FRED HARDEE and JEFFREY MATTHEWS

v. Docket No. 95-HHR-321

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES/

WEST VIRGINIA DIVISION OF PERSONNEL

DECISION

Grievant Fred Hardee, an Electrician, and Grievant Jeffrey Matthews, a Painter, are employed by the West Virginia Department of Human Resources (HHR) and assigned to Welch Emergency Hospital (WEH). They initiated this complaint at Level I November 10, 1994, alleging that their positions were misclassified. Levels I and II were bypassed and the grievance was denied at Level III following a hearing held January 23, 1995. Appeal to Level IV was made July 21, 1995, and a hearing was held September 22, 1995. (See footnote 1) The parties declined to submit proposed findings of fact and conclusions of law.

The grievants have held their current classifications for several years. The record reflects that while they occasionally perform minor repairs to other equipment, the majority of their workday is devoted to the operation and maintenance of WEH's various heating, air conditioning and refrigeration units. The record further reflects that this has been Grievant Hardee's primary assignment for approximately twelve years, and that such tasks became Grievant Matthews' predominant duties in February 1994. (See footnote 2)

In early 1993, WEH was advised that new federal regulations would require training and licensure for employees engaged in the use and disposal of various chemical refrigerants. Grievant Hardee obtained his certification in May 1993 and Grievant Matthews received his on October 21, 1994. Apparently, the regulations also required that employees be bonded or insured against negligent handling or misuse of materials.

The grievants contend that Personnel's job description for Heating, Ventilation and Air Conditioning Technician (HVAC Tech) constitutes a better fit for their duties than the descriptions forElectrician and Painter. (See footnote 3) HHR and Personnel respond that Grievant Hardee is properly classified as an Electrician. The Respondents dispute Grievant Matthews' claim to the HVAC

Tech classification and assert that the specifications for Building Equipment Mechanic (BEM) constitute the best fit for his duties. Personnel represents that Grievant Matthews' position will most likely be placed in the BEM classification should his claim for the HVAC Tech designation fail. (See footnote 4)

By now, it is well-settled that in order to prevail on a misclassification claim, an employee must prove by a preponderance of the evidence that his duties more closely match the Personnel classification specifications for an identified position than those for the position to which he is assigned. The inquiry is focused on which job description constitutes the "best fit" for the employee's actual duties. See, e.g., Hayes v. W.Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). The inquiry must include deference to Personnel's interpretation of thespecifications if they contain ambiguities. W.Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W.Va. 1993).

Personnel's specifications for HVAC Tech are as follows:

Nature of Work: Under general supervision, performs experienced level work in the operation of a computerized building heating, ventilation and air conditioning system (HVAC). Monitors and controls the automation system which receives information from zone sensors in various locations in a building complex. The technician also monitors building security and fire protection information and notifies emergency personnel as required. Uses a microcomputer to schedule preventive maintenance.

Examples of Work Performed:

Operates a building automation system which uses software and interfaces with the maintenance microcomputer.

Monitors a color VDT to determine the temperature of the supply and return air, outside temperature and humidity, outside wall mass temperature and zone temperatures. Ensures proper operation of boilers, air handlers, chillers, heating coils, louvers and the pneumatic control system; locates problems or equipment failures such as dirty filters, broken belts, overheated bearings or burned-out motors and detects fire alarm and building security location information.

Uses the computer provided information to decide when to alter temperatures and/or set and change the parameters allowing the computer to make the necessary adjustments automatically.

Locates the proper building plans and schematics for the zone in which the problem exists; reads

and interprets plans and schematics in the troubleshooting procedure to identify the exact location of the problem.

Informs maintenance crew as to which component has failed or when preventive maintenance is due.

Studies printout daily to determine problems which have occurred within the last 24 hours and informs maintenance where repairs are needed.

Operates a microcomputer using a specialized program for maintenance management and for an inventory of parts and equipment in the building complex.

Obtains scheduled preventive maintenance assignments on a calendar basis from the microcomputer; passes on the assignments to the preventive maintenance crew.

Generates work orders for reported repair problems.

Generates reports using the microcomputer which show energy consumption such as kilowatt hours, BTU's and the cost; compress cost and usage between years to monitor the efficiency of the system over a period of time.

The specifications for Grievant Hardee's Electrician position are as follows:

Nature of Work

An employee in this class performs skilled electrical work in the installation, alteration, repair, and maintenance of electrical equipment and wiring used in communication, light, and power systems. Assignments, supervision, and review are received from Building Maintenance Supervisor. The employee may supervise maintenance staff on a project by project basis. performs relates work as required.

Examples of Work

Installs and maintains security detection and fire alarm systems, distribution systems, cable systems, air conditioning and heating systems, lighting fixtures, ballasts, and timing clocks.

Removes, disassembles, repairs, or replaces electrical units and components such as motors, generators, voltage regulators, control panels, fuses, circuit breakers, switches, wiring and pumps.

Inspects for damage, tests, analyzes, and repairs electrical circuits, tools, and equipment.

Completes connection of utility electricity to power, lighting, heating, refrigeration, alarm and control equipment, machinery, and circuits.

Plans layout, methods, materials, scope of work, and sequence of operations.

Finally, Personnel's description for Building Equipment Mechanic provides,

Nature of Work

Under general supervision, performs full-performance experienced work maintaining and repairing a variety of equipment used in heating, cooling and general operation of public buildings. Performs related work as required.

Examples of Work

Installs, maintains and repairs equipment such as, air conditioners, heaters, walk-in and reach-in refrigerators, washers, dryers, water chillers and coolers, vent fans, vending machines, food preparation equipment (such as mixers, blenders, slicers, stoves and warmers, steam and hot water distribution lines), stationary boilers, compressors, generators, pumps water filtration units and heat exchangers.

Operates stationary heating and cooling equipment such as air conditioning units, air compressors, nd boilers to provide heating and cooling for buildings.

Performs chemical analysis of water in hot water and steam closed loop systems according to prescribed instructions; adds needed chemical agents to the water as indicated by test results.

Performs preventive maintenance on heating and cooling equipment such as tightening fan belts, changing filters, and providing lubrication.

Effects routine repairs to equipment by replacing motors, belts, seals, bearings blades.

Records data such as temperature, hours of operation and fuel consumed; requests supply of fuel in advance of running out, may use computer information for data.

Practices safety techniques and procedures on the job and in the shop to prevent fires and provide safety for self and others in the area; utilizes knowledge of the trade, knowledge of safety standards, signs, barricade and safety equipment (glasses, shoes, belts and masks).

Maintains necessary materials and time/man-hour accounting records of work performed; enters information on time card and job/work order.

Performs general building maintenance as required by replacing or installing plumbing and sprinkler systems; delimes hot water heaters and water coolers.

Examines heating and cooling systems and records meter readings at regular intervals to insure continuous, proper temperature throughout buildings or complexes.

Inspects heating and cooling equipment such as meters, safety valves, and pipes for loose connections, corrosion, or other defects and makes necessary repairs.
Reads meters and gauge to verify specified operating conditions.

Little analysis is needed to conclude that the grievants have failed to prove entitlement to the HVAC Tech classification. Both conceded, during their Level IV testimony, that no part of WEH's heating and cooling system is computerized. Their testimony also conclusively establishes that they perform few if any of the "Examples of Work" listed in the HVAC job specifications.

The testimony of Jenny Fitzwater, Senior Personnel Specialist in Personnel's Classification and Compensation Division, established that the HVAC Technician classification was designed almost exclusively for General Service employees who work with the State Capitol's newly-installed computerized heating and coolingsystems. She further testified, and the above specifications confirm, that the classification was not intended to encompass the operation or maintenance of "traditional" heating and cooling units. Nearly all evidence of record confirms Ms. Fitzwater's assessment.

Accordingly, the 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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JERRY A. WRIGHT

ADMINISTRATIVE LAW JUDGE

Dated: October 31, 1995

Footnote: 1At the Level IV hearing it was revealed that shortly after the issuance of the Level III decision, a WEH administrator assisted the grievants in their appeal to Level IV and at some point accepted responsibility for seeing that it was mailed to the Grievance Board. The parties agreed that the administrator either failed to file with the appropriate office or that the filing was lost in HHR's inter-agency mail system. The July 21 appeal was made after Grievant Hardee

discovered that the Grievance Board had not received the previous filing. For these reasons, counsel for HHR and Personnel's representative expressly waived any timeliness-based defense.

Footnote: 2Prior to February 1994, Grievant Matthews was assigned full-time to WEH's boiler room. As hereinafter discussed, the record reflects and the Respondents concede that Mr. Matthews' duties do not fit Personnel's job description for Painter. The agencies do, however, dispute that he is entitled to the targeted classification of HVAC Technician. Personnel's representative indicated at the Level IV hearing that a decision to reclassify his Painter position was placed on hold pending resolution of the grievance.

Footnote: 3At Level II, the grievants appeared to assert that their duties did not fit any current Personnel job descriptions and that Personnel, therefore, had a legal duty to create a new position and specifications. There was no evidence, however, presented on this issue. At Level IV, the grievants made statements to the effect that they did not want to "limit" themselves to one targeted job description, but proceeded to present evidence only on the issue of whether the HVAC Tech description constituted the better fit for their duties. Accordingly, the decision herein is confined to that argument. In any event, the evidence submitted will not support that Personnel had any obligation to create a new position.

Footnote: 4At the Level IV hearing, Grievant Matthews declined to make an alternative argument for the higher-paid BEM classification. Thus, the undersigned makes no formal findings or conclusions on that issue. It is simply noted that the record supports that Mr. Matthews does not perform any painting tasks at WEH.