THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

BARBARA HADDAD,
Grievant,

v. **DOCKET NO. 2010-0725-DOA**

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

DECISION

Grievant, Barbara Haddad, filed a grievance against her employer, the Consolidated Public Retirement Board, on November 30, 2009, alleging she was misclassified as a Information Systems Manager 2. As relief, Grievant sought, "[r]eclassification to IS Manager 3[; or r]emain IS Man[a]ger 2 with a 10% [pay] increase."

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 14, 2010, and Grievant appealed to level three on May 21, 2010. A level three hearing was convened before Administrative Law Judge Landon R. Brown on October 27, 2010, at which time Grievant's request for a continuance of the hearing was heard and granted. The level three hearing was held on December 1, 2010, before Administrative Law Judge Brown in the Grievance Board's Charleston, West Virginia Office. Grievant appeared *pro se,* the Consolidated Public Retirement Board was

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 10, 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 3, rather than an Information Systems Manager 2. 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[1] and three.

Findings of Fact

1. Grievant is employed by the Consolidated Public Retirement Board ("CPRB") as an Information Systems Manager 2 ("ISM 2"). She has been employed by CPRB since February 2007, and has always been in this classification.

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[1] 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. Grievant prepared a Position Description Form ("PDF") in 2009, and it was submitted to the Division of Personnel ("Personnel") for review. In October 2009, Grievant was notified that Personnel had found her position to be properly classified. Grievant and CPRB requested reconsideration of Personnel's decision and a desk audit. A desk audit was conducted by Barbara Jarrell, Manager of Personnel's Classification and Compensation Section, and on November 10, 2010, Grievant was notified that Personnel had determined that her position was in the proper classification.

3. Grievant reports directly to the Executive Director of CPRB, Erica M. Mani.

4. Tami Reed is Grievant's Assistant Manager of Information Technology ("IT"). Ms. Reed is classified as an Information Systems Manager 1.

5. Grievant is responsible for managing three units: the Imaging Unit, the Communications Unit, and the Mainframe Unit. She is involved in the day-to-day operations of the Imaging Unit, and in all decision-making in the Unit. She evaluates the supervisor of that Unit. She also is involved in the operations of the Communications Unit. Neither the Communications Unit nor the Imaging Unit is an information technology unit.

6. When Grievant was first placed in her current position, she had no responsibility for the Imaging Unit or the Communications Unit.

7. After Grievant was hired by CPRB, the West Virginia Office of Technology ("OOT") was delegated the responsibility for various information technology functions and decision-making in state government, removing this responsibility from the agency level.

8. Grievant spends 75% of her time managing the day-to-day operations of the IT section of CPRB, and the projects the section undertakes, such as system upgrades, completion of the web contribution system, web development, hardware and software

support, and assisting the Executive Director and Chief Operating Officer with special studies. She spends the remainder of her time working with and supervising the 13 employees in the IT section and working with the Chief Operating Officer developing the IT system needed by CPRB.

9. Since Grievant was hired into the position, she was given the additional responsibility of upgrading the mainframe legacy applications to a web-based enabled state-of-the-art system, responsibility for the VoIP Phone system, responsibility for overseeing the contract to fix and enhance the Web Contributions System, and responsibility for project management for programming the legacy systems.

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 she is not properly classified because she is responsible for the oversight of several units[2]. Personnel believes Grievant is properly classified, and that

[2] Grievant also questioned the methods used by Ms. Jarrell to review her position and determine the proper classification, suggesting that Ms. Jarrell should have asked her different questions during the desk audit, and should have consulted with the Chief Technology Officer from OOT. Grievant, however, has no expertise in classification. Just as Ms. Jarrell is not qualified to advise Grievant on how to do her job, Grievant is not qualified to question Ms. Jarrell's methodology. The classification of positions throughout

even though Grievant's responsibilities have changed somewhat, these changes have not made the ISM 3 a better fit for her duties. In fact, Personnel believes that the changes in the level of responsibility for information technology issues brought about by the changes at OOT, have actually diluted Grievant's level of responsibility.

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"; 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

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state government, while appearing simple to the layman, is a somewhat complex art form.

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 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.

INFORMATION SYSTEMS MANAGER 3

Nature of Work

Under administrative direction, performs advanced level administrative and supervisory duties in directing the data processing operations within State agencies with comprehensive, full-range data processing functions or in the state central data facility oversees a specialized unit or several units providing statewide services. Activities supervised include: application programming, program design, computer operations, network support or system development. Directly, or through lower level supervisors, schedules work and sets agency-wide data priorities and provides for the most efficient utilization of equipment and personnel. Fully responsible for hardware and software problem resolution and the coordination of system usage by agency personnel. Provides advice and assistance to top management. Performs related work as required.

Distinguishing Characteristics

Information Systems Manager 3 is distinguished from the other levels by the oversight of several units of professional, paraprofessional, technical and supervisory staff such as programming, support service including LAN management, network support (both hardware and software) or data center management. In the larger state agencies, Information Systems Manager 3 is responsible for overseeing the work of a broad scope of an agency's information systems staff and reports directly to the agency's Management Information System Director. The incumbent has wide latitude in the planning and implementation of agency wide automation needs. In the state central data facility, Information Systems Manager 3 is responsible for consulting services, development center, automation resource center, network services, operations center as examples.

Examples of Work

Organizes, assigns, directs and reviews the work of a group of professional or technical personnel in the operation of a large and comprehensive agency data processing function.
Supervises programming, computer operations, or computer support activities.
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.
May assist management in special studies requiring computer data collation and analysis.

Grievant demonstrated that her duties have changed, and that she has taken on additional responsibility. However, contrary to Grievant's argument, these changes did not move her toward the ISM 3 classification. The ISM 2 and ISM 3 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 points to the Distinguishing Characteristics Section of the classification specification, arguing that she has "oversight of several units of professional, paraprofessional, technical and supervisory staff such as programming, support service including LAN management, network support (both hardware and software) or data center management." While Grievant does have managerial responsibility for multiple units, only one of those units is an information technology unit. Neither the Communications Unit nor the Imaging Unit is primarily engaged in information technology functions, such as programming, LAN management, network support, or data center management, as is set forth in the classification specification for the ISM 3. As Ms. Jarrell pointed out, the Communications Unit is a public information unit, which would normally be under the supervision of an Administrative Services Manager, which is in a lower pay grade. While Grievant explained that these two units were placed under her supervision because of the need to upgrade software and because the website operated by the Communications Unit needed upgraded, these needs for upgrades in the information technology used by the two Units does not transform them into information technology units. The employees in these Units are not information technology specialists. Three of the eight employees are Office Assistants, one is a Public Information Specialist 1, two are supervisors, and two are Imaging Operators.

Ms. Jarrell further pointed out in regard to the second sentence of the Distinguishing Characteristics section of the ISM 3 classification specification, that CPRB is not a "larger

state agency." She stated that the Division of Highways and the Department of Health and Human Resources are larger state agencies with thousands more employees than CPRB.

Grievant is obviously a valued employee who has willingly accepted additional responsibility, yet, like all state employees at this time, she 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. Many of the responsibilities undertaken by Grievant fall under the category of an "increase in the type of duties contemplated in the class specification." The undersigned finds nothing in the evidence presented from which she could conclude that the ISM 3 classification specification is a better fit for Grievant's position. Grievant has not demonstrated that Personnel's determination that she should be classified as an ISM 2 is clearly wrong.

The following Conclusions of Law support the Decision reached.

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 she 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 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).

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. The changes in Grievant's duties have not resulted in the Information Systems Manager 3 classification being a better fit for her position.

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).

BRENDA L. GOULD
Administrative Law Judge

Date: November 9, 2011