WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

CHARLOTTE F. BRADLEY,
Grievant,

v. **Docket No. 2008-1772-DOT**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION/DIVISION OF HIGHWAYS AND DIVISION OF PERSONNEL,
Respondents.

DECISION

Grievant Charlotte Bradley has been working for the Department of Transportation in the Division of Highways ("DOH") for more than ten years. Since February 2005, she has been classified as an Accounting Technician 4 and assigned to the Accounts Payable Section of the DOH Finance Division. On June 13, 2008, Ms. Bradley filed a grievance contesting a decision by the Division of Personnel ("DOP") which denied her reallocation to the Administrative Services Assistant 2 classification. Grievant Bradley seeks to be reallocated to the Administrative Services Assistant 2 classification retroactive to February 1, 2008, as well as back pay and interest. By agreement dated June 17, 2008, Grievant and Respondents waived levels one and two of the grievance procedure. A level three hearing was held in the Charleston Office of the Public Employees Grievance Board on December 12, 2008, before the undersigned Administrative Law Judge. Grievant Bradley appeared in person and by her representative, Martha "Marty" Gibson. The DOH was represented by Barbara L. Baxter, an attorney with the DOH Legal Division, and the DOP was represented by Karen O'Sullivan Thornton, Assistant Attorney General.

The parties submitted Proposed Findings of Fact and Conclusions of Law on January 23, 2009, and this grievance became mature for decision on that date.

Synopsis

Grievant was temporarily upgraded from an Accounting Technician 4 to an Administrative Services Assistant 2 when her manager went on an extended medical leave of absence. The upgrade extended from August 1, 2006, through February 1, 2008. During this period there was a reorganization in Grievant's section and a new manager was hired. Grievant sought to have her position permanently reallocated to the Administrative Services Assistant 2 at the end of the temporary upgrade period arguing that she was given new supervisory duties that best fit in that classification.

DOP determined that, even after the reorganization, Grievant's predominant duties continued to fit in the Accounting Technician 4 classification. Grievant was unable to prove that DOP's decision was clearly wrong or arbitrary and capricious so the grievance is denied.

The following findings of facts are based upon a thorough review of the entire record in this grievance.

Findings of Fact

1. Grievant was employed by the DOH on April 1, 1998. She works in the Accounts Payable Section of the DOH Finance Division.

2. In February 2005, Grievant was promoted to the classification of Accounting Technician 4 ("Acct Tech 4"). That is her present classification.

3. In January of 2006, the supervisor of the Accounts Payable Section, Larry Bowman, began suffering severe medical problems. Mr. Bowman was absent from work most of January, all of February, and half of March in 2006. Finally, on May 25, 2006, Mr. Bowman was granted a long term medical leave of absence and he did not return to that position.[1]

4. In January of 2006, shortly after Mr. Bowman's medical problems began, James Hash reorganized the Accounts Payable Section "to make sure that the work of the unit was being done in a timely and efficient manner."[2] James Hash is an Administrative Services Manager in the DOH Finance Division. He manages three sections in that division including the Accounts Payable Section.

5. As part of Mr. Hash's reorganization of the Accounts Payable Section, he split the unit into two teams. Grievant Bradley and Augustine "Tina" Mason were each made a group leader for one of the teams. As group leaders, Grievant Bradley and Ms. Mason were given supervisory responsibilities over the remaining employees in their team. Those duties previously had been handled by Mr. Bowman.

6. In July 2006, the DOH requested that Grievant Bradley and Ms. Mason be temporarily upgraded to the Administrative Services Assistant 2 ("ASA 2") classification in recognition of the supervisory duties they assumed in Mr. Bowman's absence. *See* Grievant's Exhibit 1.

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[1] Mr. Bowman retired from the DOH in July 2007, without returning from his medical leave of absence.

[2] Level 3 testimony of James Hash, Administrative Services Manager for DOH Finance Division.

7. DOP granted the requested temporary upgrade for Grievant and Ms. Mason to the ASA 2 classification on August 1, 2006. After this initial temporary upgrade, extensions of the temporary upgrades were granted with the final extension being granted on November 1, 2007. That temporary upgrade ended on February 1, 2008.

8. Yvonne S. Wilhelm, Manager of DOP Internal Employee Placement, informed the DOH that "these upgrades [had] been extended to allow the agency time to complete the interviews and selection process." The selection process was for the replacement of Larry Bowman as the Accounts Payable Supervisor. *See* Grievant's Exhibit 1.

9. Effective July 1, 2007, DOP amended its Administrative Rule, 143 C.S.R. 1, to require that any new duties to be assigned to an employee must be posted as a new position, along with a Position Description Form[3] ("PDF") for the new duties, and the posting must be placed in the work location where the duties will be performed. Therefore, employees could no longer be reallocated until after their proposed new duties had been posted. Once posted for ten days and an employee has been selected, a PDF must be submitted to DOP, who determines if reallocation is appropriate.

10. On July 16, 2007, Donna Cox was hired as an Administrative Services Manager 1 for the Accounts Payable Section to replace Mr. Bowman. Ms. Cox became the supervisor for all of the employees in the section. Grievant and Ms. Mason continued to serve as group leaders, under Ms. Cox, pursuant to the reorganization plan of Mr. Hash.

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[3] The Position Description Form is a document which describes the officially assigned duties, responsibilities, supervisory relationships and other pertinent information relative to a position. This document is the basic source of official information in position allocation. 143 C.S.R. 1 § 3.70 (2007).

11. On September 25, 2007, DOH posted two ASA 2 positions for the Accounts Payable Section, in an effort to reallocate Grievant and Ms. Mason permanently to that classification, pursuant to the new DOH Administrative Rule. Both Grievant and Ms. Mason applied, interviewed and were selected for the two posted ASA 2 positions.

12. In November 2007, the DOH completed PDFs for Grievant Bradley and Ms. Mason to be reallocated[4] to the ASA 2 classification and submitted the PDFs to DOP for approval.

13. Section 26 of the PDF is where the employee and the agency describe "what duties have been added to or deleted from the position since the last review" to make the position eligible for reallocation. *See* Grievant's Exhibit 2. Section 26 of the PDF for Grievant Bradley stated:

> The following items have been added to the job duties:
>
> - Daily supervision;
> - Make work assignments;
> - Monitor work load and flow;
> - In depth research and problem solving;
> - Take part in disciplinary talks and actions with assigned subordinates.

14. By memo dated January 28, 2008, Barbara J. Jarrell, Senior Personnel Specialist with the Classification and Compensation Section of DOP notified Jeff Black, DOH Director of Human Resources, that the request for reallocation of Grievant to ASA 2 was denied. Ms. Jarrell gave the following reasons for DOP's decision:

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[4] Reallocation is defined in the Division of Personnel Administrative Rules as follows:

> Reallocation**:** Reassignment 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 (2007).

> We compared the current information for the position against the job posting/bulletin # 555, dated October 6, 2004, and did not find a significant change in the position. The predominant duties of the position are: (1) leading the work of others - reviewing and assigning work, (2) assisting payables' accounting technicians with problems and assigned work, (3) auditing and processing vendor invoices, and (4) training new employees. The Accounting Technician IV is advanced level work with lead worker responsibilities. The duties listed at item #26 in the position description form by the supervisor are still consistent with the current classification.

Grievant's Exhibit 2.

15. Fred Thomas, Director of the DOH Finance Division, Donna Cox and Grievant Bradley submitted an appeal to the DOP Director of the decision to deny the reallocation of Grievant to the ASA 2 classification. The appeal was submitted on February 29, 2008. *See* Grievant's Exhibit 3. Ms. Mason decided not to appeal DOP's decision and her leadership functions were absorbed by Grievant.

16. As part of the appeal, Grievant and her supervisors submitted an updated PDF ("appeal PDF") for Grievant's position. Section 26 of the appeal PDF described the additional duties in Grievant's position as follows:

> The employee is expected to approve leave for subordinates in a manner that will not have an adverse effect of [sic] the section. Make work assignments and distribute work load among subordinates which include six (6) accounting technicians. The employee is involved with documentation and discipline of subordinates. Assist in development and documentation of proper accounts payable procedures and seeing they are properly implemented.

Grievant's Exhibit 3.

17. By memorandum dated May 29, 2008, DOP Director, Otis G. Cox, affirmed DOP's prior decision that the best fit for Grievant's position was the Acct Tech 4 classification.

18. Grievant Bradley has the authority in the Accounts Payable Section to change the methods by which other employees accomplish tasks as well as monitor, coach, counsel and correct the work of other Accounting Technicians. Grievant has suggested that Ms. Cox recommend disciplinary action for certain employees in the unit and has assisted Ms. Cox with employee evaluations.

19. Grievant Bradley performs advanced and complex accounting functions and has been involved in projects that have made the Accounts Payable Section much more efficient.

20. The following are the "Nature of Work" and "Distinguishing Characteristics" sections from the classification specifications for the Acct Tech 4 classification:

ACCOUNTING TECHNICIAN 4

Nature of Work

Under general supervision, performs advanced accounting support duties. The incumbent is responsible for posting complex journal entries that require the use of specialized accounting procedures, assisting the supervisor in preparing agency budgets, and examining records to assure adherence to accounting laws and regulations. Performs related work as required. *Responsibilities may also include being a lead worker.*

(Emphasis added)

Distinguishing Characteristics

This is advanced level paraprofessional accounting work. Job duties include performing complex balancing and reconciling of multiple accounts. Employees in this class are responsible for accuracy of accounts for others and require little supervision.

21. The following are the "Nature of Work" and the "Distinguishing Characteristics" sections of the classification specifications for the ASA 2 classification:

ADMINISTRATIVE SERVICES ASSISTANT 2

Nature of Work
Under limited supervision, performs administrative and *supervisory* work in providing support services such as fiscal, personnel, payroll or procurement in a state agency or facility or serves as the assistant supervisor in a major administrative support unit of a large state agency. Develops policies and procedures for resolving operational problems and for improving administrative services. *Supervises the work of office support staff in rendering required services*. Work is typically varied and includes extensive inter- and intra governmental and public contact. Has some authority to vary work methods and policy applications and to commit the agency to alternative course of action. Performs related work as required.

Distinguishing Characteristics
Positions in this class are distinguished from the Administrative Services Assistant 1 by the supervisory nature of the work performed, by the size of the unit served and by the independence of action granted. Positions in this class are responsible for a significant administrative component in a medium size agency or state facility or serves as an Assistant Director of a major administrative support component of a large state agency. Authority to vary work methods and to commit the agency to alternative course of action is granted.

(Emphasis added)

Discussion

As this grievance does not involve a disciplinary matter, Grievant bears the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd., 156 C.S.R. 1 § 3 (2008). The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not. *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievant contends that when the reorganization occurred in the Accounts Payable Section, as a result of Mr. Bowman's medical leave, she was given supervisory authority

over the other Accounting Technicians as well as more responsibility. She avers that the supervisory responsibilities continued even after the employment of Ms. Cox to manage the section.[5] DOP agrees that Grievant performs advanced responsibilities, but they contend that Grievant was temporarily upgraded to the ASA 2 position when Mr. Bowman was absent in recognition of the fact that she was actually supervising the employees in the section at that time. However, when Ms. Cox was hired to manage the section, DOP feels that Grievant was no longer acting in a supervisory capacity but rather served as a lead for the other employees. DOP concludes that supervisory responsibilities are a defining characteristic of the ASA 2 classification and Grievant's position cannot fit into that classification without those duties.

Generally, personnel classification 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. *Poole v. W. Va. Dep't of Health & Human Res/Welch Community Hosp. and Div. of Personnel*, Docket No. 07-HHR-347 (Nov. 7, 2008).

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[5] DOH concurs with Grievant's position.

The Nature of Work section of the DOP classification specifications for the ASA 2 position states that a person holding that position "Supervises the work of office support staff in rendering required services". *See* Finding of Fact 21, *supra*. It is distinguished from the lower classification in the class series "by the supervisory nature of the work performed." *Id.* On the other hand, The Nature of Work section of the DOP classification specifications for the Acct Tech 4 classification states that the "responsibilities may include being a lead worker." Consequently, whether Grievant's responsibilities are those of a "supervisor" or a "lead" is critical to the outcome of the grievance.

The DOP "Glossary of Terms" defines the term "supervisor" as follows:

> **Supervisor** - formally delegated responsibility for planning, assigning, reviewing and approving the work of three or more full-time employees which also includes initiating disciplinary actions, approving sick and annual leave requests, conduct performance evaluations, recommend salary increases, and is a step in the grievance process.

The term "lead worker" is defined as:

> **Lead Work/Lead Worker** - this is a level of work at which an incumbent is assigned the on-going responsibility of scheduling and/or reviewing the work of other co-workers and guiding and training them while performing identical or similar kinds of work.

It is undisputed that Grievant guides the activities of the other Accounting Technicians, schedules their time, including approving leave requests, and monitors and corrects their work when necessary. Grievant has documented behavior of employees for use in disciplinary action and has assisted Ms. Cox in preparing the employee performance evaluations. In the appeal PDF, Grievant's supervisors defined her supervisory duties as follows:

> The employee is expected to approve leave for subordinates in a manner that will not have an adverse effect of [sic] the section. Make work assignments and distribute work load among subordinates which include six (6) accounting technicians. The employee is involved with documentation and discipline of subordinates. Assist in development and documentation of proper accounts payable procedures and seeing they are properly implemented.

See Grievant's Exhibit 3.

These duties all fall within the parameters of the "lead worker" definition.

Grievant does not make decisions regarding disciplinary action for other employees, nor does she complete their evaluations and she cannot recommend salary adjustments to the Department of Transportation Cabinet Secretary. These are duties that would move Grievant into the "supervisor" definition.

When Mr. Bowman was absent, Grievant and Ms. Mason had specific supervisory authority and were appropriately classified in the ASA 2 classification on a temporary basis. However, when the temporary upgrades were approved, DOP made it clear that they were only in place until the supervisor position, vacated by Mr. Bowman, could be advertised and filled. *See* Grievants Exhibit 1. Once Ms. Cox was employed, the supervisory duties fell to her, and Grievant resumed serving as a lead for her unit. While these lead duties were not part of Grievant's original duties as an Acct Tech 4, they do fall within that classification. "The performing of a duty not previously done, but identified within the class specification does not require reallocation." *McLaughlin v. W. Va. Dep't of Health & Human Res/Bureau for Children and Families and Div of Personnel,* Docket No. 07-HHR-369 (Sept. 26, 2008).

WEST VIRGINIA CODE § 29-6-10 authorizes the Division of Personnel to establish and maintain a position classification plan for all positions in the classified service. State agencies, such as DOH, which utilize such positions, must adhere to that plan in making their employees' assignments. *Toney v. W. Va. Dep't of Health & Human Res.*, Docket No. 93-HHR-460 (June 17, 1994). When an employee believes she is performing the duties of a classification other than the one to which she is assigned, DOP must determine whether reallocation is appropriate. The key to the classification analysis is to ascertain whether a grievant's current classification constitutes the "best fit" for the required duties. *Simmons v. W. Va. Dep't of Health and Human Res./Div. of Personnel*, 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).

The Division of Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. *W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681 (1993). The clearly wrong standard of review is deferential and 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. Dep't of Educ.*, 210 W.Va. 105, 556 S.E.2d 72 (2001); *Powell v. Paine*, 221 W. Va. 458, 655 S.E.2d 204 (2007).

In this grievance, it is apparent that Grievant performs some duties that could fit into either classification. However, DOP has the responsibility to determine which of the classifications is the best fit. DOP's determination that Grievant is not performing

supervisory work is supported by substantial evidence on the record. Supervisory duties are an essential function of the ASA 2 classification. The lead duties performed by Grievant are specifically listed in the Nature of Work section of the Acct Tech 4 classification specifications. DOP's determination that the Acct Tech 4 classification is the best fit for Grievant's position is reasonable and supported by the evidence. Consequently, Grievant has failed to prove that DOP's classification was clearly wrong and the grievance must be denied.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant bears the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008). The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not. *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. 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. *Poole v. W. Va. Dep't of Health & Human Res/Welch Community Hosp. and Div. of Personnel*, Docket No. 07-HHR-347 (Nov. 7, 2008).

3. The performing of a duty not previously done, but identified within the class specification does not require reallocation. *McLaughlin v. W. Va. Dep't of Health & Human Res/Bureau for Children and Families and Div. of Personnel,* Docket No. 07-HHR-369 (Sept. 26, 2008).

4. The key to the classification analysis is to ascertain whether a grievant's current classification constitutes the "best fit" for the required duties. *Simmons v. W. Va. Dep't of Health and Human Res./Div. of Personnel*, 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).

5. The Division of Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. *W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681 (1993). The clearly wrong standard of review is deferential and 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. Dep't of Educ.*, 210 W.Va. 105, 556 S.E.2d 72 (2001); *Powell v. Paine*, 221 W. Va. 458, 655 S.E.2d 204 (2007).

6. Grievant did not prove, by a preponderance of the evidence, that DOP's determination that the Acct Tech 4 classification was the best fit for her position, was clearly wrong.

Accordingly, the 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 of the 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).

DATE: February 27, 2009

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WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE