THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

MICHAEL JAMES MORRIS,
Grievant,

v. **Docket No. 2009-1685-DHHR**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/BUREAU FOR PUBLIC HEALTH and DIVISION OF PERSONNEL,
Respondent.

DECISION

Grievant Michael James Morris filed a grievance against Department of Health and Human Resources ("DHHR") and Division of Personnel ("DOP") on June 18, 2009. In his statement of grievance, Grievant contends that he is misclassified, and based on additions to his duties, he should be reallocated to the position of an Information Systems Manager 2. For relief, he seeks to be reallocated to that position with back pay to March 31, 2009.

Level one was waived by the parties. On September 9, 2009, the parties engaged in mediation. Grievant then successfully appealed to level three. A hearing was held on February 11, 2010. Grievant appeared *pro se.* Respondent Department of Health and Human Resources ("DHHR") was represented by Allen Campbell, Supervising Senior Assistant Attorney General, and Respondent DOP was represented by Karen O'Sullivan Thornton, Senior Assistant Attorney General. This case became mature for decision on the date of the hearing, as the parties declined to file proposed findings of fact and conclusions of law.

Synopsis

Grievant is classified as an Information Systems Manager 1. Since being hired, the duties of this position have expanded to include the Privacy and Continuity of Operations

("COOP") responsibilities and the scope of the Information Technology role has been expanded to include project management. Because of these additional duties, Grievant asserts he should be reallocated to the position of Information Systems Manager 2.

Respondents aver that the additional duties do not amount to a significant change in Grievant's duties and responsibilities. Respondents also looked at Grievant's predominant duties, and determined the best fit for the position is as an Information Systems Manager 1.

Grievant has failed to meet his burden of proof. Therefore, this grievance is denied.

Findings of Fact

1. Grievant is employed by Respondent as the Bureau for Public Health's Health Information Systems Coordinator ("HISC") and is classified as an Information Systems Manager 1.

2. The classification specification ("class spec") for an Information Systems Manager 1 is:

> **Nature of Work**
> Under administrative direction, performs full-performance level administrative and supervisory duties directing the data processing operations of a smaller agency system or as a first level or specialty function administrator in a large, comprehensive data processing program. Specific unit activities include systems or applications programming, or computer operations in addition to distribution; schedules work and sets unit priorities for the most efficient utilization of equipment and personnel. Resolves equipment problems and coordinates system usage by agency personnel. Provides advice and assistance to management. Performs related work as required.
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> **Distinguishing Characteristics**
> Information Systems Manager 1 is distinguished from Information Systems Manager 2 by the specific unit activities in the State's central data facility; work is in an area with a discrete function. In a state agency, the Information Systems Manager I is responsible for overseeing the work of a staff involved in programming, computer operations, or support services including LAN

management, network support, and personal computer support (both hardware and software).

Examples of Work

Organizes, assigns, directs and reviews the work of a small group of professional or technical personnel in the operation of an agency data processing function.

Supervises programming or computer operations.

Plans work schedules and set priorities to make the most efficient use of available personnel and equipment.

Analyzes agency operations and determines feasibility and cost of conversion from manual to electronic records management or conversion from one automation platform to another.

Analyze and establishes data processing unit procedures and work standards; sets standards for equipment maintenance and troubleshooting.

Advises staff and coordinates the resolution of hardware and software problems.

Directs the design, development and implementation of new systems and new applications; reviews system expansion proposals and recommends the purchase of new equipment; may develop equipment specifications proposals or new system evaluation standards; may coordinate the installation of new equipment.

Knowledge, Skills and Abilities

Knowledge of the uses and potentials of modern data processing equipment and their respective advantages and limitations.

Knowledge of state purchasing rules and guidelines in order to write, evaluate and negotiate equipment and software procurement.

Ability work effectively with users, data processing personnel, and vendor representatives in resolving equipment and operations problems.

Ability to prepare and present written and oral reports on equipment utilization and individual and group performance characteristics.

Ability to plan and supervise the activities of paraprofessionals or technical personnel.

Ability to devise work and production schedules to meet user requirements as well as modify these same schedules to meet changing demands on personnel and equipments in emergency situations.

Ability to work effectively with agency officials and the general public.

Ability to communicate effectively, orally and in writing.

Ability to evaluate equipment and operational problems and working with technicians to identify problems and formulate solutions.

Minimum Qualifications

Training:

Graduation from an accredited four-year college or university.

Substitution:
Additional experience as described below may substitute for the above training on a year-for-year basis.

Experience:
Three years of full-time or equivalent part-time paid experience in computer programming, office automation planning, purchasing and implementation of hardware and software, teleprocessing, system analysis, or supervision of computer operations.

Substitution:
A major in computer science may substitute for one year of required experience.

3. The class spec for an Information Systems Manager 2 is:

Nature of Work
Under administrative direction, performs advanced level administrative and supervisory duties directing the data processing operations of a medium sized or larger agency with a comprehensive, full-range data processing function. May also include specialty administrators in the State's central facility departments with multi-faceted and well-developed data processing functions. Activities supervised include: application programming, computer operations, support services, personal computer support or system development. Directly, or through lower level supervisors, schedules work and sets unit priorities for the most efficient utilization of equipment and personnel. Resolves equipment problems and coordinates system usage by agency personnel. Provides advice and assistance to higher level management. Performs related work as required.

Distinguishing Characteristics
Information Systems Manager 2 is distinguished by the broad base of unit activities supervised. In the state central data facility, work is in an area of computer service with a large scope of duties which impact on the planning, purchasing, and implementation of user agency systems. In a state agency, Information Systems Manager 2 is responsible for overseeing a staff involved in programming, or system development in addition to distribution, coordination, and/or support services including LAN management, network support, personal computer support (both hardware and software); the staff encompasses several units involved in separate agency program function.

Examples of Work
Organizes, assigns, directs and reviews the work of a group of professional or technical personnel in the operation of an agency data processing function. Supervises programming or computer operations.

Plans work schedules and set priorities to make the most efficient use of available personnel and equipment.
Analyzes agency operations and determines feasibility and/or cost of conversion from manual to electronic records management or conversion from one automation platform to another.
Analyze and establishes data processing unit procedures and work standards; sets standards for equipment maintenance and troubleshooting.
Advises staff and coordinates the resolution of hardware and software problems.

Knowledge, Skills and Abilities
Knowledge of the uses and potentials of modern data processing equipment and their respective advantages and limitations.
Knowledge of state purchasing rules and guidelines in order to write, evaluate and negotiate equipment and software procurement.
Knowledge of the principles underlying computer operations, modern business methods and procedures, concepts of process flow charting and evaluation, and appropriate business recovery principles and requirements.
Ability work effectively with users, data processing personnel, and vendor representatives in resolving equipment and operations problems.
Ability to prepare and present written and oral reports on equipment utilization and individual and group performance characteristics.
Ability to plan and supervise the activities of a unit of data processing personnel.
Ability to devise work and production schedules to meet user requirements as well as modify these same schedules to meet changing demands on personnel and equipments in emergency situations.
Ability to work effectively with agency officials and the general public.
Ability to communicate effectively, orally and in writing.
Ability to evaluate equipment and operational problems and working with technicians to identify problems and formulate solutions.

Minimum Qualifications
Training:
Graduation from an accredited four-year college or university.

Substitution:
Additional experience as described below may substitute for the above training on a year-for-year basis.

Experience:
Four years of full-time or equivalent part-time paid experience in computer programming, office automation planning, purchasing and implementation of hardware and software, teleprocessing, system analysis, or supervision of computer operations.

Substitution:
A major in computer science may substitute for one year of required experience.

4. Grievant submitted a Position Description Form ("PDF") to DOP detailing his duties. In that PDF, Grievant listed his duties as reviewing standards and requirements from grantors, providing project management, reviewing Office or Division level requests for new or improved information processing systems, reviewing procurement specifications, representing the Commissioner on national committees or work groups, representing the Bureau of Public Health on multi-agency and/or private/public partnerships, reviewing personnel actions and making recommendations to the Commissioner, directing in the creation and maintenance of privacy and security policies, receiving all privacy complaints and notifications of privacy/security breaches, monitoring developments in privacy and security requirements, representing Bureau of Public Health on the Governor's Executive Information Security Team and the DHHR Privacy Workgroup, representing the Commissioner on national committees or workgroups dealing with privacy and security issues, directing the Bureau of Public Health committee on COOP, drafting the policies necessary to effectively execute COOP Plans, reviewing office level plans, managing an exercise and evaluation program consistent with Federal Homeland Security, and providing project management for COOP development, training, exercise and evaluation.

5. Grievant does not supervise any employees.

6. All agencies in state government must have a COOP plan. Each agency is responsible for assigning COOP duties to an employee. These duties can be assigned to any employee, regardless of classification.

7. Management Information Systems ("MIS") is responsible for the overall use of information within DHHR. Grievant does not work for MIS.

8. On March 24, 2009, after reviewing Grievant's PDF, DOP determined Grievant was properly classified.

9. Grievant then requested a reconsideration of the March 24, 2009, classification decision. On June 9, 2009, Grievant received a letter from DOP explaining: "While we recognize Mr. Morris' new duties and responsibilities regarding privacy and Continuity of Operations Planning are significant, they do not relate to the proposed classification of Information Systems Manager 2 and, therefore, do not justify a change in classification." Respondent's Exhibit 5.

Discussion

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). 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).

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 DHHR, 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 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 asserts his position is misclassified. He has requested his position be reallocated to Information Systems Manager 2 and be placed in a higher pay grade. The 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).

The goal of the reallocation 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 supra; Falquero v. Dep't of Envtl. Prot.,* Docket No. 2008-1902-DEP (Feb. 3, 2010).

Barbara Jarrell is employed in the Classification and Compensation Section of the DOP as a Personnel Specialist. She has been in that section since the Division was established in 1989, and has been working with personnel issues for the State for more than thirty years. Ms. Jarrell has reviewed thousands of requests for reallocations to make determinations regarding where positions best fit within the West Virginia classification system. Ms. Jarrell reviewed Grievant's PDF and other documents and determined the predominant duties of the position were "coordinating the information technology/data processing operations of the Bureau of Public Health to include reviewing standards and requirements from grantors, providing project management for major technology procurement, reviewing requests for new or improved information processing systems, representing the Commissioner through committees or workgroups." Respondent's Exhibit 4. While there have been additions to Grievant's duties, they do not amount to a significant change to warrant a reallocation. Additionally, when looking at Grievant's position, he does not, by his own admission, supervise any employees which is a distinguishing feature of Information Systems Manager 2.

Lastly, Ms. Jarrell also testified that the fact Grievant had been assigned COOP duties within the Bureau of Public Health did not elevate his position, as those duties can

be and are assigned to employees throughout the various classification plan. Grievant has failed to meet his burden on proof in this matter. Therefore, this grievance is 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); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). 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. 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 Environmental Protection, 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).

3. 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).

4. 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*.

5. 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).

6. The goal of the reallocation 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 supra; Falquero v. Dep't of Envtl. Prot.,* Docket No. 2008-1902-DEP (Feb. 3, 2010).

7. Grievant has failed to prove that his duties most closely match that of Information Systems Manager 2.

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: June 16, 2010

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Wendy A. Elswick
Administrative Law Judge