WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

CONNIE HALSTEAD,
Grievant,

v. **Docket No. 2010-0112-MAPS**

WEST VIRGINIA STATE POLICE
and DIVISION OF PERSONNEL,
Respondents.

DECISION

This grievance was filed by Grievant, Connie Halstead, against Respondent, West Virginia State Police (WVSP) on July 27, 2009.[1] Grievant asserts that she should be classified as a Secretary I, instead of an Office Assistant 3 (OA3). As relief, Grievant seeks reclassification to a Secretary I with "a 10% raise or be put at mid-point pay".

A level one hearing was held on June 10, 2010. The grievance was denied at that level. A level two mediation was held on August 3, 2010. A level three hearing was held at the Grievance Board's office in Charleston, WV on February 24, 2011. Grievant was represented by Robert B. Kuenzel, Esq., Kuenzel & Associates, PLLC. Respondent West Virginia State Police (WVSP) was represented by Virginia Grottendieck Lanham, Assistant Attorney General. Respondent Division of Personnel (DOP) was represented by Karen O'Sullivan Thornton, Assistant Attorney General. This matter became mature for decision on April 1, 2011, upon final receipt of the parties' proposed findings of fact and conclusions of law.

---

[1]Division of Personnel (DOP) was later joined as a respondent.

Synopsis

Grievant seeks to have the position she holds for the West Virginia State Police reallocated from an Office Assistant III to a Secretary 1 and be placed in the Secretary I paygrade 8. Respondent WVSP asserts that Grievant is performing the duties and responsibilities of a Secretary I. Respondent DOP evaluated Grievant's position on more than one occasion and consistently found that her position was properly classified as an Office Assistant III.

Grievant did not prove that the classification determination made by DOP was clearly wrong, therefore, the grievance must be denied.

After a thorough review of the entire record in this matter, the following facts are found to have been proven by a preponderance of the evidence.

Findings of Fact

1. Grievant began employment for Respondent WVSP in 1993. She has worked for the Bureau of Criminal Investigations (BCI) from approximately six months into her employment with WVSP.

2. Grievant was classified as an Office Assistant 2 until 1996. On or about March 14, 1996, Grievant completed a Position Description Form (PDF)[2] for review by Respondent DOP. DOP conducted an onsite job audit. On June 24, 1996, DOP determined the position should be reallocated from an OA2 to an Office Assistant 3 (OA3) classification.

3. The Position Description Form (PDF) is the document DOP utilizes when

---

[2]DOP's Exhibit No. 6.

classifying positions. It is the basic source of official information about a position; containing official duties, responsibilities, supervisory relationships, and other pertinent information relevant to a position.[3]

4. On or about January 20, 2005, Grievant completed a second PDF[4] for DOP review, requesting reallocation to a Secretary I classification. On April 27, 2005, DOP determined that the position was properly classified as an OA3.

5. Grievant requested that DOP reconsider the classification determination. Barbara Jarrell, Assistant Director, Classification and Compensation section of DOP, performed an onsite job audit with Grievant.

6. On June 15, 2005, after a complete review of the position, then Acting Director of DOP, Willard M. Farley, responded to the request for consideration by upholding the original determination that the position occupied by Grievant was properly allocated to the OA3 classification. Mr. Farley concluded the duties and responsibilities assigned to the position are within the scope and nature of the OA3 classification.[5] The primary role of the position had remained the same and, as such, there had not been a substantial change in duties.

7. On or about July 24, 2005, Grievant completed a third PDF[6] for DOP review, requesting reallocation to a Secretary I classification. On September 6, 2005, DOP

---

[3] *See* W.Va. Legislative Rule 143CSR1-4.5 and DOP Exhibit No. 6.

[4] DOP's Exhibit No. 7.

[5] *See* DOP's Exhibit No. 9.

[6] DOP's Exhibit No. 1.

determined the position was appropriately classified to the OA3 classification stating that the predominant duties still fall within the scope and nature of the OA3 classification.[7]

8. On or about April 11, 2008, Grievant submitted a fourth PDF[8] for DOP review, requesting reallocation to a Secretary I classification. On July 16, 2008, DOP determined the position was appropriately classified to the OA3 classification.[9]

9. Grievant appealed the July 16, 2008, classification determination by DOP, requesting reconsideration. On September 30, 2008, another job audit of the position was conducted. On December 4, 2008, after a complete review of the position, as well as the job audit, then Director of DOP, Otis G. Cox, upheld the determination that the position occupied by Grievant was properly allocated to the OA3 classification. Mr. Cox concluded that there had been no significant change in duties so as to warrant a reallocation to the Secretary I classification.[10]

10. On or about March 6, 2009, Grievant submitted a fifth PDF[11] for DOP review, requesting reallocation to a Secretary I classification. On June 2, 2009, DOP determined the position was appropriately classified to the OA3 classification generally stating the primary duties assigned to the position are the same as those that were assigned at the time of the last review and any additional duties that may have been added are considered

---

[7] *See* DOP's Exhibit No. 10.

[8] DOP's Exhibit No. 2.

[9] *See* DOP's Exhibit No. 11.

[10] *See* DOP's Exhibit No. 12.

[11] DOP's Exhibit No. 3.

to be at the same level of complexity as those fitting the current classification.[12]

11. Grievant appealed the June 2, 2009, classification determination by DOP, requesting reconsideration. On July 23, 2009, Tari M. Crouse, then Acting Director of DOP, responded stating she found that the predominant duties fell within the scope and nature of the OA3 classification and upheld the classification determination.[13]

12. Grievant filed the present grievance on July 27, 2009.

13. On or about August 17, 2010, Grievant submitted a sixth PDF[14] for DOP review, requesting reallocation to a Secretary I classification. On October 13, 2010, DOP determined the position was appropriately classified to the OA3 classification stating they did not find a substantial change in duties necessary to warrant a reallocation of the position.[15]

14. The DOP Classification Specification for Office Assistant III[16] reads in part:

Nature of Work

> Under general supervision, performs advanced level, responsible and complex clerical tasks of a complicated nature involving interpretation and application of policies and practices. Interprets office procedures, rules and regulations. May function as a lead worker for clerical positions. Performs related work as required.

---

[12] *See* DOP's Exhibit No. 13.

[13] *See* DOP's Exhibit No. 14.

[14] DOP's Exhibit No. 5.

[15] *See* DOP's Exhibit No. 15.

[16] Joint Exhibit No. 1.

Distinguishing Characteristics

> Performs tasks requiring interpretation and adaptation of office procedures, policies, and practices. A significant characteristic of this level is a job inherent latitude of action to communicate agency policy to a wide variety of people, ranging from board members, federal auditors, officials, to the general public.

15. The DOP Classification Specification for Secretary I[17] reads in part:

Nature of Work

> Under general supervision, at the full-performance level, relieves supervisor of clerical and minor administrative duties, exercising discretion and independent judgment. Necessity for dictation, familiarity with word processors, and other special requirements vary depending upon supervisor's preference. Performs related work as required.

Distinguishing Characteristics

> This class is distinguished from the Office Assistant series by the assignment of support duties to a specific individual overseeing a section, or a division. The incumbent composes routine correspondence for the supervisor, screens calls and visitors and responds to inquiries requesting knowledge regarding office procedure, policy and guidelines, and program information. The position has limited authority to speak for the supervisor.

At this level, the work requires knowledge necessary to complete complex procedural assignments. Incumbent determines appropriate procedures from among a variety of resources, methods, and processes. Incumbent is responsible for his/her own work, and may assign and direct the work of others. Although some tasks are defined and self-explanatory, the objectives, priorities, and deadlines are made by the supervisor. Work is reviewed, usually upon completion, for conformance to guidelines. Contacts at this level are frequent and often non routine and/or of a confidential or sensitive nature, requiring tact and the ability to judge which inquiries can be answered or must be referred.

16. The DOP Classification Specification for Accounting Technician III[18] reads in part:

---

[17]Joint Exhibit No. 2.

[18]Joint Exhibit No. 3.

Nature of Work

> Under general supervision, perform full-performance accounting support duties. The incumbent is responsible for performing moderately complex posting, encumbering of funds, and examining records to assure adherence to accounting laws and regulations. Perform related work as required.

Distinguishing Characteristics

> This is the full-performance level of paraprofessional accounting. Responsibilities may include training and reviewing work of subordinate staff.

17. Grievant's supervisors, Captain Tim Bradley and Lieutenant Terry Lavenski of the WVSP's Bureau of Criminal Investigations, believe Grievant is performing the duties of a Secretary I classification.

18. Grievant is responsible for keeping track of the equipment, supplies and vehicles purchased, as well as the maintenance for all the vehicles in the Control of the Bureau of Criminal Investigations (BCI), on a statewide basis.

19. Funds that are used by officers of the BCI to conduct and purchase narcotics in undercover operations come from what is called the Imprest Fund. Grievant is in charge of receiving officers' requests for monies from the Imprest Fund, on a statewide basis. Grievant is in charge of ensuring that the Imprest Fund is reconciled and in balance.

20. Since 2005, Grievant has been the sole clerical worker for the Special Operations Section, the statewide section within the WVSP that is entrusted with the duties of bomb technicians, SWAT teams, and K-9 units. Captain Bradley specifically assigned Grievant to perform duties, such as filing, reports and paperwork, for the Special Operations Section because the unit did not have an office assistant or secretary assigned to it.

21. Grievant does not attend meetings on her supervisor's behalf.

22. Grievant's job duties and responsibilities includes the following: answering phones, typing, transcribing, composing correspondence and memos, making copies, maintaining supplies, preparing and tracking leave forms, arranging conference calls, scheduling appointments, maintaining a Purchase Card log of monies spent daily, composing Purchase Card forms, maintaining a Purchase Order Voucher log, preparing agreement forms, bookkeeping, administering accident reports, making travel arrangements, submitting travel requests, creating Excel data forms, composing bid forms for various contracts and equipment, entering time sheets into database, and preparing dictation.

23. The amount of Grievant's duties and responsibilities have increased since the Bureau of Criminal Investigations was moved to the West Virginia State Police Academy in 2005.

24. Grievant's duties and responsibilities have not significantly changed in kind, level and complexity of work.

25. The accounting related duties and responsibilities performed in Grievant's position fall within the Accounting Technician 3 (Acct Tech 3) classification.[19]

Discussion

In a misclassification grievance, the Grievant must prove by a preponderance of the evidence that the work she is doing is a better fit in a different classification than the one in which her position is currently classified. *See Hayes v. W. Va. Dep't of Natural Res.*, Docket No. NR-88-038 (Mar. 28, 1989); *Oliver v. W. Va. Dep't of Health & Human*

[19] *See* DOP's Exhibit No. 9.

Res./Bureau for Child Enforcement, Docket No. 00-HHR-361 (Apr. 5, 2001). The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." *Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96-HHR-301 (Mar. 26, 1997). An increase in the type of duties contemplated in the current class specification does not require reallocation. *Id*

Grievances contesting a grievant's current classification are therefore decided under rules of law which give DOP's interpretation of classification specifications great weight unless that interpretation is shown to be clearly erroneous. The "clearly wrong" and the "arbitrary and capricious" standards of review are deferential ones which 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)(*citing In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996)). It is fair to say that a grievant challenging her classification has an uphill battle. *Bennett v. Insurance Comm'n and Div. of Pers.* Docket No. 07-INS-299 (June 27, 2008).

Grievant and Respondent WVSP assert Grievant's position is misclassified. Grievant and WVSP argue the position be reallocated to a Secretary I and 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." Additionally, Grievant must prove by a preponderance of the evidence that her duties more

closely match another cited Division of Personnel classification specification than the one under which she 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).

An examination of the PDFs submitted by Grievant when she requested her reallocations reveal that the predominant duties of this position have not significantly changed in kind or level since Grievant was reallocated to an OA3 in 1996. The **amount** of duties and responsibilities for which Grievant is responsible have vastly increased. Grievant's duties have laterally expanded since the Bureau of Criminal Investigations was moved to the WVSP in 2005. In addition to her previous duties, Grievant is now the sole clerical worker for the Special Operations Section. However, since the predominant duties of this position did not significantly change in kind or level, a reallocation of this position was not consistent with the DOP rules.

Grievant asserts she should be reallocated to a Secretary I because she was performing similar duties as a previous employee in a Secretary position. 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 of Health and Human Resources*, Docket No. 99-HHR-142 (Oct. 28, 1999), *See also, Harmon v. Dep't of Health and Human Resources and Div. of Personnel*, Docket No. 99-HHR-432 (May 15, 2000). Classification determinations do not involve a comparison of the duties of a grievant to those of other employees in the classification sought. Those to whom the grievant compares himself may themselves be misclassified, or, they may have some

duties and responsibilities of which the grievant has no knowledge. Further,

> "[t]he remedy, in a situation involving a grievant's claim that others are enjoying a higher classification and performing the same work that she performs, is not to similarly misclassify the grievant. *Akers v. W.Va. Dept. of Tax and Revenue*, 194 W.Va. 956, 460 S.E. 2d 702 (1995)." *Myers v. Dep't of Health and Human Resources*, Docket No. 00-HHR-392D (2001).

Stihler, supra., citing Bender v. Dep't of Health and Human Res., Docket No. 00-HHR-305 (April 26, 2001); *See also, Kunzel v. Dep't of Health and Human Resources*, Docket No. 97-HHR-287 (Jan. 8, 1998), *Smith v. Dep't of Health and Human Resources*, Docket No. 94-HHR-1077 (Nov. 9, 1998). The key is to compare Grievant's duties and responsibilities to the classification at issue, utilizing the clearly wrong standard. *Stihler, supra*.

Upon hearing the testimony of Grievant's supervisors, the undersigned does not doubt that Grievant is a valued employee with excellent work ethics. Employees such as Grievant are an asset to the State of West Virginia. Although the primary role of the position remained the same and as such there has not been a substantial change in duties, DOP noted that the non-clerical duties performed by Grievant are actually accounting type duties that would fall within the Accounting Technician III (Acct Tech 3) classification.[20] The Acct Tech 3 classification is in paygrade 7, the same pay grade as the OA3. Grievant did not argue that she should be reallocated to an Acct Tech 3 classification or an Accounting Technician IV classification, which is in paygrade 9.

Respondent DOP's determination that the Office Assistant III classification is the best fit for Grievant's position was not clearly wrong. Accordingly, this grievance is DENIED.

---

[20] *Id.*

Conclusions of Law

1. In a misclassification grievance, the Grievant must prove by a preponderance of the evidence that the work she is doing is a better fit in a different classification than the one in which her position is currently classified. *See Hayes v. W. Va. Dep't of Natural Res.*, Docket No. NR-88-038 (Mar. 28, 1989); *Oliver v. W. Va. Dep't of Health & Human Res./Bureau for Child Enforcement*, Docket No. 00-HHR-361 (Apr. 5, 2001).

2. The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." *Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96-HHR-301 (Mar. 26, 1997). An increase in the type of duties contemplated in the current class specification does not require reallocation. *Id*

3. Grievant must prove by a preponderance of the evidence that her duties more closely match another cited Division of Personnel classification specification than the one under which she 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).

4. Grievances contesting a grievant's current classification are decided under rules of law which give DOP's interpretation of classification specifications great weight unless that interpretation is shown to be clearly erroneous. The "clearly wrong" and the "arbitrary and capricious" standards of review are deferential ones which 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)(*citing In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996)).

5. It is fair to say that a grievant challenging her classification has an uphill battle. *Bennett v. Insurance Comm'n and Div. of Pers.* Docket No. 07-INS-299 (June 27, 2008).

6. 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 of Health and Human Resources*, Docket No. 99-HHR-142 (Oct. 28, 1999), *See also, Harmon v. Dep't of Health and Human Resources and Div. of Personnel*, Docket No. 99-HHR-432 (May 15, 2000).

7. Classification determinations do not involve a comparison of the duties of a grievant to those of other employees in the classification sought. Those to whom the grievant compares himself may themselves be misclassified, or, they may have some duties and responsibilities which the grievant has no knowledge of. Further,

> "[t]he remedy, in a situation involving a grievant's claim that others are enjoying a higher classification and performing the same work that she performs, is not to similarly misclassify the grievant. *Akers v. W.Va. Dept. of Tax and Revenue*, 194 W.Va. 956, 460 S.E. 2d 702 (1995)." *Myers v. Dep't of Health and Human Resources*, Docket No. 00-HHR-392D (2001).

Stihler, supra., citing Bender v. Dep't of Health and Human Res., Docket No. 00-HHR-305 (April 26, 2001); *See also, Kunzel v. Dep't of Health and Human Resources*, Docket No. 97-HHR-287 (Jan. 8, 1998), *Smith v. Dep't of Health and Human Resources*, Docket No. 94-HHR-1077 (Nov. 9, 1998). The key is to compare Grievant's duties and responsibilities to the classification at issue, utilizing the clearly wrong standard. *Stihler, supra*.

8. Grievant did not prove by a preponderance of the evidence that the classification determination made by DOP was clearly wrong.

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: July 20, 2011

Jennifer Lea Stollings-Parr
Administrative Law Judge