THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES

GRIEVANCE BOARD

BRAD SILER,

Grievant,

v. **Docket No. 06-DJS-331**

Denise M. Spatafore

Administrative Law Judge

DIVISION OF JUVENILE SERVICES/

DAVIS CENTER, and

DIVISION OF PERSONNEL,

Respondents.

DECISION

Brad Siler ("Grievant") filed this grievance on November 9, 2005, alleging he should be reallocated from Correctional Officer V ("Lieutenant") to Correctional Officer VI ("Captain"), as a result of additional duties added to his position. After denials at all lower levels, Grievant appealed to level four on October 5, 2007. A hearing was held in Elkins, West Virginia, on March 5, 2007. Grievant was represented by counsel, Pat A. Nichols; the Division of Juvenile Services ("DJS") was represented by counsel, Steven R. Compton; and the Division of Personnel ("DOP") was represented by Karen O'Sullivan Thornton, Assistant Attorney General. This matter became mature for consideration upon receipt of the parties' fact/law proposals on April 16, 2007. (See footnote 1)

Synopsis

Grievant contends that, due to additional job duties he has taken on over the past few years, his position should be reallocated to Correctional Officer VI. However, the additional duties Grievant is

performing do not add complexity to his job duties, and his current responsibilities still fit within the job description for Correctional Officer V. Grievant has failed to establish that he is entitled to reallocation.

Findings of Fact

1. Grievant has been employed by DJS at the Davis Center since 1996, starting as a Correctional Officer I. The Davis Center is a small juvenile detention facility.

2. Over the years, Grievant has received promotions, most recently becoming a Lieutenant (Correctional Officer V) in 2002. At Davis Center, this position is considered the Chief Correctional Officer for the facility.

3. When Grievant was first promoted to Lieutenant, he became the chief security officer, having ultimate supervisory authority over 24 correctional officers. He was placed in charge of all issues regarding the officers' scheduling, post orders, leave, and evaluations.

4. Until sometime in early 2006, Grievant was also in charge of the K-9 unit, which consisted of two officers who work with dogs trained in escapes and drug investigations. However, those duties are no longer assigned to Grievant's position.

5. Since becoming a Lieutenant, Grievant has taken on the following additional duties:

-- Supervision of the kitchen staff

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Functioning as the superintendent's designee in her absence, making decisions on her behalf if necessary, which occurs on an occasional, intermittent basis --

In 2004, Grievant revised the existing operational procedures for the facility, some of which were out of date; however, this was a one-time event, and the procedures are only reviewed and revised once each year

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Serves on promotion boards and chairs interview committees for new officers

6. The classification specification for Correctional Officer V, Grievant's current classification, provides in pertinent part:

Nature of Work Under general supervision, performs administrative or supervisory duties as a shift

or unit supervisor, Chief Correctional Officer, or in a mid-level specialized supervisory or administrative position. The officer manages or supervises the enforcement of rules, regulations and state law necessary for the control and management of offenders and the maintenance of public safety. The officer plans, directs and reviews the work of subordinates or performs administrative duties related to the security or operation of a specialized unit. Performs related work as required.

Distinguishing Characteristics Factors such as size of correctional officer complement or offender population are considered in determining assignment of a position to this rank. Holds the assigned rank of Lieutenant.

Examples of Work Ensures security of perimeter and points of ingress/egress. Identifies posts and ensures adequate coverage. Ensures controls are in place regarding searches to detect and discourage the introduction, manufacturing and trafficking. Functions as the designee for chief executive officer of the operational unit, as directed. Maintains public safety and control of offenders through efficient management of correctional officer work force. Conducts, assigns, supervises and/or evaluates required security audits and inspections and takes appropriate follow-up action. Chairs or participates in staff team or committee meetings. Conducts, assigns, supervises and or evaluates inquiries or investigations and takes appropriate action. Participates in or conducts segregation reviews. Testifies at internal disciplinary hearings and in court. Ensures monitoring of disruptive and high profile offenders. Assists in selection, hiring and promotion of staff. Prepares work schedules, makes required adjustments and maintains leave, overtime and attendance records. Ensures equitable rotation of correctional officers. Ensures subordinates complete required training. Ensures performance evaluations are completed. Delegates and monitors subordinates assignments.Encourages staff mentoring, development and advancement. Listens to problems and concerns of staff and resolves them through appropriate action. Makes referrals to employee assistance programs. Recommends staff commendations and disciplinary actions. Recognizes and directs the response to potential or actual emergencies such as, but not limited to fires, physical altercations, disturbances or escapes in a manner consistent with policy procedure and state law. Ensures offender escort/transport security. Ensures key and weapon control. Handles and operates security/communications equipment and/or firearms as required and in a manner consistent with policy procedure.

7. The classification specification for Correctional Officer VI provides, in pertinent part:

Nature of Work Under general supervision, performs administrative duties as shift or unit supervisor, Chief Correctional Officer or in a related administrative capacity. The officer manages the enforcement of institution rules and regulations necessary for the control of offenders and the maintenance of public safety. The officer plans, directs and reviews the work of subordinates to ensure the overall orderly function of a facility or a specialized unit. Performs related work as required.

Distinguishing Characteristics Factors such as complexity of duties, size of correctional officer complement or offender population assist in determining assignment of this rank classification to a specific position. Holds the assigned rank of Captain.

Examples of Work Ensures security of perimeter and points of ingress/egress. Identifies posts and ensures adequate coverage. Ensures controls are in place regarding searches to detect and discourage the introduction, manufacturing and trafficking. Functions as the designee for chief executive officer of the operational unit, as directed. Maintains public safety and control of offenders through efficient management of correctional officer work force. Conducts, assigns, supervises and/or evaluates required security audits and inspections and takes appropriate follow-up action. Conducts, assigns, supervises and or evaluates inquiries or investigations and takes appropriate action. Participates in or conducts segregation reviews. Testifies at internal disciplinary hearings and in court. Ensures monitoring of disruptive and high profile defenders. Assists in selection, hiring and promotion of staff. Prepares work schedules, makes required adjustments and maintains leave, overtime andattendance records. Ensures equitable rotation of correctional officers. Ensures subordinates complete required training. Ensures performance evaluations are completed. Delegates and monitors subordinates assignments. Encourages staff mentoring, development and advancement. Listens to problems and concerns of staff and resolves them through appropriate action. Makes referrals to employee assistance programs. Recommends staff commendations and disciplinary actions. Recognizes and directs the response to potential or actual emergencies such as, but not limited to fires, physical altercations, disturbances or escapes in a manner consistent with policy procedure and state law. Ensures offender escort/transport security. Ensures key and weapon control. Handles and operates security/communications equipment and/or firearms as required and in

a manner consistent with policy procedure.

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 match another cited DOP classification specification than that under which he is currently assigned. *See generally, Hayes v. W. Va. Dep't of Natural Res.*, Docket No. NR- 88-038 (Mar. 28, 1989). DOP 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. Dep't of Health*, Docket No. 90-H-444 (Apr. 22, 1991); *See generally, Dollison v. W. Va. Dep't of Empl*. Security, Docket No. 89-ES-101 (Nov. 3, 1989).

DOP has reviewed Grievant's job duties and determined that he is appropriately classified as a Lieutenant. DOP's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. *See W. Va.Dep't of Health v. Blankenship*, 189 W. Va. 342, 348, 431 S.E.2d 681, 687 (1993). As explained by Lowell Basford, Assistant Director of DOP's classification and compensation section, the duties of Lieutenant and Captain are extremely similar and overlapping, and both may function as the Chief Correctional Officer of a facility. However, the major distinction between the two is in the Nature of Work section, which designates the Lieutenant as a mid-level position, whereas the Captain may be used in a “related administrative capacity.” Mr. Basford testified that this particular phrase refers to positions which may be used in a statewide administrative position, rather than a facility-related security function. In addition, as can be seen in the Distinguishing Characteristics sections of both specifications, the size of the facility is a major distinguishing factor. Because Davis is a small facility, its chief security officer may not be ranked higher than a Lieutenant, whereas larger facilities would have more personnel and higher potential ranks for their officers.

As to the additional duties Grievant has taken on in recent years, Mr. Basford explained that these duties are either encompassed within his existing classification, or they add only volume, not

complexity to his job. For example, Grievant has taken over the supervision of the kitchen staff, which is a job duty normally assigned to a position in a much lower pay grade than Grievant's, so it does not make his job more complex. As recently discussed in *Keys v. Department of Environmental Protection*, Docket No. 06- DEP-307 (Apr. 20, 2007) the key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." An increase in number of duties and the number of employees supervised does not necessarily establish a need for reallocation. *Kuntz/Wilford v. Dep't of Health and Human Res*., Docket No. 96-HHR-301(Mar. 26, 1997). "An increase in the type of duties contemplated in the [current] class specification, does not require reallocation. The performing of a duty not previously done, but identified within the class specification also does not require reallocation." *Id*. Accordingly, the undersigned does not find that Grievant has established entitlement to reallocation.

The following conclusions of law support this Decision.

Conclusions of Law

1. 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 match another cited DOP classification specification than that under 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. DOP 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. Dep't of Health*, Docket No. 90-H-444 (Apr. 22, 1991); *See generally, Dollison v. W. Va. Dep't of Empl*. Security, Docket No. 89-ES-101 (Nov. 3, 1989).

3. The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." An increase in number of duties and the number of employees supervised does not necessarily establish a need for reallocation. *Kuntz/Wilford v. Dep't of Health and Human Res*., Docket No. 96-HHR-301 (Mar. 26, 1997). "An increase in the type of duties contemplated in the [current] class specification, does not require reallocation. The performing of a duty not previously done, but identified within the class specification also does not require

reallocation." *Id.*

4. Grievant has not met his burden of proof that there has been a significant change in the kind or level of duties and responsibilities to warrant a reallocation.

For the foregoing reasons, 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 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). 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: May 29, 2007

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DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

It appears that DOP's submission was mailed to the Grievance Board's Charleston office and received there on April 9, 2007. However, it was not forwarded to the Westover office until April 16, 2007.