THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

JAMES RICHARDS, et al.,

Grievant,

v. DOCKET NO. 05-HHR-456

DEPARTMENT OF HEALTH AND
HUMAN RESOURCES/BUREAU FOR
CHILDREN AND FAMILIES
and DIVISION OF PERSONNEL,

Respondents.

DECISION

Grievants (See footnote 1) filed this grievance at various points throughout April 2005. Their consolidated statement of grievance reads:

Grievants believe they are improperly classified by the West Virginia Division of Personnel as Social Service Worker 2 (9587) and should be properly classified as either Human Resources Specialist, Senior (9591) or as an alternative classification, Human Resources Specialist (9589).

Their stated relief sought is:

Grievants wish to be reclassified as either Human Resources Specialist, Senior (9591) or as an alternative classification, Human Resources Specialist (9589) and that the appropriate pay be awarded to ten days prior to the initial filing of this grievance.

A two day level four hearing was held in the Grievance Board's Charleston office. The first day of hearing was held on September 22, 2006, and the second day was held on January 8, 2007. Joseph Albright, Esq., represented seventeen of the Grievants. (See footnote 2) TheDepartment of Health and Human Resources ("DHHR") was represented by B. Allen Campbell, Senior Assistant Attorney

General, and the Division of Personnel ("DOP") was represented by Karen Thornton, Assistant Attorney General. This matter became mature for decision on March 2, 2007, the deadline for filing of the parties' proposed findings of fact and conclusions of law. (See footnote 3)

Synopsis

Grievants assert they are not properly classified as a Social Service Worker ("SSW") 2, and should be classified as either Human Resource Specialist ("HRS") or Human Resource Specialist, Sr. ("HRS Sr."). Respondents assert Grievants are appropriately classified.

Based on a preponderance of the evidence, I find the following material facts have been proven:

Findings of Fact

1. Grievants are employed by DHHR as SSW 2 and Social Service Supervisors ("SS Sup."). (See footnote 4)

2. At level 3, this case was placed in abeyance while Grievants completed Position Description Forms ("PDF") and submitted them to DOP, as this had not previously been done. 3. Grievants who are classified as SSW 2s listed the majority of their duties as "Registration, regulation and ongoing regulation of child care providers that require different levels of regulatory oversight." SSW 2s also begin the process of background checks for providers, but ultimately that is done in concert between the State office and the State Police.

4. Grievants classified as SS Sups. listed a majority of their duties as administrative oversight, review and approve work completed in the computer system, and serve on various committees.

5. SSW 2s are responsible for only a couple of counties, while SS Sups. are considered to be acting regionally.

6. The State office is responsible for developing programs, policy and regulations. Grievants may provide input on an *ad hoc* basis to the State office, but Grievants have no authority over the final product or decisions made by the State office.

7. It is not uncommon for Grievants to serve on statewide committees. This is an intermittent responsibility.

8. DOP reviewed the PDFs and determined each Grievant was properly classified.

9. The classification specifications for a Social Service Worker 2 are as follows:

Nature of Work

Under general supervision performs full performance level social service work in providing services to the public in one or multiple program areas. Work requires the use of a personal automobile for local travel. Employee is subject to on-call status during non-business hours. May be required to deal with situations which are potentially dangerous to client and worker. Performs related work as required.

Distinguishing Characteristics

All three levels of Social Service Worker provide professional social services to the public. The Social Service Worker 2 provides these services in one or more of the following areas: nursing home placement, adult family care, pre-institutionalization, admission and aftercare, generic social services, homeless, reception social work, or other services at this level.

Examples of Work

Maintains a caseload for programs and services at this level.
Takes, evaluates and approves client applications for services; explains services and eligibility criteria.
Recruits, evaluates and approves providers of services at this level; conducts on-site evaluation of provider facilities and services.
Develops client service plan designed to accomplish habilitation and rehabilitation of the client and to provide social services to assist client in attaining social, educational and vocational goals.
Interacts with a variety of professional practitioners in the areas of social work, mental health, developmental disabilities, education and counseling and guidance to assess client's needs and provide appropriate services.
Counsels clients/families in achieving goals of client service plan. Speaks before community organizations and groups regarding services available and to develop community resources.
Writes report on case findings and summaries of client social and financial circumstances.

10. The class specifications for Social Service Supervisor are:

Nature of Work

Under general supervision, performs complex administrative, supervisory, and advisory services in

the development and maintenance of specialized human resources programs. Responsible for planning, organizing, and leading a comprehensive program of staff activities, and coordinating the work of the agency, volunteer organizations, and public agencies. Work requires the use of a personal automobile for local travel. Employee is subject to on-call status during non-business hours. May be required to deal with situations which are potentially dangerous to client and worker. Performs related work as required.

Examples of Work

Develops acceptable standards of casework and supervises the maintenance of such standards.Provides administrative supervision of employees to insure uniform application of all laws, regulations, policies, and procedures relating to any or all social service programs.
Evaluates effectiveness of social service programs.
Coordinates work with volunteer organizations and other public agencies.
Counsels and guides subordinates in the development of individual or group programs for the rehabilitation of clients.

11. The class specifications for Health and Human Resources Specialist is:

Nature of Work

Under general supervision, performs work at the full-performance level by providing development of program, as well as associated policy and procedures based on standards and regulation, administrative oversight of and complex technical assistance with a program or a particular major component of a statewide program, or major technical area specific to or characteristic of the Department of Health and Human Resources. Assures compliance with federal, state, and local regulations governing the program or technical area. Uses independent judgement to determine appropriate action taken to achieve desired results. Has responsibility for providing consultation on highly complex individual problem situations. Develops and delivers training programs related to assigned program or component. Monitors and evaluates the operation of the assigned program or program component. Exercises considerable latitude in determining approaches to problem solving. Work may be performed independently and/or in conjunction with other program or technical area staff. Performs related work as required.

Distinguishing Characteristics

The Health and Human Resources Specialist is distinguished from the Health and Human Resources Associate by the responsibility for development and management of a statewide program or operation area or a significant segment of a major statewide program or operation area. This class is distinguished from the Health and Human Resources Specialist, Senior, by the fact that although the Specialist may oversee clerical or support staff in relation to the completion of his/her own work, this class does not function in a regularly assigned lead or supervisory capacity over professional classes as a significant segment of their total assignment nor does he/she have responsibility related to entire programmatic or operational systems.

Examples of Work

Analyzes laws and regulations governing program or technical area and applies them appropriately to resolve problems and assure compliance.Interprets laws and regulations governing program or technical area for participants and staff.
Monitors changes in laws and regulations and advises participants and other staff.
Confers with inter- and intra-agency personnel to transact business or discuss information.
Collaborates on determining need for changes in procedures, guidelines, and formats; devises resolutions and changes, and monitors success.
Drafts program manuals, clarifying the wording and describing new procedures, etc., accurately.
Represents the program in the area of assignment with the agency and outside entities.
Has contact with federal, state, local program representatives and participants, or technical area personnel.
Completes related reports; may compile special and/or statistical reports, analyzing data and interpreting results.
May oversee the work of support staff or other specialists in relation to the completing of specific assignments.

12. The class specifications for Health and Human Resources Specialist, Senior

is as follows:

Nature of Work

Under general supervision, performs work at the advanced level by providing administrative coordination of and complex technical assistance in a component of a major statewide program, as statewide program in its entirety, or a major technical area specific to or characteristic of the Department of Health and Human Resources. Acts as liaison to facilitate problem resolution and assure compliance with federal, state, and local regulations, laws, policies, and procedures governing the program or technical area. Has primary responsibility for developing standards for major systems and for monitoring and/or evaluation of major complex systems of multi program operations. May consult on highly complex individual situations that potentially have significant impact on systems or involve sensitive legal issues. Has responsibility for development and issuance of comprehensive training programs to insure basic competency and continued development of skills, knowledge and abilities relevant to the systems for which she/he are assigned responsibility. Uses independent judgement in determining action taken in both the administrative and operational aspects of the area of assignment. Exercises considerable latitude in varying methods and procedures to achieve desired results. May supervise or act as lead worker for other professional staff. Performs related work as required.

Distinguishing Characteristics

The Health and Human Resources Specialist, Senior, is distinguished from the Health and Human Resources Specialist by the broader scope of administrative oversight and responsibility for planning and operational aspects of a system of program or technical areas. This level may function in a regularly assigned lead or supervisory capacity over professional, paraprofessional and clerical classes and, if not, must have responsibility for the conceptualization and development of major complex program and/or operational systems.

Examples of Work

Interprets federal and state laws, regulations, and guidelines for staff which provides services; guides other in developing and utilizing plans and recommends methods of improvement.
Effects or recommends operational changes to facilitate efficient and effective accomplishment of goals or deliver of service.

Informs director of technical area, program, or service deficiencies and recommends improvements.

Consults with other program or technical area staff, supervisors, or managers concerning projects and priorities.

Develops rules, policies, and legislation regarding specific work projects.

Reads, reviews, and responds to correspondence or distributes to appropriate staff.

Develops research, information, or training programs.

Evaluates program or technical area effectiveness.

Writes, edits, or contributes to policy and procedure manuals.

Has contact with federal, state, local program representatives and officials, Department of Health and Human Resources management and staff, and legislature.

Plans and develops budget requests and short-and-long range work plans.

May lead or supervise professional and support staff.

Discussion

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 DOP classification specification than that under which they are 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).

Grievants assert they are misclassified, and have given two different positions they believe may be a more appropriate fit given their duties. DOP has reviewed the PDFs submitted by Grievants and determined they are appropriately classified. 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).

Lowell Basford, Assistant Director, Classification and Compensation Division of DOP testified the individual PDFs were completed in such a way that the duties of the unit were extrapolated onto an individual position. DOP's role is to classify the position, not the unit. Mr. Basford classified the position based on the predominate duties, but he also took into consideration the organizational unit under which Grievants worked. Also, DOP reviewed the comments of their supervisor which indicated that a number of duties had been reassigned either to a worker at the state office level or to the individual districts.

Grievants' duties are more closely related to those of SS 2s and SS Supp. It does appear there have been minor changes in the job duties and responsibilities over theyears. However, those changes have not been significant and have not constituted a change in the predominant duties the Grievants perform.

The following conclusions of law support this discussion:

Conclusions of Law

1. 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 DOP classification specification than that under which they are 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. 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).

4. Grievants did not meet their burden of proving by a preponderance of the evidence that their duties for the relevant period more closely match another cited DOP classification specification than

that under which they are currently assigned. For the foregoing reasons, this grievance is hereby **DENIED**.

This decision is final upon the parties and is enforceable in the Circuit Court of Kanawha County. Any party may appeal this decision to the Circuit Court of Kanawha County within thirty days of receipt of the decision. This decision is not automatically stayed pending the outcome of the appeal. *W. Va. Code* § 6C-2-5(c). Neither the West Virginia Public Employees Grievance Board nor any of its administrative law judges is a party to such appeal and should not be so named.

DATE: April 27, 2007

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Wendy A. Campbell

Administrative Law Judge

Footnote: 1

James Moore, II, James Richards, Timothy Lepley, Mary Grutto, Margaret Sue Kelley, Lissa Newton, Janet Ocheltree, Bruce Patalano, Catherine Schumaker, Fay Magner, Shelia Hott, Pearl Montgomery, Winfield Francis, Gloria Fergus, Dennis McGraw, Vernie Brown, Teresa Perry, Debra Campbell, and Annabelle Edwards.

Footnote: 2

The following were represented by Mr. Albright: James Moore, II, James Richards, Timothy Lepley, Mary Brutto, Margaret Sue Kelley, Lissa Newton, Janet Ocheltree, Bruce Patalano,Catherine Schumaker, Fay Magner, Shelia Hott, Pearl Montgomery, Winfield Francis, Gloria Ferguson, Vernie Brown, Debra Campbell, and Annabelle Edwards.

Footnote: 3

DHHR and DOP jointly filed proposed findings of fact and conclusions of law. No filing was received from Grievants' attorney.

Footnote: 4

Two Grievants, James Moore and Vernie Brown, are SS Sups., all other Grievants are SSW 2s.