THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

TAMI KEIFFER REED,
Grievant,

v. **DOCKET NO. 2010-0723-DOA**

CONSOLIDATED PUBLIC RETIREMENT BOARD/DEPARTMENT OF ADMINISTRATION and DIVISION OF PERSONNEL,
Respondents.

DECISION

Grievant, Tami Keiffer Reed, filed a grievance against her employer, the Consolidated Public Retirement Board, on December 1, 2009, alleging she was misclassified as a Information Systems Manager 1. As relief, Grievant sought, "[r]eclassification to IS Manager 2[; or r]emain IS Man[a]ger 1 with a 10% [pay] increase."[1]

A hearing was held at level one on January 25, 2010, and a decision was issued at level one on January 29, 2010, stating that Respondent had no ability to grant the grievance. Grievant appealed to level two on February 3, 2010. A mediation session was held at level two on May 10, 2010, and Grievant appealed to level three on May 21, 2010. A level three hearing was held before Administrative Law Judge Landon R. Brown on November 10, 2010, in the Grievance Board's Charleston, West Virginia Office. Grievant was represented by J. Michael Adkins, the Consolidated Public Retirement Board was

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[1] Grievant did not pursue the request for a 10% pay increase, and presented no evidence that she was entitled to any pay increase. What Grievant is seeking is a "discretionary" pay increase, which the undersigned has no authority to grant. *Lucas, et al., v. Dep't of Health and Human Resources,* Docket No. 07-HHR-141 (May 14, 2008).

represented by its General Counsel, J. Jeaneen Legato, and the Division of Personnel was represented by Karen O'Sullivan Thornton, Assistant Attorney General. The Department of Administration also appeared separately at the level three hearing by its counsel, Stacy L. DeLong, Assistant Attorney General. This matter became mature for decision upon receipt of the last of the parties' Proposed Findings of Fact and Conclusions of Law, on January 3, 2011. This matter was transferred to the undersigned Administrative Law Judge on October 3, 2011, for administrative reasons.

Synopsis

Grievant believes she should be classified as an Information Systems Manager 2, rather than an Information Systems Manager 1. Grievant did not demonstrate that any of the changes in her duties were such that she should be reallocated to the requested classification. Further, Grievant did not demonstrate that the requested classification was a better fit for her position.

The following Findings of Fact are made based upon the record developed at levels one[2] and three.

Findings of Fact

1. Grievant is employed by the Consolidated Public Retirement Board ("CPRB") as an Information Systems Manager 1 ("ISM 1"). She has been employed by CPRB since July 2007, and has always been in this classification.

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[2] Respondent Consolidated Public Retirement Board did not provide a transcript of the hearing at level one as is required by the Grievance Board, but rather, sent a CD recording of the hearing. Should this matter be appealed to Circuit Court, it will be the responsibility of Respondent to have this hearing transcribed, and in the future, such a transcript must be provided to the Grievance Board on appeal to level three.

2. In 2009, Grievant completed a Position Description Form ("PDF"), and submitted it to her supervisor, Barbara Haddad. Grievant and her supervisor discussed the PDF, the PDF was finalized and signed by Grievant's supervisor, and it was submitted to the Division of Personnel ("Personnel") for review on July 20, 2009. Personnel determined that Grievant was properly classified, and Grievant was advised of this determination in October 2009. Grievant and the CPRB appealed this determination to Personnel, a desk audit was completed by Personnel, and the appeal was denied in November 2009.

2. Erica M. Mani is the Executive Director of CPRB. Grievant's supervisor, Ms. Haddad, is the Chief IT/Information Officer, and reports to Director Mani. Ms. Haddad is classified as an Information Systems Manager 2. On the organizational chart, Grievant is the only person listed as reporting directly to Ms. Haddad.

3. Grievant assists Ms. Haddad in the supervision of three units within the Information Technology ("IT") section: Imaging, Mainframe/Web/Computer Operations, and Communications and Public Information. It is Ms. Haddad who has the primary responsibility for this entire group. Grievant supervises the Imaging Supervisor, the Communications and Public Information Manager, and the employees in the Mainframe unit. When one of the Supervisor positions is vacant, she may assume responsibility for supervising all the employees in the unit. She also oversees the work of two individuals who are not state employees, but are working full time as IT contractors for CPRB, which is a duty that was added after she was hired.

4. Grievant spends 51% of her time assisting her supervisor in the day to day management of the IT Section, performing a variety of duties, such as programming

applications to reflect changes in rules, web development, including database design, data and logic flow, coding in COBOL, SAS, and CICS, coordinating imaging workflow into the agency, communicating with retirees and covered groups of retirees, scheduling work and setting agency-wide priorities, providing for the most efficient use of equipment and personnel, resolution of hardware and software problems, coordination of system usage by agency personnel, advising and assisting Executive Director regarding information technology, analyzing and establishing data processing unit procedures and work standards, setting standards for equipment maintenance and troubleshooting, assisting the Executive Director and Grievant's supervisor with special studies requiring data collation and analysis, procuring equipment and software, and mentoring subordinates. She also works on special projects, such as working on an RFP (request for proposals) for equipment upgrades. Grievant spends 29% of her time managing a two-year project to fix certain program bugs, develop the system for other CPRB plans, and provide predefined enhancements. She spends 20% of her time on building management, including identifying problems, seeking out the cause of the problem, providing information to others on the problem, scheduling repairs, making sure the building is handicapped accessible, and designing office spaces.

5. The complexity of Grievant's duties has increased as the computer technology used by CPRB has advanced.

6. Grievant's building management duties were added to her position in November 2007. She also assumed more of her supervisor's responsibilities during an extended period of time when her supervisor was working on an RFP.

7. Grievant temporarily assumed more responsibility for the day-to-day operations of her unit while her supervisor was working on an RFP (request for proposals) for an extended period of time.

Discussion

Grievant has the burden of proving her grievance by a preponderance of the evidence. *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *See also Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). "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 argued that Personnel has no authority to classify her position because CPRB is an exempt agency, but did not really address this issue in her written argument. The Grievance Board has made clear that:

> Grievant's employer, the CPRB, is an exempt state agency. W. VA. CODE §29-6-4(c)(5). As such, Grievant is not employed within the classified service of state government. Instead, Grievant is a classified-exempt employee. W. VA. CODE § 29-6-2. Even though Grievant is a classified-exempt employee of an exempt agency, [Personnel] is still responsible for determining whether Grievant's position is classified properly. W. VA. CODE §§ 29-6-1; 29-6-5; 29-6-10.
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> DOP is charged with the duty of formulating a classification plan for classified service positions *and* classified-exempt service positions within state government. W. VA. CODE §§ 29-6-1; 29-6-5; 29-6-10; *See also,* 143 C.S.R. 1 § 4.9. Under the classification plan for the classified-exempt service, all positions that are sufficiently similar with respect to type, difficulty, and responsibility of work are to be included in the same class. W. VA. CODE § 29-6-10; *See also,* 143 C.S.R. 1 § 4.9(a). Further, the classification plan is to be based on an analysis of the duties and responsibilities of each

> position, and each position is to be allocated by the Director of Personnel to its proper class in the plan. *Id.*

Patton v. Consol. Pub. Retirement Bd., Docket No. 2010-0882-DOA (July 12, 2011).

Grievant next argued that she was not properly classified because she is supervising three distinct units, while her predecessor supervised only one unit, and because the complexity of her job has increased with the use of more advanced technology by CPRB. Personnel believes Grievant is properly classified, and that reallocation of her position would not be appropriate because there has not been a significant change in Grievant's duties.

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 and classified-exempt service. State agencies which utilize such positions 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 misclassification grievance, the focus is upon the grievant's duties for the relevant period, and whether they more closely match those of another cited classification specification than the classification to which she is currently assigned. *See generally, Hayes v. W. Va. Dep't of Natural Resources*, Docket No. NR-88-038 (Mar. 28, 1989). Personnel job specifications generally contain five sections as follows: first is the "Nature of Work" section; second, "Distinguishing Characteristics" section; third, the "Examples of Work" section; fourth, the "Knowledge, Skills and Abilities" section; and finally, the "Minimum Qualifications" section. These 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 these purposes, 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).

The key to the analysis is to ascertain whether the employee's current classification constitutes the "best fit" for her required duties. *Simmons v. W. Va. Dep't of Health and Human Resources*, 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). Importantly, the Division of Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly wrong. *See, W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

However, this grievance must first be evaluated pursuant to the Division of Personnel's Rule on reallocation. 143 C.S.R. 1 § 3.75 defines "Reallocation" as "[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." The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." *Keys v. Dep't of Environmental Protection,* Docket No. 06-DEP-307 (Apr. 20, 2007)*; Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96-HHR-301(Mar. 26, 1997); *See, Siler v. Div. of Juvenile Serv.*, Docket No. 06-DJS-331 (May 29, 2007). An increase in the number of duties and the number of employees supervised does not necessarily establish a need for reallocation.

Kuntz/Wilford, supra. "An increase in the type of duties contemplated in the [current] class specification, does not require reallocation. The performing of a duty not previously done, but identified within the class specification also does not require reallocation." *Id.*

The relevant portions of the classification specifications at issue follow.

INFORMATION SYSTEMS MANAGER 1

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.

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.

INFORMATION SYSTEMS MANAGER 2

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.

The first question is whether Grievant's duties have changed since she was hired. Grievant first pointed to the fact that she supervises three units. She testified that the person she replaced had only supervised one unit. Grievant believed when she was hired that she would be supervising two units, but discovered about a month later that she would

be supervising three units. No other testimony was offered on this subject. The undersigned cannot conclude that Grievant has demonstrated that her duties changed with regard to the number of units she would be supervising. It is just as likely that it simply was not made clear to her when she was hired that she would be supervising three units.

Grievant also pointed out that the complexity of her duties has increased as CPRB has moved to more advanced computer technology. No one disputed this, however, the undersigned finds nothing in the classification specifications which would indicate that a change in the complexity of duties has any bearing on whether the position is an ISM 1 or 2.

Grievant pointed to the fact that she assumed more management responsibility while Ms. Haddad was working on an RFP, however, this was a temporary situation. Had this additional responsibility continued, this would be a consideration, as management responsibility is indeed one of the issues in this case. However, this assumption of additional responsibility did not become a part of Grievant's permanent duties. As such, this cannot be considered in the analysis of whether Grievant is misclassified.

Grievant is also now overseeing the work of two contract employees. The undersigned cannot conclude from the evidence presented that this has changed the nature of the work performed by Grievant. Further, there is no evidence that this takes up a significant portion of Grievant's time.

Finally, Grievant demonstrated that she now has responsibility for building maintenance and design issues which she did not previously have. However, Barbara Jarrell, Manager of Personnel's Classification and Compensation Unit, pointed out that this duty is not within either the ISM 1 or 2 classification specification, but rather, would fit within

the Building Maintenance Supervisor classification, which is in a much lower pay grade. This change in responsibility is of no help in Grievant's quest for reallocation. Grievant has not met her burden of demonstrating a significant change in her responsibilities which would entitle her to reallocation to an ISM 2.

Moreover, Grievant failed to demonstrate that the ISM 2 classification is the best fit for her duties. Grievant called as a witness Lowell D. Basford, former Manager of Personnel's Classification and Compensation Section, now retired, who testified that he believed the ISM 2 classification is a better fit for Grievant's duties. He had reviewed Grievant's PDF and the classification specifications, and pointed out that CPRB would be a medium sized or larger agency as those terms are used in the classification specifications. He relied upon the use of the word "or" in the second sentence of the Nature of Work Section of the ISM 1 classification specification, stating that Grievant supervises systems, applications programming, <u>and</u> computer operations, not just one of these areas. He stated that she should be supervising only one of these areas to fit within the ISM 1 classification specification based on the use of the word "or" as the conjunction between these three listed areas.

Ms. Jarrell disagreed with Mr. Basford. She testified that the use of the word "or" in the classification specification for the ISM 1 does not mean that a position that is responsible for more than one section cannot be placed in this classification. More importantly, however, she pointed out that Grievant's PDF states that she "assists" her supervisor in the day-to-day management of the IT section. Ms. Haddad is apparently the person responsible for the entire IT section. Grievant's in-house title is "Assistant Manager." She assists Ms. Haddad in the management of the section. Ms. Haddad is

classified as an ISM 2. Grievant's PDF indicates that she spends quite a bit of time in non-management activities, such as programming and coding. The classification specification for the ISM 2 states that the position performs "advanced level administrative and supervisory duties directing the data processing operations of a medium sized or larger agency," while the ISM 1 does the same at the full-performance level for a smaller agency system, "or as a first level or specialty function administrator in a large, comprehensive data processing program." Grievant would appear to be the first level administrator, assisting Ms. Haddad in the management of the IT section.

The ISM 1 and ISM 2 are part of a class series, and there is significant overlap in the classification specifications, as is to be expected in a class series. The distinctions between the two are difficult to understand. Grievant is obviously a valued employee who is willing to take on any task that needs to be done to assure that the agency's work is getting done,[3] yet, like all state employees at this time, cannot be rewarded for her efforts with a merit increase. While this situation is unfortunate, it does not equate to entitlement to a different classification. Grievant has not demonstrated that Personnel's determination that she should be classified as an ISM 1 is clearly wrong.

The following Conclusions of Law support the Decision reached.

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[3] Counsel for the Department of Administration, for some reason not apparent to the undersigned, went out of her way at the level three hearing to paint Grievant as a liar, based on Grievant's testimony in an entirely different grievance hearing, about a conversation between Grievant and Ms. Haddad after Ms. Haddad had testified. That grievance was also a classification grievance. The undersigned does not find Grievant's credibility to be at issue here.

Conclusions of Law

1. Grievant has the burden of proving her grievance by a preponderance of the evidence. *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *See also Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988).

2. "Even though Grievant is a classified-exempt employee of an exempt agency, [Personnel] is still responsible for determining whether Grievant's position is classified properly. W. VA. CODE §§ 29-6-1; 29-6-5; 29-6-10." *Patton v. Consol. Pub. Retirement Bd.*, Docket No. 2010-0882-DOA (July 12, 2011).

3. In a misclassification grievance, the focus is upon whether the grievant's duties for the relevant period 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).

4. The key to the analysis is to ascertain whether the grievant's current classification constitutes the "best fit" for his required duties. *Simmons v. W. Va. Dep't of Health and Human Resources,* 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). Importantly, the Division of Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly wrong. *See, W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

5. 143 C.S.R. 1 § 3.75 defines "Reallocation" as "[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." The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." *Keys v. Dep't of Environmental Protection,* Docket No. 06-DEP-307 (Apr. 20, 2007)*; Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96-HHR-301(Mar. 26, 1997); *See, Siler v. Div. of Juvenile Serv.*, Docket No. 06-DJS-331 (May 29, 2007).

6. An increase in the number of duties and the number of employees supervised does not necessarily establish a need for reallocation. *Kuntz/Wilford, supra.* "An increase in the type of duties contemplated in the [current] class specification, does not require reallocation. The performing of a duty not previously done, but identified within the class specification also does not require reallocation." *Id.*

7. Because Grievant's duties have not changed significantly, reallocation of Grievant's position would be in violation of the Division of Personnel's Rules.

8. The Information Systems Manager 2 classification is not a better fit for Grievant's duties than the Information Systems Manager 1 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 appealing party must also provide the Board with the civil action number so that the certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. *See also* 156 C.S.R. 1 § 6.20 (2008).

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BRENDA L. GOULD
Administrative Law Judge

Date: October 26, 2011