BETTY JO DAVIS, ET AL.,

Grievants,

v.

DOCKET NO. 93-HHR-392

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
OFFICE OF OPERATIONS and DEPARTMENT OF
ADMINISTRATION/DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievants, Betty Jo Davis, Patricia Hunsaker, Sondra Persinger, Linda Maxey, Linda Pinter, Carolyn Sue Roach, and Tammy Trent (hereinafter Grievants), employed by the Department of Health and Human Resources (hereinafter DHHR), filed a level four grievance appeal on September 17, 1993, alleging that they are misclassified as Supervisor Is. Grievants' immediate supervisor, Mary Ann Dean, agrees that Grievants' are misclassified as Supervisor Is. (See footnote 1) Grievants assert that, based upon the duties which they perform, their proper classification is Administrative Service Manager I. A level four hearing was conducted in the Board's offices in Charleston, West Virginia, on November 18, 1993. The parties submitted Proposed Findings of Fact and Conclusions of Law on December 17, 1993, at which time the case became mature for decision. (See footnote 2)

The classification specifications at issue are reproduced herein as follows:

SUPERVISOR I

Nature of Work

Under general supervision, performs full-performance supervisory work overseeing

the activities of clerical support staff, semi-or-fully-skilled trade workers, or inspectors. Completes annual performance appraisals, approves sick and annual leave, makes recommendations and is held responsible for the performance of the employees supervised. Work is reviewed by supervisors through results produced or through meetings to evaluate output. Performs related work as required.

Distinguishing Characteristics

Supervisor I is usually a working supervisor who makes work assignments, reviews employees' work, and compiles reports on section activities in addition to performing tasks similar to their employees. In some instances, may be a working supervisor performing related work of a more advanced level than subordinates.

Examples of Work

Performs duties that are similar or related to the work performed by subordinates.

Makes work assignments to employees, reviews the work of subordinates to ensure accuracy.

Trains employees in proper work methods.

Ensures that equipment, supplies, and materials are available to complete work.

Inspects work areas to ensure that tasks are completed in a timely manner.

Evaluates employees' performance; counsels employees and recommends corrective action.

Answers inquiries from employees; relays information from management.

Updates and compiles reports outlining the unit's activities, including other factors such as amountof work produced, monies spent or collected, or inventory.

Discusses personnel issues with employees; answers grievance issues within mandated time frames in an effort to solve problems.

Knowledge, Skills and Abilities

Knowledge of office methods and procedures, inspection practices or procedures, skilled trade and related activities.

Knowledge of departmental procedures and policies.

Ability to plan, assign, and coordinate the work of employees engaged in complex clerical activities, field inspection work, or skilled trades.

Ability to make decisions based on governing laws and regulations and to explain policies to subordinates.

Ability to make composite detailed reports based on individual reports of subordinates.

Ability to maintain effective working relationships with fellow employees and the general public.

Minimum Qualifications

TRAINING: Graduation from a standard high school or

equivalent.

EXPERIENCE: Four years of experience in the area of assignment, one year of which must have been in a lead worker or administrative support capacity.

SUBSTITUTION: Course work from an accredited college or university may be substituted for the required experience up to four years for non-trade positions.

SUBSTITUTION FOR BUSINESS/TRADE POSITIONS: Completion of a course accredited by the Department of Education may be substituted for experience at the rate of 1,080 hours per year.

OR

Completion of a related trade union-sponsored apprenticeship program may be substituted for equivalent amount of full-time experience.

ADMINISTRATIVE SERVICES MANAGER I

Nature of Work

Under administrative direction, manages an organizational unit providing administrative and support services (i.e., budgeting, purchasing, personnel, business operations, etc.) in a division where operations, policy, work processes, and regulatory requirements of the unit are predictable and stable. Involves the supervision of professional, technical, and clerical employees. The scope of responsibility includes planning the operations and procedures; during the work of employees; developing employees; evaluating unit operation; developing budget needs; researching new procedures and improvements; interpreting statutes, regulations and policies. Performs related work as required.

Distinguishing Characteristics

The Administrative Services Manager I is distinguished from the Administrative Services Manager II by the responsibility to manage a department-wide administrative support function or a secondary mission, or unit of a primary statewide mission of the department.

Examples of Work

Plans, develops, and executes through professional, technical and clerical staff, a secondary mission of a statewide program or a primary department-wide program.

Directs the daily operations of the staff and may direct regional or other field staff.

Develops and implements operating procedures within regulatory and statutory guidelines; develops and approves forms and procedures.

Renders decisions in unusual or priority situations; consults with supervisors and other state managers in reviewing same.

Evaluates the operations and procedures of the unit for efficiency and effectiveness.

Recommends the selection and assignment of staff to supervisors; conducts interviews and background evaluations for prospective employees.

Determines need for training and staff development and provides training or searches out training opportunities.

Assists in the development of the division and/or agency budget for personnel services, supplies, and equipment.

Researches professional journals, regulations, and other sources for improvements to agency and unit programs and procedures.

Compiles a variety of data related to the operation of the unit and/or the agency.

Interprets statutes, regulations and policies to staff, other managers, and the public.

May serve as a witness in grievance hearings or other administrative hearings.

Prepares reports reflecting the operational status of the unit and or agency programs.

May participate in local conferences and meetings.

Knowledge, Skills and Abilities

Knowledge of the organization and programs of the agency or department.

Knowledge of the principles and techniques of management, including organization, planning, staffing, training, budgeting, and reporting.

Knowledge of state government organization, programs and functions.

Knowledge of state legislative processes.

Knowledge of federal, state, and local government relationships as they relate to the program, mission and operations of the unit and/or department.

Ability to plan, direct, and coordinate the program and administrative activities of the unit.

Ability to supervise others.

Ability to evaluate operational situations, analyze data and facts in preparation for administrative and policy decisions.

Ability to establish and maintain effective working relationships with other government officials, employees, and the public.

Ability to present ideas effectively, both orally and in writing.

Minimum Qualifications

TRAINING Graduation from an accredited college or university with a degree in the area of assignment.

SUBSTITUTION Experience as described below may substitute for the training

requirement on a year-for-year basis.

EXPERIENCE Four years of full-time or equivalent part-time paid administrative or supervisory experience in the area of assignment.

SPECIAL REQUIREMENT A valid West Virginia drivers license may be required.

Discussion

In order for Grievants to prevail upon a claim of misclassification, they must prove by a preponderance of the evidence that their duties for the relevant period more closely matched another cited Personnel classification specification than that under which they are currently assigned. See generally, Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). Personnel specifications are to be read in "pyramidfashion," 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 the Work" section of a classification specification is its most critical section. Atchison v. W. Va. Div. of Health, Docket No. 90-H-444 (Apr. 22, 1991); See generally, Dollison v. W. Va. Dept. of Employment Security, Docket No. 89-ES-101 (Nov. 3, 1989). The key to the analysis is to ascertain whether Grievants' current classification constitutes the "best fit" for their required duties. Simmons v. W. Va. Dept. of HHR/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 Services, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Finally, Personnel's interpretation and explanation of the classification specifications at issue, if said language is determined to be ambiguous, should be given great weight unless clearly erroneous. See, W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993).

In this case, the first task is to draw a meaningful distinction between the classification specifications at issue by reviewing the documents from the top down. The Supervisor I's main focus is on supervision of office personnel, including clerical support staff, semi-or-fully-skilled trade workers, or inspectors. The Supervisor I may be a working supervisor performing relatedwork of a more advanced level than subordinates. The Supervisor I compiles reports on section activities.

The Administrative Services Manager I involves the supervision of professional, technical, and clerical employees. The Administrative Services Manager I is responsible for the management of a whole region or state-wide program. The Administrative Services Manager I supervises first-line supervisors, which includes the Supervisor I classification.

Job classifications focus primarily on the actual functions performed by the employees. Mr. Basford testified that the Division of Personnel developed a classification hierarchy in terms of levels of difficulty and complexity. The lowest tier consists of office support work, progressing upward through technical level work, and finally professional level work. The supervisory levels for all classifications are intertwined within that basic hierarchy. The lowest tier represents supervisors of clerical/office support staff, and again, upward through technical skill level, professional skill level, supervisory, managerial, administrative, and finally, executive classifications.

The essence of Grievants' job is two-fold: First, they are Operations Supervisors who supervise office support classifications as first-line supervisors within the classification hierarchy. Secondly, they perform office manager functions for their respective local offices, including maintenance of the physical plant, and contacts with landlords, vendors, and other agencies asis necessary to ensure the smooth and effective operation of their respective local offices. **(See footnote 3)**

Grievants testified that the employees they are charged with supervising are "professional" and therefore their job best fits within the Administrative Services Manager I classification. The Division of Personnel defines "professional" as someone who has undergone a "prolonged course of study" for a particular type of work. The National Labor Relations Board ("NLRB") defines the term "professional employee" as referring to such persons as legal, engineering, scientific and medical personnel. See, NLRB v. Bell Aerospace

Co. Div. of Textron, Inc., 94 S.Ct. 1757, 416 U.S. 267, 40 L.Ed.2d 134 (1974).

While there is no doubt that the employees under the supervision of the Grievants act in a professional manner and are competent in the performance of their jobs, the use of the term "professional" by the Division of Personnel, and as it is used by the NLRB, clearly contemplates individuals who have achieved a particular level of skill in a particular field through advanced study, such as accountants, lawyers, physicians, nurses, social workers, architects, engineers, etc. Grievants supervise clerical support staff and custodians. Therefore, the Grievants do notsupervise "professional" employees as that term is used by the Division of Personnel and as is found in the Administrative Services Manager I job description.

The Grievants submitted numerous letters into evidence in an effort to show that they have extensive responsibility for the day-to-day operations and management of their offices. These letters consist of correspondence with landlords, vendors, other agencies and the public. However, these "contact" letters also highlight the inherent local nature of Grievants' duties in managing the operations of their respective local offices. The Administrative Services Manager I manages an organizational unit providing administrative support services on a department-wide or state-wide level. The Grievants supervise and manage employees in a local county office.

The following findings of fact are derived from the record developed by the parties.

Findings of Fact

1. Grievants are Operations Supervisors within the Office of Operations of the Department of Health and Human Resources.

2. Grievants report directly to the Regional Administrator of Operations for Region IV of the Office of Operations.

3. Grievants are responsible for the office management of their respective local offices within Region IV, including coordination of office space, leasing, renovations, and other typical office management functions, including contact with vendors supplying the local offices.

4. Grievants supervise clerical support staff, including Office Assistants, Accounting

Assistants, and custodians.

5. The Grievants do not supervise "professional" employees as that term is contemplated by the Division of Personnel.

6. The Grievants do not provide office support services on a state-wide or department-wide level.

Conclusions of Law

1. Grievants have failed to prove by a preponderance of the evidence that they are improperly classified as Supervisor Is based upon a review of their normally assigned duties and responsibilities.

2. Personnel's interpretation of the two classification specifications at issue in this case is not clearly wrong as applied to the facts developed by the Grievants. Blankenship, supra.

Therefore, this grievance is hereby DENIED.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," 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 Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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MARY JO ALLEN

Administrative Law Judge

Date: April 26, 1994

Footnote: 1 ***Ms. Dean testified that she, along with Thomas P. Gunnoe, Office Director of the Office of Operations, recommended to Mr. Basford that Grievants be classified as Supervisor II's during the reclassification process.***

Footnote: 2 ***This case was transferred to the undersigned from Administrative Law Judge Albert C. Dunn, Jr.***

Footnote: 3 ***Mr. Basford introduced an Office Manager job description during his testimony. The Supervisor I classification overlaps considerably with the Office Manager classification, with the major difference being the focus of the duties. The Office Manager's responsibility is on the functioning of the office, including budgeting and payroll functions, while the Supervisor I's responsibility is the supervision of the support staff. Mr. Basford testified that the Grievants could easily have also been classified as Office Managers.***