KAREN A. BUTCHER and EVALEE PHILLIPS

v. Docket Nos. 93-HHR-387/388

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/

DIVISION OF PERSONNEL

DECISION

Grievants, Karen A. Butcher and Evalee Phillips, employed as Office Assistant IIs by the Department of Health and Human Resources (DHHR or Respondent), filed separate level four appeals on September 21, 1993, in which they alleged misclassification by the Division of Personnel (Personnel). (See footnote 1) The grievances were consolidated and an evidentiary hearing was conducted on February 1, 1994. Although both parties indicated they would not file proposed findings and conclusions, Grievants did submit additional documentation on April 25, 1994. Lowell D. Basford, Assistant Director of the Classification and Compensation section of Personnel responded on July 13, 1994.

Grievants, appearing pro se, assert the duties which they performed at the time the statewide classification review took place would entitle them to assignments ofOffice Assistant IIIs. It is the position of DHHR and Personnel that Grievants are correctly classified based upon their current duties.

The following findings of fact made by DHHR in the level three decision were undisputed at level four and are incorporated herein. (See footnote 2)

1. Prior to Personnel's reclassification of positions in DHHR Grievants were classified as Clerk IVs.

2. Grievants completed Position Description forms on or about September 18, 1990. Personnel's review took place in October 1990, with an implementation date of December 16, 1992.

3. Prior to the reclassification, Grievants' duties included the development of schedules for clerical and senior workers and monthly backup schedules for other support service staff. Grievant Phillips

trained backup terminal operators and served as second backup to the Support Service Supervisor. Grievant Butcher was first backup to the Supervisor and directly supervised two Senior Community Employment Workers and the Governor's Summer Youth Employees. In the absence of the lead clerical worker in Tucker County, Grievants were required to travel there andperform all the duties of that worker. Between September 1990 and December 1992, Grievants assumed a portion of their Supervisor's responsibility for approving other workers' breaks.

4. Memoranda from Grievants' supervisor dated September 1991 and August 1992 indicate a reduction in Auditing of Monthly Report Forms and assumption by the Supervisor of granting approval for other workers' breaks.

5. After the reclassification, Grievants' duties were reduced, removing supervision and scheduling responsibilities.

At the level four hearing Tom Gunnoe, Director of Operations for DHHS, stated that Grievants work as terminal operators approximately 75 percent of the time. Sharon Bedford, Economic Service Supervisor, testified that Grievants work with diverse and complicated programs which require that they have a knowledge base not required of other clerical workers. Lois Klingerman, Supervisor I, confirmed that as Clerk IVs Grievants performed supervisory duties, including those of office manager when needed. As a result of the reclassification Ms. Klingerman stated that she resumed these supervisory duties. Lowell Basford, Assistant Director of Personnel's Classification and Compensation Section, testified that Grievants weredetermined to be appropriately classified as Office Assistant IIs because their position descriptions indicated that a preponderance of their duties involves the accessing and manipulation of data. He advised that neither Grievants' ability nor tenure could be considered when classifying the employees.

In an ordinary classification grievance, in order for the Grievants to prevail upon a claim of misclassification, they must prove by a preponderance of the evidence that their duties more closely match another cited Personnel classification specification than the one to which they are currently assigned. See generally, Hayes v. W.Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). Usually the key to the analysis is to ascertain whether the Grievants' current classification constitutes the "best fit" for their required duties. Propst v. W.Va. Dept. of Health and Human

Resources/W.Va. Div. of Personnel, Docket No. 93- HHR-371 (Dec. 3, 1993). The predominant duties of the position in question are class-controlling. Broaddus v. W.Va. Div. of Human Services, Docket No. 89-DHS-606, 607, 609 (Aug. 31, 1990). Finally, Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. W.Va. Dept. of Health v. Blankenship, 431 S.E. 2d 681, 687 (W.Va. 1993). It appears Grievants' position is that they were demoted as a result of the reclassification process; however, there is insufficient evidence in the record to support that finding. It was not established whether Grievants were properly assigned the supervisory duties while classified as Clerk IVs and there is no indication that the deletion of these duties from Grievants' responsibilities was in any manner improper. Neither does the record contain any evidence that Grievants are presently misclassified given their current duties.

In addition to the foregoing facts and discussion it is appropriate to make the following formal conclusions of law.

CONCLUSIONS OF LAW

1. In order for Grievants to prevail upon a claim of misclassification they must prove by a preponderance of the evidence that their duties more closely match another cited Personnel classification specification than that under which they are currently assigned. Hayes v. W.Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989).

2. In matters of classification the Division of Personnel's interpretation and explanation should be given great weight unless clearly erroneous. W.Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W.Va. 1993).

3. Grievants have failed to prove by a preponderance of the evidence that they were improperly relieved of certain supervisory duties, that they were demoted as a result of the Division of Personnel's reclassification project, or that they are currently misclassified given their current duties and responsibilities.

Accordingly, the grievance is DENIED.

DATED August 29, 1994 Sue Keller

Senior Administrative

Law Judge

Footnote: 1

Both Grievants attached level three decisions in which DHHR denied the complaints without comment. Ms. Phillips also attached a Waiver Agreement to her appeal form indicating that both parties agreed to bypass levels one and two.

Footnote: 2

It is noted that the record in this matter consists only of Grievants' appeal forms, the level three decision, and the information filed by Grievants in April 1994, regarding DHHS' recommendations concerning clerical reclassification.

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