WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

KELLEY THOMPSON,
Grievant,

v. **Docket No. 2009-1278-DOT**

DEPARTMENT OF TRANSPORTATION/
DIVISION OF HIGHWAYS and DIVISION
OF PERSONNEL,
Respondent.

D E C I S I O N

Grievant, Kelley Thompson filed a grievance against Respondent, Department of Transportation/Division of Highways (hereinafter "DOH"), on March 4, 2009, protesting his classification. Respondent, West Virginia Division of Personnel (hereinafter "DOP"), is an indispensable party. The Statement of Grievance stated, "On 2/23/09 Reallocation request denied." The relief sought by Grievant is "[t]o be made whole, including reallocation, backpay & interest."

A waiver agreement was executed by the parties and as authorized by W. VA. CODE § 6C-2-4 (a)(4) this matter proceeded directly to level three. A level three hearing was held before the undersigned Administrative Law Judge on April 1, 2010, in the Grievance Board's Charleston office. Grievant appeared in person and was represented by Gordon Simmons, UE Local 170 West Virginia Public Workers Union. Respondent DOH was represented by counsel Robert Miller, Division of Highway's Legal Division. Respondent DOP was represented by Karen O'Sullivan Thornton, Assistant Attorney General. During the litigation of this grievance, the following two individuals testified: (1) Kelley Thompson,

Grievant, and (2) Barbara Jarrell, Senior Personnel Specialist, Classification and Compensation Section, DOP.

This case became mature for decision on May 3, 2010, the deadline for the submission of the parties' proposed findings of fact and conclusions of law. The parties submitted fact/law proposal documents.[1]

Synopsis

Grievant is employed with Respondent DOH as a Cartographic Drafter, pay grade 11. The Cartographic Drafter classification is intended for positions that produce maps and related diagrams. Grievant contends modern technology has developed and implemented changes to the duties he now performs. He is of the opinion that the tasks and duties of his position are not accurately depicted by his present classification. Grievant avers his position is misclassified. Grievant wants his position reallocated to the classification of Geographic Information System Technician, pay grade 13.

West Virginia Division of Personnel is the entity of West Virginia State government charged with classifying positions in the West Virginia Classified Service. DOP, after proper review, made the determination that Grievant's position was properly allocated to the Cartographic Drafter classification. DOP recognized that there have been technological developments in the manner by which Grievant now performs the duties of his position, but nevertheless found that the duties at the full performance level uses

[1] DOH deferred to DOP's decision on the issue of appropriate placement of Grievant's position in the classification system and did not submit separate fact/law proposal.

technical methods, procedures and symbols to produce maps and related diagrams. Reallocation of the position was deemed unwarranted. This Grievance is DENIED.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant is employed by Respondent DOH, in a position classified as a Cartographic Drafter, pay grade 11.

2. Grievant's job duties include the utilization of Geographic Information System (GIS) technology, using images produced by global positioning satellites. Grievant assigns a vector (longitude and latitude) point to roadway features, specifically any intersection. Grievant utilizes a lot of differing sources (straight-line diagrams, commissioners' orders and general highway maps) to select, compile, collect and transfer information to create 'metadata' for each point, as well as to digitally manipulate GIS 'base layers.' The GIS technology uses this data and creates various maps and other related diagrams.

3. On June 24, 2008, Grievant completed a Position Description Form[2] (hereinafter "PDF") which was to be routed to DOP for review and assessment. G. Ex. 4.

4. Grievant and his supervisors, Sean Litteral and Hussein Elkhanas, signed the PDF certifying that the duties and responsibilities listed for Grievant's position on the PDF were accurate and complete. G. Ex. 4.

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[2] 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 utilized by the DOP to allocate the position to the proper classification. *See* W. VA. CODE R §§ 143-1-3.70 and §143-1-4.5 *et seq*.

5. DOP conducted an on-site job audit[3] of Grievant's position on November 21, 2008. DOP compared the predominant duties of the position to the last review of the position. *See* G. Ex. 4, R. Ex. 1 and Testimony of Barbara Jarrell.

6. Subsequent to the on-site job audit and review of the submitted PDF, DOP determined that Grievant's position was properly allocated to the Cartographic Drafter classification.

7. On November 24, 2008, Barbara Jarrell, Senior Personnel Specialist, Classification and Compensation, DOP, sent a memorandum to Jeff Black, Director Human Resources, DOH, indicating that;

> The duties and responsibilities assigned to the position occupied by Kelly Thompson, Cartographic Drafter (9840), GTI Section, Mapping Unit, has been reviewed to determine the appropriate classification. We used the most recent position description form submitted which was signed and dated by Mr. Thompson, June 3, 2008. We also considered information obtained from the most recent organizational chart and job audit.

R. Ex. 1. It was DOP's determination that Grievant's position was properly allocated to the Cartographic Drafter classification.

8. Grievant requested a reconsideration of the DOP's classification determination.

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[3] Ms. Jarrell explained, that in an effort to get a more clear understanding of the position to make the appropriate classification determination, when DOP does not feel they have enough information from the PDF to make a classification determination, they send a member of the classification team to the agency to meet with the employee at their worksite. This is considered an on-site job audit. The member and the employee will go over the PDF together. The employee is given an opportunity to explain in more detail the job duties and responsibilities of the position. After meeting with the employee, the team member may also meet with the employee's supervisor. *See* L3 Testimony, Barbara Jarrell.

9. On February 23, 2009, Otis G. Cox, then Director of DOP, responded to the request for reconsideration with a written memorandum upholding the initial classification determination. *See* R. Ex. 2. Among other information the document stated,

> The primary role of the position as indicated by your supervisor is: under general supervision, at the full-performance level, performs work using technical methods, procedures and symbols to produce maps and related diagrams. The Cartographic Drafter classification is intended for positions that produce maps and related diagrams. While we recoginize that some changes have been made to the position, these changes are on a level comparable to the current classification.

10. DOP informed Grievant that there needed to be a significant change in the duties and responsibilities assigned to a position before a reallocation is warranted citing DOP Administrative Rule § 4.7. *See* R. Ex. 1. The duties, activities and responsibilities described in relevant PDFs did not persuade or trigger DOP to reallocate the position occupied by Grievant.

11. There is a job class between the classification of Grievant's current position, and the classification to which he has requested to be reallocated. The job class directly superior to Grievant's is Senior Cartographic Drafter, pay grade 12. The Geographic Information System Technician class is a two step advance in classification.

12. The pertinent sections of the classification specifications for the Cartographic Drafter and Geographic Information System Technician reveal the distinctions between the two classifications:

CARTOGRAPHIC DRAFTER

Nature of Work

Under general supervision, at the full performance level, performs work using technical methods, procedures and symbols to produce maps and related diagrams. Uses standard guides and knowledge of general cartographic conventions to select the appropriate method of conveying information via maps and related diagrams and determines which

information is appropriate from the materials furnished. Work is performed in an office setting and involves prolonged close visual work. May review maps from contract services or other services insuring proper mapping procedures have been followed. Performs related work as required.

Examples of Work

Creates maps, depicting land features, resources, political subdivisions, and other physical or cultural geographic information by transferring current data and/or amendments from work copies to original master maps on linen or polyester film.
Creates charts, graphs, pictorial diagrams, and other graphic materials.
Edits and reviews final drafted maps of contractors to insure compliance with established guidelines and procedures.
Draws corporation (city) and district (rural) maps from rough field copies depicting bearings, distances, and acreage.
Revises, re-drafts or scribes map changes associated with individual property ownership, industrial site drawings and political subdivision boundaries.
Plots roads, drainage, transportation facilities, utilities and other cultural features.
Maintains records of drawings, maps, or delivery dates for maps.
May sometimes edit proposed amendments and exercise individual judgment on special projects.
May be required to operate map reproduction equipment.

GEOGRAPHIC INFORMATION SYSTEM TECHNICIAN

Nature of Work

Under general supervision, usually by a GIS Manager or senior GIS technical staff, this position involves entry-level technical work in multi-tier Geographic Information System (GIS) operations and services for a state agency or department. Duties include digital data entry and maintenance, executing applications, and producing maps and related graphic output and reports. Performs related work as required.

Distinguishing Characteristics

Performs routine work in geospatial data collection, processing and analysis. This classification is regarded as beginning or training level work wherein an employee, under general supervision, is oriented to GIS work and may be trained to perform those duties through on-the-job experience.

Examples of Work

Performs low to mid-level GIS operations including manual data entry (e.g., digitizing, scanning, keyboard entry, etc.) Plot and map production, low-level GIS analysis, generating reports, and answering information requests.
Assists with GIS hardware and software operations such as system setup and updates, installation and test, networking and peripheral device connectivity.
Assists in investigating, evaluating and recommending new data sources, software, equipment and techniques for improving geospatial analysis and services.

Assists in developing and following GIS database standards for content, format, design, maintenance and quality assurance procedures.

See G. Ex. 7 and 8.

13. Grievant enters specialized data into a computerized system which ultimately produces maps and related diagrams. DOP made the determination that Grievant's position was properly allocated to the Cartographic Drafter classification. *See* G. Ex. 4; R. Ex. 1 and 2, Position Review Determination Memorandums.

14. DOP determined the fact that Grievant's activities generate maps and related diagrams elevated his classification above that of a Data Entry classification. Data Entry classifications are a series of "Job Classifications" with a lower pay grade than Grievant's current position.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his case by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2008). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he 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). Where the evidence equally supports both sides, a party has not met its burden of proof. *Id.*

W. VA. 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 the Department of Highways, which utilize such positions, must adhere to applicable portions of the 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 he is performing the duties of a classification other than the one to which he is assigned, DOP must determine whether reallocation is appropriate. *Hart v. Dep't of Health & Human Res.*, Docket No. 2008-0641-DHHR (Feb. 19, 2009).

Grievant argues he is currently misclassified. Grievant believes his current classification does not properly reflect his position's routine activity. Grievant has requested his position be reallocated to the classification of Geographic Information System Technician, and be compensated in a higher pay grade. DOP Legislative Rule defines "Reallocation" as "[r]eassignment by the Director of Personnel of a position from one classification to a different classification 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. To receive a reallocation, an employee must demonstrate a significant change in the kind or level of duties and responsibilities. An increase in the number of duties 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). "The performing of a duty not previously done, but identified within the class specification also does not require reallocation." *Id*. Additionally, in order for Grievant to prevail upon a claim of misclassification, he must prove by a preponderance of the evidence that his duties more closely match another cited Division of Personnel classification specification than the one 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). *See Campbell v. Dep't of Transp./Div. of Highways,* Docket No. 05-DOH-385 (May 26, 2009).

Grievant was first employed by Respondent in 2007. Among the numerous duties performed by Grievant, a major task performed routinely was the physical drawing of maps. The manner in which Grievant performs his duties have evolved over the years. Grievant now uses a computer and modern technology to create maps or depict physical and geographic information. Grievant places data into a computerized system which uses the information to generate and maintain charts, maps and various boundaries including depiction of bearings, distances, acreage, roads, utilities and other cultural features. Grievant avers the alteration in his job duties justify the reallocation of his position.

The DOP Administrative Rule, Section 4.4 (b) requires that the specification as a whole be used in allocating positions. The standard of **'best fit'** is applied by comparing the various duties/responsibilities identified in the position description form to various class specifications **and** the relationship to other classes in rendering an allocation decision. The fact that Grievant now uses computer technology to assist in performing his creating of maps and depicting land features, such as roads, highways and property boundaries was explicitly considered by DOP when assessing the job classification that best fit Grievant's position.

Barbara Jarrell, Senior Personnel Specialist, Classification and Compensation Section, DOP, testified that but for DOP's acknowledgment of the fact that Grievant's activities generates maps and various other geographical byproduct, Grievant's job duties,

as depicted by his testimony, could be appraised as a data entry clerk. The Data Entry classification is several pay grades below Grievant's current position. The full nature of the work performed by Grievant was included in DOP's assessment and determination as to which job classification was the best fit for Grievant's position. R. Ex. 1 and 2.

Grievant no longer draws maps by hand. His vocation is not the first nor will it be the last to be affected by technology. DOP is aware of alterations in how Grievant performs his assigned duties. Such alteration(s) may not be minor to him or his colleagues, however the overall task remains consistent. The principle duty and responsibility of a Cartographic Drafter employed by DOH is to, under general supervision, perform work using technical methods, procedures and symbols to produce maps and related diagrams. DOP is required to determine that a significant change in the work performed by a position has occurred when determining whether or not a reallocation is appropriate. *See* DOP Administrative Rule § 4.7. The change has to be significant enough that it would cause the scope and nature of the position's work to fit or match another job classification. The goal of the classification analysis is to ascertain whether an employee'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); *See Hart v. Dep't of Health & Human Res.*, Docket No. 2008-0641-DHHR (Feb. 19, 2009)*; Falquero v. Dep't of Envtl. Prot.,* Docket No. 2008-1902-DEP (Feb. 3, 2010). While Grievant's work has changed since he first took on the position of a

Cartographic Drafter, the new manner of creating geographical diagrams did not raise the level of complexity of the job beyond the predominant duties associated with the position's current classification.

Further, it was demonstrated that Grievant does not perform a noticeable number of the predominant duties of the job classification directly above his current position. It was DOP's determination that Grievant does not perform duties that rise to the level of the Senior Cartographic Drafter classification, pay grade 12, much less to the level of the Geographic Information System Technician classification, pay grade 13, which he requested to be reallocated. It is not forgotten that Ms. Jarrell testified that Grievant's testimony if taken literally, would indicate not a higher but a lower job classification. Lastly, Ms. Jarrell testified she heard nothing new in the testimony or evidence presented at the hearing that would cause her to believe Grievant's position should have been reallocated to the Geographic Information System Technician classification and the "best fit" within the current classification plan for Grievant's position is the Cartographic Drafter classification. DOH deferred to DOP's statutory authority in regard to determining the classification of employees.

The Division of Personnel's interpretation and explanation of the classification specifications 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 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). DOP's determination regarding the classification of Grievant's

position is supported by the evidence and Grievant was unable to prove that determination was clearly wrong. Consequently, the grievance is denied.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant bears the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990).

2. 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). *See Campbell v. Dep't of Transp./Div. of Highways,* Docket No. 05-DOH-385 (May 26, 2009).

3. To receive a reallocation a grievant must demonstrate "a significant change in the kind or level of duties and responsibilities." An increase in the number of duties 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). "The performing of a duty not previously done, but identified within the class specification also does not require reallocation." *Id*.

4. Classification determinations are not made based upon comparison to other employees, but upon which classification description is the best fit for that employee's duties. *Baldwin v. Dep't Health and Human Resources*, Docket No. 99-HHR-142 (Oct. 28,

1999). The key to the analysis is to ascertain whether Grievant's current classification constitutes the "best fit" for their 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); *See Hart v. Dep't of Health & Human Res.*, Docket No. 2008-0641-DHHR (Feb. 19, 2009)*; Falquero v. Dep't of Envtl. Prot.,* Docket No. 2008-1902-DEP (Feb. 3, 2010).

5. The Grievance Board's role is not to act as an expert on matters of classification of positions. *Moore v. W. Va. Dep't of Health & Human Resources*, 94-HHR-126 (Feb. 3, 1997).

6. The State Personnel Board and the Director of DOP have wide discretion in performing their duties although they cannot exercise their discretion in an arbitrary or capricious manner. *See, Bonnett v. West Virginia Dep't of Tax and Revenue and Div. of Personnel*, Docket No. 99-T&R-118 (Aug 30, 1999), *Aff'd* Kan. Co. Cir. Ct. Docket No. 99-AA-151 (Mar. 1, 2001).

7. An action is arbitrary and capricious if the agency making the decision did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of opinion. *See, Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996).

8. The Division of Personnel's interpretation and explanation of the classification specifications should be given great weight unless clearly erroneous. *W. Va. Dep't of Health & Human Resources v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681 (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. 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).

9. DOP performed the required examination of Grievant's position and determined that the best fit for the position is the Cartographic Drafter classification. DOP's determination regarding the classification of Grievant's position is supported by the evidence and Grievant was unable to prove that determination was clearly wrong.

10. Grievant has not shown by a preponderance of the evidence that his duties and responsibilities of his position fall more closely within the Geographic Information System Technician classification than the Cartographic Drafter classification.

Accordingly, 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 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: October 15, 2010

Landon R. Brown
Administrative Law Judge