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SANDRA RUMBAUGH

v.

Docket No. 89-DOH-389

**WEST VIRGINIA
DEPARTMENT OF HIGHWAYS**

and

**WEST VIRGINIA
DIVISION OF PERSONNEL**

D E C I S I O N

Grievant Sandra Rumbaugh, a Right-of-Way Technician III (RWT III) with Respondent West Virginia Department of Highways (DOH), alleges that from June 1986 to the present she has been doing the work of a Right-of-Way Technician IV (RWT IV). She requests backpay plus interest and reclassification. Her grievance, filed May 23, 1989, and denied at Levels I through III, was advanced to Level IV on July 26. At hearing on September 11, 1989,¹ Lowell Basford, representing Respondent West Virginia Division of Personnel (Personnel), requested leave to conduct an audit of

¹A hearing scheduled for August 21, 1989, was continued at the request of Grievant.

Grievant's job and the parties agreed that such an audit should be performed. The hearing was reconvened on October 18, 1989, and with receipt of proposed findings of fact and conclusions of law from Grievant and DOH² this matter may be decided.

The dispute in this matter is a limited one, based on the parties' differing views of the meaning of the description of the "Nature of Work" of the classification specification for a RWT IV, which is,

Under limited supervision, an employee in this class supervises the revision of maps and plans used in the acquisition of right-of-way or relocation of facilities or utilities as required by Department of Highways.

Respondent's position was succinctly stated by the Level III evaluator, i.e., that "A [RWT] III performs and a [RWT] IV supervises. ...Testimony indicates that Ms. Rumbaugh does review the work of another employee but this review could not be considered supervision." Grievant contends that by reviewing the work of another employee she "supervises the revision of maps and plans" within the terms of the specification and supervision of an individual employee is not required thereby.

The most significant portion of a classification specification is the "nature of work" section. Dollison v. W.Va. Dept. of Emp. Sec., Docket No. 89-ES-101 (Nov. 3,

²Personnel has apparently waived submission of proposals since the deadline for service thereof has passed and none have been received.

1989). The parties correctly center on the meaning "supervises the revision of maps and plans...," in the RWT IV specification, for whatever type of supervision is intended thereby is not included in the description of the nature of work of a RWT III, which is as follows:

Under limited supervision, an employee in this class performs in an advanced or specialist role in the revision of maps and plans used in the acquisition of right-of-way or relocation of facilities or utilities as required by Department of Highways.

The remainder of the specifications for the two technician positions do not vary greatly, for they share the same "Examples of Work Performed," with the exception of three included in the RWT IV specification, one of which, "Assigns the preparation and revision of right-of-way or relocation plans, descriptions, and exhibits to subordinate technicians," supports Respondents' position, since it refers to "subordinate technicians." However, the listed "Required Knowledge, Skills and Abilities" of both specifications are exactly the same, including, "Ability to supervise skilled and semi-skilled technicians...." Accordingly, simply reviewing the specifications themselves does not solve whether supervision of a technician is a cornerstone of the RWT IV classification but rather makes it only more clear that the meaning of "supervision of revision of maps and plans" is ambiguous.

Personnel requests that special deference be given to Mr. Basford's view, expressed in the "Classification

Determination" he prepared upon auditing Grievant's job and in his testimony. In his report Mr. Basford reasoned,

At question number 23 of the position description form Ms. Rumbaugh indicates that she has supervisory authority for a position occupied by Robert Samms, Right-of-Way Technician II. Upon further questioning in the job audit it was determined that the "supervision" involves the review of the technical aspects of his work and making occasional work assignments to him. Moreover, at question number 28 of the position description form, Guy Mick, Grievance Supervisor, indicated that the position has no supervisory responsibility. Ms. Rumbaugh also provides technical assistance and advice to right-of-way agents, engineering technicians and other employees in the design, division and the right-of-way division.

Absent the supervisory elements required in the Right-of-Way Technician IV class specification, the position does not represent a "best fit" with this level in the class series. With her responsibility for reviewing calculations of invoice packages, conducting field surveys and investigations relating to the property acquisition and relocation, advising other technicians on the interpretation of survey notes or techniques for determining property boundaries and providing consultation with designers, engineers and right-of-way agents, the position is most appropriately classified as Right-of-Way Technician III. In relation to the full performance level identified at the Right-of-Way Technician II level, the work performed by Ms. Rumbaugh is clearly at the advanced or specialist level as identified in the Right-of-Way Technician III class specification. Ms. Rumbaugh does not have supervisory authority over other employees which represents the most significant distinguishing characteristic between the three and four levels in the class series. In fact, there is only one other Right-of-Way technician in the unit and the legitimate supervision for that position is assigned to Mr. Mick.

In testimony he further explained that the Right-of-Way Technician positions constitute a series and, while some duties are shared by all members of the series, the RWT IV position, as the last in the series, involves the greatest experience and expertise and is the only one with supervisory duties. He specified that supervision means that the

individual has at least some power of hiring and firing and evaluating the subordinates. He testified that Grievant's review of the maps and plans of other employees is not supervision but merely "part of the process and flow of the work."

Personnel has otherwise crafted classification specifications that unambiguously show that the incumbent supervises other individuals. For example, the descriptions of the nature of the work of the Economic Service Worker II and III classification specifications discussed in Bannister v. West Virginia Dept. of Human Services, Docket Nos. 89-DHS-251/252 (Nov. 3, 1989), unambiguously provide, respectively, that "This employee may supervise Economic Service Worker I and Eligibility Aides, as necessary[,]" and "Incumbent may supervise subordinate Economic Service Workers and Aides." If such supervision was intended as a necessary or essential component of the RWT IV position, Personnel could and should have unambiguously so stated. Since classification specifications are like regulations promulgated by an agency, they are subject to the same principles of law. Grievant relies on Morgan v. Pizzino, 256 S.E.2d 592 (W.Va. 1979), where it was ruled that "School personnel regulations and laws are to be strictly construed in favor of the employee." Syl. Pt. 1. While this case is not an education case, the same reasoning applies since it involves construing a personnel regulation where one interpretation thereof would benefit a governmental employer, DOH, and a statutory employer, Personnel, see

Hayes v. DNR, Docket No. NR-88-035 (Mar. 28, 1989), and a contrary interpretation would benefit an employee, Grievant.³ Accordingly, the classification specification of a RWT IV must be interpreted as not requiring supervision of individuals. Nevertheless, because the specification does require "supervis[ion]" of the revision of maps and plans, it must require at least some inherent control over such revision.

The parties have little disagreement on what are Grievant's duties. In fact, DOH proposes as findings of fact the listing of duties Grievant made on the personnel form for requesting reclassification, as follows:

- a. Review and comment on projects, plans, plats, descriptions, etc. to ascertain r/w [right-of-way] requirements; order revisions; check and/or correct same; advise subordinates of same by memo and/or exhibit-utilizing knowledge of r/w regulations, surveying, and associated terminology. . .
- ..
- b. Check accuracy of invoice packaging-calculations, descriptions, etc.-correcting as necessary, submitting for authorization.
- c. Prepare and revise plans and property descriptions, also check and correct others['] work. . .
- ..
- d. Research records, deeds, titles, land books, and conduct interviews to identify ownership and boundaries.
- e. Investigate, report, and/or prepare findings as exhibits for r/w acquisition, relocation, inquiries from citizens. . .
- f. Prepare responses of research, inquiries, revisions concerning r/w activities. . .

³Of course, where benefitting one employee at the expense of another would result from strict construction, the stated principle would not apply.

- g. Research and prepare r/w, relocation, property management plans and maps; review same; make revisions as necessary. . . .
- h. Assist technicians with interpretation of boundaries; assist others with interpretation.
- i. Perform other various and related tasks as required- i.e. making specialized signs, procurement of materials, maintaining office files and updating same.

DOH's Proposed Finding of Fact 2.⁴ Finally, DOH adds, "Additional responsibilities [of Grievant] are maintaining the map and plans room and the microfilm library." DOH's Proposed Finding of Fact 3.

Grievant described her duties as "assist[ance]," Tr. 16, to a variety of DOH employees, conceding that she can make no assignments, nor can she "exactly point to someone and say do this." Tr. 16. There was little concrete evidence of record on the degree to which such employees are required to submit their work to her or how great is her right to change their work if they do not approve. In fact, the only such evidence is the agreement of Robert M. Samms, an RWT II and the only other RWT in the District I office of DOH where Grievant works, that Grievant "checks" his "plats and property descriptions." Moreover, Grievant's simple

⁴DOH's inclusion of "order revisions" and the reference to "subordinates" in the first duty listed is surprising since it is directly contrary to Respondents' contention made throughout these proceedings and in DOH's proposals that "The grievant in her job does not supervise any other employees of the Department." DOH's Proposed Finding of Fact 4. Because such inclusion was therefore apparently inadvertent, it is not accepted as a concession by DOH.

statement that she "check[s]" and "correct[s] others['] work," although accepted by DOH, is insufficient to establish any substantial degree of control over others' work so as to consider such review supervision.

Finally, while it is recognized that the examples of work performed provided by a classification specification are simply that, examples, and that an employee properly working in a classification may not have the same duties as those listed in that classification's specification, it is worth examining whether Grievant performs the three examples provided in the RWT IV specification not included in the RWT III specification. Grievant clearly has not shown that she "Assigns the preparation and revision of right-of-way or relocation plans, descriptions, and exhibits to subordinate technicians," as discussed, and likewise has not shown that she "writes reports of technical activities and progress." Grievant did not discuss any reports as such but instead referred to letters she writes that are issued over Mr. Mick's signature. Only regarding the third, "Develops final right-of-way and/or relocation maps and plans; reviews to detect errors, and makes revisions if necessary," was there evidence indicating Grievant has some duties consistent therewith. While Mr. Mick testified that he did not think that Grievant "develop[s] final right of way and or relocation maps and plans," Tr. 12, and Grievant stated that she does not do the "full size sheets" of the final right-of-way and relocation maps and plans, Tr. 17, Mr. Mick testified

that "she does review the plans to detect errors and to make revisions if necessary." Tr. 13.

In addition to findings of fact and conclusions of law contained in the foregoing discussion, the following are appropriate:

Conclusions of Law

1. A grievant must prove, by a preponderance of the evidence, the allegations of his or her complaint. Payne v. W.Va. Dept. of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988).

2. The "Nature of Work" section of the RWT IV classification specification ambiguously provides that the "employee in this class supervises the revision of maps and plans. . ."

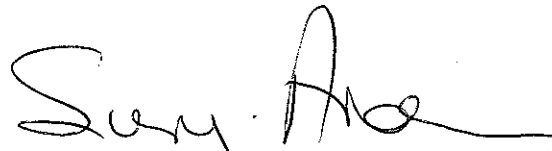
3. The principle that a personnel regulation must be strictly construed against an employer, see Morgan v. Pizzino, 256 S.E.2d 592 (W.Va. 1979), is applicable to interpreting the classification specification in this case. Accordingly, "supervises the revision of maps and plans" cannot be interpreted as requiring the supervision of individual subordinates. However, it must be interpreted as requiring some inherent control over the revision of such maps and plans.

4. While the evidence established that Grievant did review and revise work of other employees of DOH, a

preponderance of the evidence did not establish that Grievant exercises control over the revision of maps and plans so as to constitute supervision of such revision.

Accordingly, the grievance is **DENIED**.

Either party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate court.

A handwritten signature in dark ink, appearing to read "Sunya Anderson", is written over a horizontal line.

**SUNYA ANDERSON
HEARING EXAMINER**

DATE: December 18, 1989