ELSIE D. McCRAY,

Grievant,

v. Docket No. 93-HHR-394

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES/PINECREST HOSPITAL/WEST VIRGINIA DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Elsie McCray (hereinafter Grievant) filed this appeal with the Grievance Board on September 23, 1993, after receiving an adverse decision at Level Three. Grievant filed a grievance alleging that she was improperly classified by the Division of Personnel (hereinafter Personnel) as a Nursing Director I, and that her proper classification should be that of a Nursing Director II. A Level IV hearing was held in the Board's offices in Beckley, West Virginia, on May 23, 1994. (See footnote 1)

Background

The facts in this case are not in dispute. Grievant has beenemployed for many years at Pinecrest Hospital and was promoted to Nursing Director I (ND I) in March 1990. Her immediate predecessor had been classified as a Nursing Director II (ND II) for about two years, but when Grievant assumed the position it was downgraded to a ND I. (See footnote 2) She requested Personnel to reclassify her position as a ND II in 1992, and when this request was denied she filed this grievance on November 16, 1992, contending she was misclassified. A month after she filed the grievance Personnel completed a reclassification project for the Department of Health and Human Resources (HHR) on December 16, 1992, but Grievant's classification was left unchanged. (See footnote 3)

Grievant testified that the "Nature of Work" section of the ND II classification specification more accurately described her duties and responsibilities than the ND I class specification. She directly

supervises twelve employees, eight of whom are registerednurses (RNs) (See footnote 4), in a nursing department containing 138 employees. She also stated that as of October 1993 she indirectly supervised 22 licensed practical nurses (LPNs) through the assistant director. Gr. Exhs. 18, 21. At the time of the Level Four hearing, Pinecrest had 155 patients, about two thirds of whom have psychiatric problems, with a bed capacity of 200 patients. Pinecrest has a larger bed capacity than at least two of the state hospitals staffed with a ND II position, and the number of employees in the nursing department is as large or larger than at least two of those hospitals. Grievant testified that, based upon discussions with persons holding ND II positions at other state hospitals, her duties and responsibilities were neither different nor less complex.

The administrator of Pinecrest Hospital, Mr. Earnest R. Eades, also expressed the opinion that the ND II class specification more accurately described Grievant's position, pointing out that Grievant performed all the examples of work contained in that class specification and that Pinecrest is the largest long-term care facility in the State. He also testified that over the past four years Grievant's duties had become more complex because the variety of patients served at Pinecrest had increased and the treatment and services provided these patients had become increasingly specialized.

Mr. Lowell Basford, Personnel's Assistant Director ofClassification and Compensation, testified at Level Four that Grievant could not properly be classified as a ND II because she does not supervise a "large" professional staff. For these class specifications, he defined "professional staff" as including only RNs (See footnote 5), not LPNs (See footnote 6) or health service workers (HSWs), although he acknowledged that Personnel has not adopted any written definitions for these terms. He stated that the limited size of professional staff supervised was the principal factor determining the classification of Grievant's position and that Personnel assumes the complexity of administrative and supervisory positions increases with the size of the professional staff managed.

He noted that Grievant supervises only eight RNs, far fewer than the number of RNs supervised by the ND IIs at the state's four "large" hospitals, as defined by the size of the professional nursing staff: (1) Colin-Anderson Center - more than 30; (2) Huntington State Hospital - 32; (3) Welch Emergency Hospital - more than 30; and (4) Weston State Hospital - 36. (See footnote 7) Mr. Basford further stated that Grievant is classified the same as the ND Is at the other three hospitals with a "small" RN staff, i.e., Hopemont Hospital 7, Lakin Hospital 7, and Marion Health Care Hospital 7. Mr. Basford acknowledged that Pinecrest Hospital did have a ND II as recently as 1990, but explained

that the position had then been misclassified. (See footnote 8)

Classification Specifications at Issue

Two sets of class specifications are involved in this case: the Nursing Director class series before and after implementation of the reclassification project. The class specifications (See footnote 9) in effect prior to December 16, 1992, were as follows:

NURSING DIRECTOR I

Nature of Work

An employee in this class performs administrative work directing nursing services in a hospital department of nursing or in a public health nursing program in a county health department which offers a variety of services.

NURSING DIRECTOR II

Nature of Work

An employee in this class performs complex administrative work directing nursing services in a large hospital department of nursing or in a public health nursing program carried out in one of the large county health departments which offers a wide variety of complex health services. [Underlining not in original]

The current class specifications for ND I and II are as follow:

NURSING DIRECTOR I

Nature of Work

Under administrative direction, performs administrative work at the full-performance level, directing nursing services in a hospital nursing department or in a public health nursing program in a mid-sized county health department which offers a variety of services. Plans, organizes and directs all nursing activities and is responsible for the quality of nursing care delivered in the hospital or

county health department. Work is reviewed by a hospital administrator or county health director for compliance with policies, standards, procedures, and for results obtained in meeting program objectives and nursing service goals. Performs related work as required.

Distinguishing Characteristics

A position at this level is distinguished by the management of professional staff through subordinate supervisors. The incumbent may be the "nurse administrator" of a local health department or a moderately populous area or may oversee the staff of a public health program for a large county health organization. At a small to mid-sized hospital which is typically a long-term care facility, the nursing director is classified at this level. A nursing director does not provide direct patient care as a general rule.

Examples of Work:

Plans and directs the work of nursing staff; assures an adequate level of nursing care; develops staffing patterns.

Develops policies, sets standards and plans objectives for the nursing department or public health nursing program in accordance with established policies.

Makes long-range plans and regularly reviews activities, problems and functions of nursing services being delivered.

Provides staff development including orientation, in-service training, workshops, formal and informal on-the-job training, and continuing education for all levels of nursing staff.

Conducts conferences with nursing supervisors to interpret hospital or public health policies and to communicate changes in regulations and procedures; formulates, reviews and revises nursing policies and procedures, discusses problems and develops solutions.

Reviews records and performance of staff for evaluation of compliance with standards, policies, procedures, and objectives.

Represents the department of nursing at meetings ofhospital administrative staff or public health administrative staff in the planning of overall program goals and policies.

Recruits and interviews nursing applicants; authorizes personnel actions for the nursing staff.

Determines needs of nursing department or public health program for personnel, supplies and equipment; works with the budget officer in developing annual budget requests; administers expenditure of allocated funds.

Oversees the collection of data for statistical records.

Knowledge, Skills and Abilities

Knowledge of the administration and organization of nursing services.

Knowledge of professional nursing theory, procedures, and techniques.

Knowledge of state and federal laws and regulations governing the practice of nursing and the provision of health care to clients.

Skill to plan, organize, manage and evaluate the delivery of a variety of nursing services.

Ability to interpret policy to nursing personnel.

Ability to handle sensitive situations and emergencies, and to develop guidelines for code situations.

Ability to work effectively with a wide range of health professionals and ancillary personnel.

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

Ability to perform routine mathematical calculations for budget and payroll purposes.

Minimum Qualifications

TRAINING Successful completion of an associate degree in nursing from an accredited college or university or a diploma nursing program and seven years of full-time or equivalent part-time paid experience as a registered professional nurse, including three years in an administrative capacity or in supervising other registered professional nurses.

OR

Baccalaureate degree in nursing from an accredited four-year college or university and four years of full-time or equivalent part-time paid experience as a registered professional nurse, including two years in an administrative capacity or in supervising other registered professional nurses.

OR

Master's degree in nursing or nursingadministration or in public health or public health administration from an accredited four-year college or university and three years of full-time or equivalent part-time paid experience as a registered professional nurse, including one year in an administrative capacity or in supervising other registered professional nurses.

OR

Baccalaureate degree in the health sciences or behavioral sciences from an accredited four-year college or university and five years of full-time or equivalent part-time paid experience as a registered professional nurse, including one year in an administrative capacity or in supervising other registered professional nurses.

SPECIAL REQUIREMENT Current West Virginia license or temporary permit to practice as a registered professional nurse.

NURSING DIRECTOR II

Nature of Work

Under administrative direction, performs administrative work at the full-performance level, directing nursing services in central office local health section, a large hospital, or in public health nursing in a large county health department which offers a variety of complex health services. Plans, organizes and directs all nursing activities and is responsible for the quality of nursing care delivered in the hospital or county health department. Work is reviewed by a hospital administrator or county health director for compliance with policies, standards, procedures, and for results obtained in meeting program objectives and nursing service goals. Performs related work as required.

Distinguishing Characteristics

A position at this level is distinguished by the management of a large professional staff through subordinate supervisors. The incumbent oversees large clinical and home health care staffs at local health organizations. At a large hospital or an acute care facility, the nursing director is classified at this level due to the consequence of error being greater; acute care and psychiatric hospitals have a more volatile and potentially a medically unpredictable population. In the central office position, the Nursing Director II oversees operation of local health care and its components. A nursing director does not provide direct patient care as a general rule.

Examples of Work

Plans and directs the work of nursing or other professional staff; assures an adequate level of nursing care; develops staffing patterns.

Develops policies, sets standards and plans objectives for the section, nursing department or public health

Makes long-range plans and regularly reviews activities, problems and functions of services being delivered.

Provides staff development including orientation, in-service training, workshops, formal and informal on-the-job training, and continuing education for all levels of nursing staff.

Conducts conferences with nursing supervisors to interpret hospital or public health policies and to communicate changes in regulations and procedures; formulates, reviews and revises nursing policies and procedures, discusses problems and develops solutions.

Reviews records and performance of staff for evaluation of compliance with standards, policies, procedures, and objectives.

Represents the appropriate department at meetings in the planning of overall program goals and policies.

Recruits and interviews nursing applicants; authorizes personnel actions for nursing and other staff.

Determines needs of section, nursing department, public health program for personnel, supplies and equipment; works with the budget officer in developing annual budget requests; administers expenditure of allocated funds.

Oversees the collection of data for statistical records.

Knowledge, Skills and Abilities

Knowledge of the administration and organization of nursing services;

Knowledgeable of local health department administrations.

Knowledge of professional nursing theory, procedures and techniques.

Knowledge of state and federal laws and regulations governing the practice of nursing and the provision of health care to clients; for central office: Knowledgeable of laws governing local health.

Skill to plan, organize, manage and evaluate the delivery of a variety of nursing and other services.

Ability to interpret policy to personnel.

Ability to handle sensitive situations and emergencies, and to develop guidelines for codesituations.

Ability to work effectively with a wide range of health professionals and ancillary personnel.

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

Ability to perform routine mathematical calculations for budget and payroll purposes.

Minimum Qualifications

TRAINING Successful completion of an associate degree in nursing from an accredited college or university or a diploma nursing program and nine years of full-time or equivalent part-time paid experience as a registered professional nurse, including three years in an administrative capacity or in supervising other registered professional nurses.

OR

Baccalaureate degree in nursing from an accredited four-year college or university and six years of full time or equivalent part-time paid experience as a registered professional nurse, including two years in an administrative capacity or in supervising other registered professional nurses.

OR

Master's degree in nursing or nursing administration or in public health or public health

administration from an accredited four-year college or university and five years of full-time or equivalent part-time paid experience as a registered professional nurse, including one year in an administrative capacity or in supervising other registered professional nurses.

OR

Baccalaureate degree in the health sciences or behavioral sciences from an accredited four-year college or university and seven years of full-time or equivalent part-time paid experience as a registered professional nurse, including one year in an administrative capacity or in supervising other registered professional nurses.

SPECIAL REQUIREMENT Current West Virginia license or temporary permit to practice as a registered professional nurse.

Discussion

In order for Grievant to prevail upon her claims of misclassification, she must prove by a preponderance of the evidence that her duties for the relevant time periods more closelymatched the ND II class specification. See generally, Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). Class 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 class specification is the 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 which class specification constitutes the "best fit" for her 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 class specifications should be given great weight unless clearly erroneous. W. Va. Dept. of

Health v. Blankenship, 189 W. Va. 342, 348, 431 S.E.2d 681, 687 (1993).

As to the first period of alleged misclassification, Personnel has not been shown to be clearly wrong in determining that Grievant was not employed in a "large" hospital department of nursing, measured by the number of RNs directly supervised. Grievant supervises only eight RNs. Neither will the record support afinding that Personnel was clearly wrong in determining that the "best fit" for Grievant's position was that of a ND I. (See footnote 10) Grievant does not directly supervise nearly as many RNs as employees who are classified as ND II at other hospitals. Furthermore, it appears she indirectly supervised fewer LPNs than employees holding positions classified as ND II. Pinecrest Hospital (Pinecrest), prior to December 16, 1992, was primarily a long-term care facility with patients who did not require the variety and complexity of services provided at other hospitals with primarily psychiatric and/or mentally ill patients. Hence, Grievant has not shown that Pinecrest then offered a "wide variety of complex health services." Grievant therefore cannot prevail on her first claim of misclassification.

Whether Grievant has proven her second claim under the current class specifications is a closer question; however, given that Personnel's interpretation and explanation of its class specifications must be "given great weight unless clearly erroneous," Blankenship, supra, it is concluded that this claim must be rejected too. As is true with the former set of class specifications for the nursing director positions, Personnel's explanation that Grievant does not manage a "large professional staff," i.e., eight RNs, is not clearly wrong. Grievant supervises far fewer RNs than persons holding positions classified as ND IIs, and it appears that fewer LPNs work in the nursing department atPinecrest than at hospitals having the ND II classification.

Although this is a close case and it is uncontradicted that Grievant's duties and responsibilities have become increasingly complex as the number and percentage of patients needing different and specialized services has increased, the undersigned administrative law judge finds that the evidence is not sufficient to establish that Personnel's interpretation and explanation of the class specifications is clearly wrong. Classification determinations under Personnel's current "best fit" approach is obviously far from an exact science, and the class specifications at issue here are certainly not a model of descriptive accuracy. Personnel's assumption that the more professional employees a nursing director supervises the more complex the work becomes is not so devoid of rationality to warrant a conclusion or finding that its theory is arbitrary and capricious, either in general or as

applied to the facts of this case.

The foregoing discussion of the facts and the applicable law is hereby supplemented by the following appropriate conclusions of law.

Conclusions of Law

1. Grievant failed to prove by a preponderance of the evidence that the "best fit" for her position is a Nursing Director II.

2. The Division of Personnel's interpretation of the class specifications for the positions of Nursing Director I and II in this case is not clearly wrong. W.Va. Dept. of Health v.Blankenship, 189 W. Va. 342, 431 S.E.2d 681 (W. Va. 1993). Personnel's assumption of complexity based upon the number of RNs supervised has not been shown to be arbitrary and capricious in this case.

Therefore, this grievance is **DENIED.**

Any party 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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Ronald Wright

Administrative Law Judge

January 25, 1995

Footnote: 1 This case was reassigned for administrative reasons to the undersigned administrative law judge on May 11. The case became mature for decision on July 11, 1994, with the receipt of Respondents' Reply to Grievant's Proposed Findings of Fact and Conclusions of Law.

Footnote: 2 The downgrading of this position appears to have been effected largely, if not entirely, as a cost saving measure rather than to correct for a position misclassification. WV-11 of Mar. 1990, Gr. Exh. 1; Level Three Tr. at 41.

Footnote: 3 Grievant seeks back pay and prejudgment interest from November 17, 1992, essentially the date Personnel denied her administrative request for reclassification. The classification specifications for ND I and ND II, in effect at the time of this request, are Grievant's exhibits 6 and 7, respectively. The grievance was amended at Level Three, with the consent of all parties, to include the claim that Grievant is also misclassified as a ND I under the class specifications adopted as a part of the reclassification project. That issue can therefore properly be decided in this case. W. Va. Dept. of Health and Human Resources v. Hess, 432 S.E.2d 27 (W. Va. 1993). Grievant's exhibits 8 and 9 are the class specifications utilized in the reclassification project.

Footnote: 4 These RNs appear to be variously classified as Nurse IVs, Nurse IIIs and Nurse IIs. Position Description Form, Gr. Exh. 5.

Footnote: 5 Mr. Basford testified that he considers LPN positions to be technical positions, even though LPNs must be licensed by the State of West Virginia, and that to the extent Senior Personnel Specialist Ginny Fitzwater testified differently at Level Three, her testimony was in error.

Footnote: 6 Mr. Basford also testified that LPN's are not defined as professional employees by either the United states Department of Labor or the Equal Employment Opportunity Commission.

Footnote: 7 The number of RNs supervised is not in dispute.

Footnote: 8 Personnel does not dispute that Grievant is qualified to be reclassified as a ND II.

Footnote: 9 These class specifications do not contain a distinguishing characteristics section setting forth Personnel's basis for differentiating or separating one classification in a series from another class.

Footnote: 10 Grievant's argument that it is unnecessary or improper to look at whether she is also misclassified under the later set of classification specifications is manifestly without merit.