THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

PATRICIA CAYE and

ELLEN STICKLEY,

Grievants,

v. DOCKET NO. 2008-0838-CONS

DEPARTMENT OF HEALTH AND

HUMAN RESOURCES/BUREAU FOR

CHILD SUPPORT ENFORCEMENT and

DIVISION OF PERSONNEL,

Respondents.

DECISION

Grievants Patricia Caye and Ellen Stickley filed separate grievances in August 2007, alleging they were each misclassified as Administrative Secretaries, when their positions should be classified as Executive Secretaries. As relief, they are seeking reclassification and 15% pay increases. The grievances were consolidated at level one due to their similarity.

A level three hearing was held in the Grievance Board's Charleston office on July 30, 2008. Grievants both appeared *pro se*, Respondent Department of Health and Human Resources/Bureau for Child Support Enforcement ("BCSE") was represented by counsel, B. Allen Campbell, Senior Assistant Attorney General, and Respondent Division of Personnel ("DOP") was represented by counsel, Karen O'Sullivan Thornton, Assistant Attorney General. The matter became mature for decision on September 4, 2008, the deadline for the parties to submit their proposed findings of fact and conclusions of law.

Synopsis

Grievants claimed they were misclassified as Administrative Secretaries, because they are each assigned to support a Deputy Commissioner within the DHHR, and they believed other Deputy

Commissioners were supported by Executive Secretaries. They didnot meet their burden of proving that the job duties assigned to their specific positions more closely matched the Executive Secretary class specifications, so their grievances are denied.

Findings of Fact

Based on a preponderance of the evidence contained in the records and adduced at the hearing, I find the following material facts have been proven:

1. Grievants are employed by the BCSE as Administrative Secretaries, pay grade 10.

2. Grievant Caye is secretary to Garret M. Jacobs, Deputy Commissioner and General Counsel, assigned to the Central Operations Unit of the BCSE.

3. Deputy Commissioner Jacobs directs the central Customer Service Unit and the Locate Unit, the Central Auditing Unit, the Training Unit, the Central Registry and the Employer Relations Unit. He also directs the Legal Service Unit, which is a policy-making section for the field staff, and which prepares cases on appeal to the West Virginia Supreme Court of Appeals. It also drafts legislation, renders opinions on various legal matters, and reviews and drafts contracts, memoranda and cooperative agreements.

4. Grievant Stickley is secretary to David M. Welker, Deputy Commissioner, assigned to the Field Operations Unit of the BCSE. Deputy Commissioner Welker also serves as a Field Attorney, representing the BCSE in family and circuit courts.

5. The Field Operations Unit directs the work of all field staff, including five supervising attorneys and legal staff. Deputy Commissioner Welker also directs the preparation of cases for filing and argument in the courts, and coordinates the work of technical staff to ensure the computer system meets all federal and state requirements.

6. The DOP class specification for Administrative Secretary specifies, in part:

> **Nature of Work**
>
> Under general direction, performs advanced level work by assuming responsibility for adjunctive administrative duties under the guidance of an administrator. Applies in-depth knowledge of program areas, the mission of the division, and the administrator's jurisdiction, policies and views. Provides support services to administrator by supplying specific information, composing reports and correspondence, and taking initiative to recommend actions, or by taking action in modifying and/or improving unit procedures, policies, rules and regulations. Depending on size of organizational unit, may offer some clerical support to administrative superior, often in matters which must

remain confidential. Typically performs administrative support for an agency/division administrator. Performs related work as required.

Distinguishing Characteristics

The paraprofessional work at this level is generally confidential and requires a working knowledge of program areas within the division or organizational unit to which assigned. Administrative support duties are predominant; clerical/ secretarial duties typically comprise less than 20% of work time.

7. The DOP class specification for Executive Secretary, which does not have a “Distinguishing Characteristics” section, specifies, in part:

Nature of Work

Under limited supervision, performs highly responsible advanced level administrative support work in providing assistance to a department secretary. Work involves independent responsibility for making limited policy interpretations in dealing with the public and acting with authority on office management and administrative functions in the absence of the supervisor. Responsibilities include high level secretarial, clerical, office management and general administrative duties with primary emphasis on relieving the supervisor of administrative details. Work is performed in strict confidence and in accordance with modern professional secretarial principles and techniques. Supervision may be exercised over subordinate office clerical personnel. Performs related work as required.

8. Both Grievants submitted self-completed Position Description forms to the DOP for review, and the DOP, based on its review of the Position Description forms, found that the positions were properly classified.

9. Grievant Caye's Position Description Form lists, among lesser duties:

45%
Type correspondence, reports, contracts, initial composition of highly complex RFPs and RFQs in preparation for obtaining departmental bids, memorandums of understanding, narratives, research and draft lien releases, research cases and draft workers' compensation letters to claimants' counsels, and distribute and maintain bankruptcy notices. Initiates travel arrangements.

15%
Independently compose and type correspondence for the Deputy Commissioner's signature.

10%

Prepare and maintain BCSE's organizational charts and other monthly, quarterly reports. Verification of confidential information to Monthly Staffing Report.

10%

Maintain Deputy Commissioner's calendar and schedule conferences and meetings correlating convenient time frames for all parties involved.

10. The Position Description form for Grievant Stickley lists as her predominate duties:

45%

I routinely draft and type correspondence, reports, forms and orders of a confidential nature for the Deputy Commissioner's signature, which requires a knowledge of legal terminology as well as the laws pertaining to domestic relations, enforcement of judgments and procedures of the Circuit and Family Courts. I do administrative tasks such as maintaining and organizing office files as well as monitoring changes in the law and regulations that are received through the policy manual changes. I organize and coordinate administrative activities, keep statistical data, and serve as a point of contact for communications concerning the activities and operations of the office. I maintain the billing data received from vendors and process the billings for payments. I screen telephone calls and visitors in the absence and presence of the Deputy Commissioner.

20%

I answer questions and direct tenured personnel regarding the policy and procedures of the Bureau. In my own capacity and in assisting the Deputy Commissioner, I have identified training issues and trained personnel statewide on the proper use of the OSCAR computer system. I also teach organizational skills. Under the general direction of the Deputy Commissioner, I am required to daily apply my past experience and in-depth knowledge of tasks to assist him with the day to day administration of all BCSE field offices, which are under his jurisdiction, as well as in his sphere of responsibility for BCSEcomputer application known as OSCAR. I delegate typing, filing and other office duties to other clerical personnel, when available.

15%

Determine and notify the Deputy Commissioner of problems within the various offices which may affect operations and make recommendations for possible resolutions to improve policies, procedures and work practices on a regional and statewide level.

11. In addition to the duties listed on her Position Description Form, Grievant Stickley also spends a significant amount of time performing paralegal duties for Deputy Commissioner Welker.

12. Grievants did not experience a significant change in the duties assigned to their positions, but instead filed their grievances upon learning that an Executive Secretary position had been posted, assigned to the Deputy Commissioner for the Bureau for Children and Families within the DHHR.

13. There is no DOP or DHHR requirement that secretaries assigned to Deputy Commissioners be classified as Executive Secretaries.

Discussion

In a misclassification grievance, the Grievant must prove by a preponderance of the evidence that the work she is doing is a better fit in a different classification than the one in which her position is currently classified. (See footnote 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 specificationthan that under which they are currently assigned. (See footnote 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. *(See footnote 3)* For these purposes, the "Nature of Work" section of a classification specification is its most critical section. (See footnote 4)

This grievance was filed not because significant changes were made to the Grievants' duties, triggering a need to compare the new duties to the possible class specifications, but instead the grievance was filed after Grievants saw a job posting for an Executive Secretary position assigned to another Deputy Commissioner. Their reasoning was that if one Deputy Commissioner had an Executive Secretary, then their positions should be similarly classified. As stated above, this is the wrong approach -- positions are classified by comparing their assigned duties to the class specifications, not by comparing one position to another.

Grievants' Proposed Findings point out that the Respondents did not prove that the person who would occupy the Executive Secretary position posted for the Bureau of Children and Families would

perform Executive Secretary duties. While true, this fact has no bearing on the outcome of this case. Again, positions are not compared with each other, but more importantly, the burden of proof in this case is on Grievants, and other thanthe fact that the posted position is assigned to a Deputy Commissioner, Grievants presented no evidence of the duties of that position. Further, that position was classified before it was posted, based on the duties assigned to the position. The person who will eventually occupy the position and perform those duties is irrelevant. Respondents therefore had no duty to rebut any facts related to that posting. Further, the differences in the duties of the Deputy Commissioners to which the Grievants are assigned, and the differences in their own duties, are enough to create an inference that a comparison would be useless.

A close look at the “Nature of Work” sections of the two class specifications at issue reveals significant differences. The Administrative Secretary position works under “general direction,” while the executive secretary works under “limited supervision.” In both positions, administrative work predominates over secretarial work, but the executive secretary exercises more discretion and has authority to interpret policy.

“Administrative” work is defined as “work activities relating to planning, organizing, directing, controlling, supervising and budgeting of agency or unit operation, programs and mission,” while “administrative support” is “support services such as personnel, budget, purchasing, data processing which support or facilitate the service programs of the agency; also means work assisting an administrator through office management, clerical supervision, data collection and reporting, workflow/project tracking, etc.” (See footnote 5) While an Executive Secretary is assigned to a “Department Secretary,” an Administrative Secretaryis assigned to an “Administrator.” The Deputy Commissioners the Grievants work for are definitely “Administrators,” and not Department Secretaries.

Although these grievances were consolidated based on the similarity of the statement of grievance and relief sought, the positions the Grievants occupy are very different, as the duties of the Deputy Commissioners to which they are assigned are very different. While the same general principles apply to the analysis, each Grievant's position must be examined separately.

Patricia Caye

Grievant Caye is assigned to the Central Operations unit of the BCSE. Her own description of the duties of her position lists secretarial duties as making up almost 80% of her job. In fact, after hearing

Grievant Caye elaborate on her duties at the level three hearing, Former DOP Assistant Director of Classification and Compensation Lowell Basford testified that it was doubtful her position was properly classified, but opined that it could have been placed in a lower classification. (See footnote 6) Grievant Caye's position does not exercise the independent authority and is not performed under the limited supervision contemplated by the Executive Secretary specification.

Ellen Stickley Grievant Stickley's position is certainly more complex than Grievant Caye's, but still does not rise to the level of Executive Secretary. Again, there is a predominance of secretarial duties and a dearth of independent, administrative duties. Although she does spend more time "running" the office in the absence of the Deputy Commissioner, she still does not exercise independent policy interpretation authority. Although she testified that there has been a change in her position - she is busier now with more work - classifications are not based on volume of work, but on complexity and scope of work. "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." (See footnote 7)

Grievant Stickley does have a different scope of work than Grievant Caye, because Deputy Commissioner Welker, at this time, is filling a dual job role as both Deputy Commissioner and BCSE Attorney. To support his attorney role, Grievant Stickley performs many paralegal duties. However, Mr. Basford explained, there is a separate Paralegal classification that is actually lower on the pay scale than Administrative Secretary, so this work serves to "dilute" the complexity of Grievant Stickley's position rather than increase it.

Neither Grievant has met her burden of proving her position is misclassified. DOP's interpretation and explanation of the classification specifications at issue should be givengreat weight unless clearly erroneous. (See footnote 8) Neither Grievant presented any evidence to suggest that DOP's original interpretation of their Position Description Forms was erroneous, or that new evidence that came out during the pendency of these grievances would be cause to change DOP's initial determination.

Conclusions of Law

1. In a misclassification grievance, the Grievant must prove by a preponderance of the

evidence that the work she is doing is a better fit in a different classification than the one her position is currently in. *See Hayes v. W. Va. Dept. of Natural Res.*, Docket No. NR-88-038 (Mar. 28, 1989); *Oiler v. W. Va. Dep't of Health and Human Resources/Bureau for Child Support Enforcement*, Docket No. 00-HHR-361 (Apr. 5, 2001).

2. 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).

3. Grievants did not meet their burden of proving the work they perform would be a better fit in the Executive Secretary classification.

For the foregoing reasons, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. Va. Code § 6C-2-5. 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy ofthe appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (2008).

September 23, 2008

Figure

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M. Paul Marteney

Administrative Law Judge

Footnote: 1 *See Hayes v. W. Va. Dept. of Natural Res., Docket No. NR-88-038 (Mar. 28, 1989); Oiler v. W. Va. Dep't*

of Health and Human Resources/Bureau for Child Support Enforcement, Docket No. 00-HHR-361 (Apr. 5, 2001).

Footnote: 2 *See generally, Hayes, supra.*

Footnote: 3 *Captain v. W. Va. Div. of Health, Docket No. 90-H-471 (Apr. 4, 1991).*

Footnote: 4 *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).*

Footnote: 5 *DOP Glossary of Classification Terms, http://www.state.wv.us/admin/personnel/clascomp/ Docs/define.htm.*

Footnote: 6 *Grievant's Proposed Findings of Fact and Conclusions of Law take issue with this opinion, stating it "defies logic" and urging the undersigned to find his testimony inconsistent with the facts of the case, since the DOP has earlier concluded her position was properly classified. However, I find the testimony reliable because Mr. Basford clearly stated his opinion was based on the testimony of the Grievant he had just heard, and not just on the Position Description Form information used by DOP to make its earlier determination.*

Footnote: 7 *Butler, et al. v. Div. or Corrections, et al., Docket No. 07-CORR-314 (July 9, 2008; Kuntz/Wilford v. Dep't of Health and Human Res., Docket No. 96-HHR-301 (Mar. 26, 1997).*

Footnote: 8 *See W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 348, 431 S.E.2d 681, 687 (1993).*