator 2 classification description was his attendance at a Maintenance Seminar. This was explained by DOH as having occurred due to the fact that Mr. Thomas was already slotted to attend, leaving an opening. The fact that Grievant was permitted to attend the seminar due to the vacancy created by Mr. Thomas's multiple assignments does not entitle him to a temporary upgrade. While Grievant undoubtedly feels that heassumed more responsibility during this period of time, the duties he performed were appropriate for his classification.

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

Conclusions of Law

1. In a misclassification grievance, the focus is upon the grievant's duties for the relevant period, and whether they more closely match those of another cited classification specification than the classification to which he is currently assigned. *See generally, Hayes v. W. Va. Dep't of Natural Res.*, Docket No. NR-88-038 (Mar. 28, 1989). 2. Personnel job 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" sectionof a classification specification is its most critical section. *See generally, Dollison v. W. Va. Dep't of Employment Security*, Docket No. 89-ES-101 (Nov. 3, 1989).

3. The key to the analysis is to ascertain whether the employee's current classification constitutes the "best fit" for his required duties. *Simmons v. W. Va. Dep't of Health and Human Res.*, 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).

4. The duties performed by Grievant from March 2004 through March 2006 fall squarely within the classification description for Transportation Crew Supervisor 2. 5. Grievant has failed to prove that he is entitled to an upgrade to Highway Administrator 2 for the period of time in question.

Accordingly, the 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 the grievance occurred." Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 29-6A-7 (1998)(repealed) (*but see Executive Order No. 2-07*, May 8, 2007). 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.

DATE: AUGUST 8, 2007

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE