WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

ELIJAH POOLE, III,

GRIEVANT,

v.

Docket No. 07-HHR-347

DEPARTMENT OF HEALTH AND

HUMAN RESOURCES/WELCH COMMUNITY

HOSPITAL and DIVISION OF PERSONNEL,

RESPONDENTS.

DECISION

Elijah Poole, III ("Grievant"), grieves the decision of the Department of Health and Human Resources ("DHHR"), Welch Community Hospital, and the Division of Personnel ("DOP"), that refused to reallocate his position from Housekeeper, Lead, to Supervisor One ("Supervisor 1").

The grievance in this matter was filed on June 5, 2007. (See footnote 1) The statement of grievance provides that

> [t]he determination of the informal classification review of my position by the WV Divison of Personnel. [*sic*]. (Their decision is: I am appropriately classified H.S.K. Lead).

As relief, the Grievant seeks to have his “position as Housekeeper Lead reclassified toSupervisor 1. Primarily on the responsibilities and duties I perform within and out of the Environmental Department [*sic*].” Hence, the Grievant seeks reallocation (See footnote 2) to the classification of Supervisor 1.

Level One and Level Two were waived by the parties. At Level Three, the Hearing Evaluator recognized this case was a close call and found the Grievant was misclassified. The Hearing Evaluator limited the award of back-pay to ten days prior to the filing of the most recent Position Description Form. (See footnote 3) The Commissioner of the Bureau for Behavioral Health & Health Facilities, DHHR, rejected the Hearing Evaluator's recommendation and denied the grievance.

A Level Four hearing was held on February 19, 2007, before Administrative Law Judge (ALJ) Thomas J. Gillooly. Grievant appeared by and through his counsel, Kathryn Reed Bayless. Respondent DHHR appeared by and through its counsel, B. Allen Campbell, Senior Assistant Attorney General for the State of West Virginia. Respondent DOP appeared by and through its counsel, Karen O'Sullivan Thornton, Assistant Attorney General for the State of West Virginia. Findings of fact and conclusions of law were due before March 26, 2008, the date this matter became mature for decision. Both parties have submitted proposed findings of fact and conclusions of law. This grievance was transferred to the undersigned ALJ on or about October 22, 2008, for administrativereasons.

Synopsis

Grievant claims his position is misclassified as a Housekeeper, Lead, and should be properly classified as Supervisor 1. Respondent DOP maintains that the Housekeeper, Lead, classification is the “best fit” for the Grievant's position.

The duties of the Grievant's position indicate that he is taking an active role in the work he is supervising. When compared to the other classification at issue, the Housekeeper, Lead, classification is the “best fit.”

For the reasons set-forth below, this grievance is denied.

Based upon a detailed review of the record in its entirety, the undersigned makes the following findings of fact:

Findings of Fact

1. Grievant is employed by Welch Community Hospital in the Environmental Services

Department. His Civil Service title is Housekeeper, Lead.

2. Grievant has been employed by Welch Community Hospital for 23 years. Grievant became a Housekeeper, Lead, on July 1, 1990. Grievant has been performing some supervisory duties since he was hired.

3. Grievant is supervised by Linda Thomas. Ms. Thomas is classified as a Supervisor II.

4. Grievant has completed and submitted several Position Description Forms over the past ten years. He submitted Position Description Forms before 2002, in 2003, and again in 2007. Each time the Division of Personnel determined Grievant was classified asa Housekeeper, Lead. Grievant filed no grievances challenging the Division of Personnel's determinations in 2002 or 2003.

5. Grievant submitted his most recent Position Description Form on March 21, 2007. Then, after receiving the Division of Personnel's determination that his position is appropriately classified as a Housekeeper, Lead, Grievant filed a grievance seeking to be reallocated to the Supervisor 1 classification.

6. The Position Description Form submitted by the Grievant provides that he spends approximately 70% of his time supervising employees, 10% of his time serving on a three member interview team, 8% maintaining the material safety data sheets, 5% training employees in proper work methods, 5% counseling employees on work and personnel issues and enforcing policies, and 2% of his time contacting vendors to acquire material safety data sheets for products.

7. Grievant more specifically describes his job duties by delineating how many hours he spends in a 40 hour work week on each task. Grievant spends 10 hours per week in the morning and 8 hours in the afternoon reviewing the work of others. 18 hours constitutes 45% of Grievant's work week. For 45% of his time Grievant is essentially roaming the hospital and reviewing the work of the other housekeepers. While doing this, Grievant takes inventory of clean linens. He also checks and restocks supplies.

8. The next largest block of time Grievant lists is 5.75 hours spent on checking emails or phone messages for complaints, checking for call-ins so that he might adjust the schedule, and determine where the housekeepers are scheduled so he can ensure they have the equipment and supplies they need. Five and three quarter hours constitutes 14.38% of Grievant's work week. For 14.38% of his time Grievant is essentially dealingwith scheduling.

9. Grievant next lists spending 5 hours per week “helping the staff take care of the laundry

service to properly count and stock the clean linen on the shelves ... .” Five hours constitutes 12.5% of Grievant's work week. For 12.5% of his time Grievant helps his staff count and stock linen.

10. For 4.25 hours per week Grievant posts policy and security reminders and puts material safety data sheets in a three ring binder. Four and one quarter hours constitutes 10.62% of Grievant's work week.

11. Grievant spends 2 hours per week taking care of paperwork and documenting incidents that may have occurred during his shift. Two hours per week constitutes 5% of Grievant's work week.

12. The remaining 5 hours or 12.5% of Grievant's work week is spent on break or at lunch.

13. Grievant also lists miscellaneous duties which apparently make up less than 1% of his duties. These duties include taking patient, supervisor and employee complaints, filing, and emailing.

14. Grievant sometimes signs annual leave and sick leave slips of housekeepers in his department. He prepares performance recommendations for his supervisor, though his supervisor does not always accept his recommendations. Additionally, he sits on interview teams when new housekeeping staff are being interviewed.

15. Grievant does not have the final determination on performance evaluations.

16. Grievant rotates on the regular housekeeper list 6-7 times a year.

17. If a regular housekeeper fails to attend a scheduled shift, Grievant fills-in andperforms the housekeeper's assignment.

18. Grievant performs the vast majority of the floor buffering at Welch Community Hospital.

Discussion

West Virginia Code § 29-6-10 authorizes the West Virginia Division of Personnel to establish and maintain a position classification plan for all positions in the classified services. State agencies which utilize such positions, such as DHHR, must adhere to that plan in making assignments to their employees. *Toney v. W. Va. Dep't of Health & Human Resources*, Docket No. 93-HHR- 460 (June 17, 1994).

In a grievance which does not involve a disciplinary matter, the grievant has the burden of proving his grievance by a preponderance of the evidence. *Payne v. W. Va. Dept. of Energy*, Docket No. ENGY-88-015 (Nov. 2, 1988); *Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996). In a misclassification grievance, the focus is upon whether a grievant's duties for the relevant

period of time 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 Resources*, Docket No. NR-88-038 (Mar. 28, 1989). The key to the analysis in this grievance is to ascertain whether Grievant's current classification of Housekeeper, Lead, constitutes the “best fit” for his position's required duties. *See Simmons v. W. Va. Dep't of Health and Human Res./Div. of Personnel*, Docket No. 90-H-433 (Mar. 28, 1991). The predominate duties of the position in question are controlling. *Broaddus v. W. V. Div. of Human Services*, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Moreover, class specifications are descriptive only and are not meant to be restrictive. The mention of one duty orrequirement does not preclude others. 143 C.S.R. 1 § 4.4(a); *Coates v. W. Va. Dept. of Health and Human Resources*, Docket No. 94-HHR-041 (Aug. 29, 1994).

The Housekeeper, Lead, classification is the “best fit” because the nature of the Grievant's duties are of an active-worker, supervisory nature. In this matter, the Grievant's position is classified as a Housekeeper, Lead. He seeks to be classified as a Supervisor 1.

The duties of the Grievant's position must be compared to the DOP job specifications. Generally, personnel job specifications 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 classification 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 the purpose of position comparison, the “Nature of 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).

First, the classification specification of Supervisor 1 must be examined. It provides, in part, as follows:

Nature of Work Under general supervision, performs full performance supervisory work overseeing the activities of clerical support staff, semi-or-fully-skilled trade workers, or inspectors. (See footnote 4) Completes annual performance appraisals, approves sick and annual leave, makes recommendations and is held responsible for the performance of the employees supervised. Work is reviewed by superiors through results produced or through meetings to evaluate output. Performs

related work as required.

Distinguishing Characteristics Supervisor 1 is usually a working supervisor who makes work assignments, reviews employees' work, and compiles reports on section activities in addition to performing tasks similar to their employees. In some instances, may be a working supervisor performing related work of a more advanced level than subordinates.

Examples of Work Performs duties that are similar or related to the work performed by subordinates. Makes work assignments to employees; reviews the work of subordinates to ensure accuracy. Trains employees in proper work methods. Ensures that equipment, supplies, and materials are available to complete work. Inspects work areas to ensure that tasks are completed in a timely manner. Evaluates employees' performance; counsels employees and recommends corrective action. Answers inquiries from employees; relays information from management. Updates and compiles reports outlining the unit's activities, including other factors such as amount of work produced, monies spent or collected, or inventory. Discusses personnel issues with employees; answers grievance issues within mandated time frames in an effort to solve problems.

Knowledge, Skills and Abilities Knowledge of office methods and procedures, inspection practices or procedures, skilled trade and related activities. Knowledge of departmental procedures and policies. Ability to plan, assign, and coordinate the work of employees engaged in complex clerical activities, field inspection work, or skilled trades. Ability to make decisions based on governing laws and regulations and to explain policies to subordinates. Ability to make composite detailed reports based on individual reports of subordinates. Ability to maintain effective working relationships with fellow employees and the general public.

Next, the specification of Housekeeper, Lead, must be examined. This specification provides, in part, as follows:

Nature of Work Under general supervision, performs work at the full performance level as a lead worker in scheduling and/or reviewing the work of others, and guiding/training them while performing similar kinds of work. Work requires the completion of routine custodial tasks. Has little latitude to vary methods, procedures, or equipment used. Performs related work as required.

Distinguishing Characteristics Work at this level includes the assignment, review and oversight of the work of two or more permanent, full-time employees. Performs related clerical work such as record or timekeeping.

Examples of Work Dusts chairs, tables and other furniture or equipment. Washes windows, walls and woodwork. Sweeps, mops, and waxes floors. Gathers and disposes of refuse. Keeps bathrooms clean and supplied with linens and toilet tissue. Varnishes, shellacs and polishes furniture and brass. Shakes out bed linens and blankets, and makes beds. Sorts and folds linens and blankets. Keeps a record of linens and cleaning supplies used within a specific area or time period. Completes time reports and other appropriate paperwork. Trains new employees. Schedules, assigns, reviews, and oversees the work of other full-time employees.

Knowledge, Skills and Abilities Knowledge of the methods, supplies, and equipment used to clean buildings, offices, and living areas. Knowledge of disinfecting areas for compliance to health standards. Ability to oversee and inspect the work of others for conformance to standards. Ability to understand, give and follow written and oral instructions. Ability to instruct and assist residents and other workers in their housekeeping duties. Ability to maintain inventories and other routine reports.

As an initial matter, it is recognized that the two classification specifications at issue have similarities. Both generally involve supervisory tasks. However, the Housekeeper, Lead, classification specification generally exudes that the employee, on some heightened level, is taking an active role in the activity that he or she is supervising. The Supervisor1 position also indicates that the employee has direct responsibility for the individual of which he or she supervises.

When comparing these classification specifications to the Grievant's duties, the “best fit” for Grievant's position is the Housekeeper, Lead, classification. Grievant's duties indicate that he is acting in a supervisory nature, yet still completing tasks within the realm of a housekeeper. *See* Findings of Fact 9, 16, 17, 18. There is no indication that the Grievant has direct responsibility for the housekeepers. That responsibility lies with Ms. Thomas.

In an effort to fit into the Supervisor 1 classification, the Grievant maintains that he sits on a hiring committee, has the ability to discipline other employees (See footnote 5) , and completes annual appraisals. (See footnote 6) In these three specific duties, it is fair to say that the Grievant has, on at

least one occasion, performed some portion of the whole tasks. Nevertheless, as a general rule, employees who simply perform some duties normally associated with a higher classification may not be considered misclassified *per se*. *See generally Hatfield v. Mingo County Bd. of Educ.*, Docket No. 91-29-077 (April 15, 1996). Incidental duties which require an inconsequential amount of employees' time will not warrant a higher classification, if the remainder of their duties are accurately described by their classification. *See Graham v. Nicholas County Bd. of Educ.*, Docket No. 93-34-224 (Jan.6, 1994).

DOP's interpretation and explanation of the classification specifications at issue, if the language is determined to be ambiguous, should be given great weight unless clearly erroneous. *See W. Va. Dept. of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993). The clearly wrong standard requires the reviewing authority to presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. *Adkins v. W.Va. Dept. Of Educ.*, 210 W.Va. 105, 556 S.E.2d 72 (2001); *Powell v. Paine*, 221 W.Va. 485, 655 S.E.2d 204 (2007); *Bennet v. Insurance Comm'n and the Div. Of Personnel*, Docket No. 07-INS-299 (June 27, 2008). In this instance, it cannot be said that the DOP's interpretation is clearly wrong.

The following conclusions of law are appropriate in this matter:

Conclusions of Law

1. In order to prevail upon a claim of misclassification, a grievant must prove by a preponderance of the evidence that his duties for the relevant period of time more closely match those of another cited classification specification than the classification to which he is currently assigned. *See generally Hayes v. W. Va. Department of Natural Resources*, Docket No. NR-88-038 (Mar. 28, 1989).

2. DOP's interpretation and explanation of the classification specifications at issue, if the language is determined to be ambiguous, should be given great weight unless clearly erroneous. *See W. Va. Dept. of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993). The clearly wrong standard requires the reviewing authority to presume an agency's actions are valid as long as the decision is supported by substantial evidence orby a rational basis. *Adkins v. W.Va. Dept. of Educ.*, 210 W.Va. 105, 556 S.E.2d 72 (2001); *Powell v. Paine*, 221 W.Va. 485, 655 S.E.2d 204 (2007); *Bennet v. Insurance Comm'n and the Div. of Personnel*, Docket No. 07-INS-299 (June 27, 2008).

3. The Grievant has not established, by a preponderance of the evidence, that the Supervisor 1

position is the “best fit” for Grievant's position.

Accordingly, this grievance is hereby **DENIED**.

Any party 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 (*See* Footnote 1*)*. 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 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: November 7, 2008

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Mark Barney

Administrative Law Judge

Footnote: 1

In 2007, the Legislature, 2007 Acts ch. 207, abolished the West Virginia Education and State Employees Grievance Board, replacing it with the Public Employees Grievance Board. W.Va. Code §§ 18-29-1 to 18-29-11 and W.Va. Code §§ 29-6A-1 to 29-6A-12 were repealed and replaced by W.Va. Code §§ 6C-2-1 to 6C-2-7 and W.Va. Code §§ 6C- 3-1 to 6C-3-6 (2007). Grievances which were pending prior to July 1, 2007, are decided under the former statutes, W.Va. Code §§ 18-29-1 to 18-29-11, for education employees, and W.Va. Code §§ 29-6A-1 to 29-6A-12, for other state and higher education employees. See Executive Order No. 2-07, May 8, 2007. References in this decision are to the former statutes, which continue to control the proceedings in this case.

Footnote: 2

Reallocation is the “[r]eassignment by the Director of Personnel of a position from one class to a different class on the basis of a significant change in the kind or level of duties and responsibilities assigned to the position.” 143 C.S.R. 1 § 3.75.

Footnote: 3

Pursuant to 143 C.S.R. 1 § 4.5, the Position Description Form is the official document utilized by the DOP to allocate a position to the proper classification within the Classification and Compensation Plan.

Footnote: 4

It is not necessary to pass upon whether Housekeepers fit within this "semi-or- fully-skilled trade workers" definition as the predominate duties are controlling. It is notedthat the Grievant's supervisor is classified as a Supervisor 2.

Footnote: 5

The only instance the Grievant provides as an example of this disciplinary authority was where he gave a verbal warning to an employee when accompanied by his supervisor, Linda Thomas. As indicated by her Position Description Form, she is the immediate supervisor of all Housekeepers and Housekeeper Leads.

Footnote: 6

The Grievant does not complete the appraisals. He merely makes recommendations to his supervisor. As indicated at the hearing, his supervisor does not always adopt his appraisals.