DOLORES FERRELL, ET AL.

v. **Docket No. 93-BEP-449**

BUREAU OF EMPLOYMENT PROGRAMS

and DIVISION OF PERSONNEL

D E C I S I O N

The Grievants, Dolores Ferrell, Judith Johnstone, Joseph Savors, Pamela Curry, and David Lee Ingraham, are all currently classified as Computer Operator IIs ("CO II") with the Bureau of Employment Programs ("BEP"). They filed this grievance on February 17, 1993 (See footnote 1) stating the current salary range of the CO II did not "reflect the level of maturity that a computer operator in our bureau with this level of responsibility may achieve in such areas as electronic processing, telecommunications, and teleprocessing." The Grievants also stated that since they workunder "little or no direct supervision" they had increased responsibilities and were "charged to handling (sic) significant problems themselves." (See footnote 2)

The relief requested was either:

1)

Restore the computer operator pay scale to its pre-classification salary of $17,532-$30,024.

OR

2)

Create a Computer Operator III position that will incorporate the pre-reclassification pay scale of an computer operator II ($17,532-$30,024). Include the following in the job description:

*

Little or no direct supervision.

*

Resolve significant problems to resolution.

*

Analytical expertise.

*

Rescheduling critical jobs that abort.

The issues in this grievance are two-fold. First, the Grievants disagree with the current salary range for CO IIs. Second, the Grievants think the CO II job description does not include key components of the work they perform. However, it was clear from the record and evidence presented at hearing, that the major focus of the Grievants is that the salary range for this position was decreased during the reclassification project.

The Division of Personnel ("DOP") argues there are no recruitment and retention problems for the CO II position, no state agency has requested the State Personnel Board to revise the pay grade, and a survey of computer operator pay scales revealed the state salaries are "in general" higher than the private sector andon par with other states in the area. DOP further argues the CO II job description is the "best fit" for the Grievants and the job description did not require in-house supervision.

The classification specification for the Grievants' CO II position is reproduced in pertinent part below:

COMPUTER OPERATOR II

Nature of Work

Under general supervision, am (sic) employee in this class performs full-performance and/or advanced level work in operating a variety of electronic data processing equipment such as computer

consoles, card readers, printers, tape drives and remote job entry stations. Worker is expected to be able to identify the full range of hardware problems and software error codes. Shift work and an irregular schedule may be required in some positions. Performs related work as required.

Distinguishing Characteristics

This level may be distinguished by the diversity of program operations monitored, size and general complexity of equipment and system, and on (sic) increased role in determining job run priorities, problem resolution and training or guiding newer or lower level operators. Significant problems involving programming and job control errors or equipment malfunction are referred to a shift or unit supervisor.

Examples of Work

Operates computer console, card reader, card punch, printers, tape and disk drives and remote job entry stations to process a variety of computer programs and data.

Loads and mounts cards, paper, tapes and disks onto equipment; activates job state.

Monitors job progress on computer console; checks for system and equipment errors; takes corrective action in response to error messages.

Assists in job scheduling and aligning production commitments with programs, hardware and software resources.

Trains new operators; assists operators in the identification and resolution of program and equipment problems.

Notifies supervisor, programmer/analyst, user or vendor representative of program or equipment problems.

Reviews completed jobs to ensure compliance with user specifications; maintains job status logs; advises user on reason for job failure and assists in correcting job control language problems.

Checks operation of machines and printers to assure paper alignment and sequence of forms; removes jammed forms and cards.

Performs routine maintenance and cleaning duties such as replacing ribbons and changing ribbon trains; cleans printer, tape and disk drives and the work area; maintains stock of paper, cards and other supplies in the work area; assists in controlling inventory of supplies and documenting supply usage.

The additions that Grievants seek to make to a potential CO III job description was previously listed.

Classification

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 for the relevant period more closely matched 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). Personnel 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 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). Usually the key tothe 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); 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 No. 89-DHS-606, 607, 609 (Aug. 31, 1990). Finally, DOP'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).

In this case, since the Grievants seek to compel DOP to develop a new classification, the first issue is whether the current position description fits their job duties. Their current class specification must be examined to see if the criteria proposed by the Grievants are inherent in the current job description.

On February 22, 1994, the Grievants submitted a new position description form they had filled out as a collaborative effort. This form demonstrates that the majority of the Grievants' work week is spent "in operating a variety of electronic data processing equipment" and identifying a full range of hardware and software problems. The CO II "Nature of Work" section identifies both these areas as work to be performed by the CO II classification.

The Grievants testified that they have increased responsibilities in problem-solving and in scheduling and prioritizing. The CO II job description includes these activities in the "Distinguishing Characteristics" section.

The Grievants also state that the CO II job description requires them to work under "general supervision" and to refer problems to a shift or unit supervisor. They argue they have the responsibility to resolve problems and there is no unit or shift supervisor present at the work place. While it is clear from the testimony that Grievants are charged with some problem-solving responsibility, the testimony also reveals that programmers and supervisors are available on a 24-hour basis by phone. Mr. Basford testified that general supervision did not mean a physical presence in the same building, but someone generally available for guidance. This person may be available by

phone.

Since the predominant duties of the position in question are class-controlling, and since the vast majority of Grievants' duties fall within the classification, it is clear the Grievants' are not misclassified. Broaddus, supra. The fact that every task the Grievants perform does not appear in the specification does not mean they are misclassified. W. Va. Admin. Rule, 4.04(c).

Salary Range

The Grievants argue the current salary range for the CO II position is too low and should be changed to the priorreclassification level to allow for advancement. (See footnote 3) Several of the Grievants are at the higher end of the range and fear they will not receive future raises. DOP countered this argument in multiple ways. First, Mr. Basford stated that the Grievants' commissioner has the right to grant the Grievants longevity raises just as he can grant merit raises. Thus, there are no reasons why Grievants could not receive further increases beyond the stated salary range.

Second, Mr. Basford stated the State pay scale for CO IIs is approximately $3,000 above the private sector salary range for people performing the same job duties. He also testified the CO II salaries were in line with other salaries for like positions in the southeastern states area. To increase salary ranges would not be in line with the directives of the reclassification process. Thirdly, Mr. Basford said that no one, including the Commissioner of BEP, has formally requested the pay scale be increased, and no one had demonstrated there was a recruitment or retention problem with the CO II position. Salary ranges are typically increased or set aside only when these types of problems are proven.

There is no question that DOP has the authority to establish salary ranges within a pay plan and was given the assignment to revamp the classification system, decreasing the number of job positions and decreasing the size of the salary pay ranges. Stephenson v. Bureau of Employment Programs/Div. of Personnel, Docket No. 92-DOP-447 (Aug. 12, 1993); Level IV Testimony of Mr.Basford. The Grievants submitted no evidence to demonstrate that decreasing the salary range in the CO II classification was a violation of any rule, regulation, or statute.

The foregoing discussion of facts and the applicable law is supplemented by the following findings of fact and conclusions of law:

Findings of Fact

1) Grievants are employed as CO II's by BEP.

2) Grievants, under general supervision, perform advanced level work with a variety of electronic data processing equipment, identify a full range of hardware/software problems, and have a significant role in job run priorities and problem resolution as identified by the CO II job description.

3) Grievants do occasionally perform duties not specifically listed on the CO II job description that require additional problem-solving skills and responsibility.

Conclusions of Law

1) The Grievants have not proven by a preponderance of the evidence that they are misclassified as CO IIs.

2) Grievants have not proven that DOP abused its discretion in decreasing the salary range for CO IIs. See Blankenship, supra.

3) Grievants have not proven that DOP violated any law or regulation in establishing the salary range as CO IIs as a result of DOP's reclassification project.

Accordingly, this grievance is **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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JANIS I. REYNOLDS

Administrative Law Judge

Dated: July 29, 1994

Footnote: 1This grievance was denied at all lower levels. A Level IV hearing was held on January 20, 1994, and the case

was to become mature on March 8, 1994 following the submission of briefs. Additionally the Grievants agreed to update the job description, and Mr. Basford agreed to review it and to send this information to the undersigned. On May 2, 1994 Mr. Lowell Basford, Assistant Director of Classification and Compensation with the Division of Personnel, wrote the undersigned stating he had reviewed the newly completed position description forms submitted by the Grievants and still believed the CO II class was the "best fit" for the Grievants.

Footnote: 2The Grievants and their supervisor also argued that there were plans to give the Grievants additional duties, and the development of a Computer Operator III job description would allow for future growth. Since a misclassification grievance deals only with the current job duties as compared with the current job description, this issue was not considered by the undersigned.

Footnote: 3Due to the decision in this case it is not necessary to reach the issue of whether the Grievance Board would have the authority to change a salary range.