WINFIELD FRANCIS and WAYNE SAYRE

v. Docket No. 95-HHR-077

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/OFFICE OF SOCIAL SERVICES and DIVISION OF PERSONNEL

D E C I S I O N

Mr. Winfield Francis and Mr. Wayne Sayre, Grievants, originally filed this grievance in June, 1994, alleging they were working out-of-classification. The relief sought was to be relieved of all out-of-classification duties and to be "monetarily compensated" for all times they had been required to perform these duties. This grievance was denied at all lower levels. A Level IV hearing was held on May 23, 1995, and the case became mature for decision on that date as the parties agreed no further documentation or argument was needed.

By the time the grievance was heard at Level IV, the only issue unresolved to the Grievants' satisfaction was the issue of back pay from January, 1994. The majority of the facts are not in dispute, and the issues in this case revolve around a change in how caseloads are counted and reported, and an interpretation of the class specifications.

Grievants are Social Service Workers III ("SSW III") in Wayne County. They complain the majority of the duties they are required to perform fall within the class specification of Protective Service Worker ("PSW"), a higher pay grade. PSWs work with abused and neglected children. PSWs frequently remove children from the home and work to resolve problem areas, and if possible, place the children back with their biological families. If this is not possible, PSWs work to terminate parental rights, and find suitable placement for the child, including adoption. The focus of a PSW's work is in-depth assessment and planning with the child and his family to provide appropriate resolution of potentially dangerous situations. Their work includes detailed investigations, assessment of family dynamics, formulation of family treatment plans, counseling to resolve problematic issues, and constant evaluation of the family's progress toward the identified goals. In order to complete these assessments, etc., PSWs must complete lengthy forms adopted by the Department, and known by

the acronym, CARFs. (See footnote 1)

Grievants, on the other hand, work mainly with children placed in alternative care arrangements, including foster care. The major focus of this interaction is dealing with the children and, at times, with their care-givers. There are few plans for these children to be returned to their families, and the need to assess,plan, implement, and evaluate the treatment is substantially decreased and less complex. Grievants call themselves Foster Care Workers ("FCW") even though there is no such classification. Typically, their caseload comes from the Juvenile Court system.

During the past two years the Office of Social Services ("OSS") has shifted its focus. Prior to that time many children remained in foster care "limbo" for many years. There were no plans made to reunite children with their families, while at the same time no action was taken to terminate parental rights so these children could be adopted or more permanently placed. OSS's current goals are to reintegrate families where possible and terminate parental rights as necessary. This shift requires more in-depth work and assessment by all workers. Additionally, during the time period, OSS has changed how cases are counted and reported. Children originally seen through Child Protective Services ("CPS") are maintained on the CPS roles, even if they basically receive foster care services.

Grievants complain that the majority of their time since January, 1994, has been spent serving CPS children, thus they are working outside their classification. Grievants argue they have been expected to complete CARF assessments and other paperwork. Grievants also complain because they were placed in direct beeper or emergency care rotation with PSWs and were required to be on-call every five or six weeks rather than the every twelve weeks they had previously been on-call.

Respondents argue Grievants are continuing to do the same work they have always done--providing direct services to children. Respondent notes, and Grievants confirm, they have done little to no in-depth assessment or interaction with families. Grievants' supervisor has assigned a few CARF assessments to the Grievants, but Grievant Sayre has done none and Grievant Francis has completed only one. Respondent notes the majority of these assigned assessments were eventually reassigned to other workers.

Grievants noted their supervisor had told them the caseload through the court system had decreased and the CPS caseload had increased. Apparently, as of June 26, 1994, their then-supervisor, Joyce Campbell, thought she had negotiated a resolution with the Grievants as reflected by the Level II decisions. These decisions noted Grievant Francis had agreed to remain in foster

care, as he had the most tenure with the agency, and Grievant Sayre had agreed to be reclassified to a PSW position with an increase in the complexity of his duties. (See footnote 2) Grievant Sayre rejected this resolution, but sees this offer as proof that he has been working out-of-classification.

Respondent noted the "Nature of Work" section of the SSW III class specification states the employee is subject to being on-call during non-business hours. Respondent explained all counties are required to provide 24-hour emergency service and the increased on-call requirement was necessitated by the loss of other child care workers in Wayne County. The calls these workers receive may dealwith either CPS or foster care children, and the worker on-call may receive one call a night or no calls at all during the week. Respondents note the SSW III "Nature of Work" states the employee may be required to work in potentially dangerous situations just like the PSWs. Respondents further note the "Distinguishing Characteristics" section of the class specification states SSW III positions "involve a significant, but not predominant, amount of protective services work." Overall, Respondents argue the Grievants are working within their class specification.

The relevant portions of the class specifications, for the two positions are repeated below:

SOCIAL SERVICE WORKER III

Nature of Work: Under general supervision, performs advanced level professional social service work in providing services to the public in one or multiple program areas. Work requires the use of a personal automobile for local travel. Employee is subject to on-call status during non-business hours. May be required to deal with situations which are potentially dangerous to client and worker. Performs related work as required.

Distinguishing Characteristics: All three levels of Social Service Worker provide professional social services to the public. The Social Service Worker III provides these services in one or more of the following areas: foster care, emergency shelter care, youth services, community juvenile delinquency, single adolescent parent, adoption, Hartley program, Medley program, Medical Waiver Project, licensing specialist or other services at this level. This class may also be used for positions in certain geographic areas performing professional social work in a variety of program areas such as day care, generic social

services, foster care and protective services, and differs from the generic Social Service Worker II in that the positions involve a significant, but not predominant, amount of protective services work.

Examples of Work

Maintains a caseload for programs and services at this level.

Prepares social assessment of client circumstances.

Interacts with a variety of professional practitioners in the areas of social work, mental health, developmental disabilities, education, juvenile delinquency, and counseling and guidance to assess client's needs and provide appropriate services.

Develops client service plan designed to accomplish habilitation and rehabilitation of the client and to provide social services to assist client in attaining social, educational and vocational goals.

Cooperates with the court system for foster care, adoption, juvenile delinquency and Medley program services by preparing social assessments and recommending actions to accomplish goals.

Locates and evaluates providers for foster care, adoption, emergency shelter care and Medley home services; counsels and rains providers in effectively providing required services; conducts periodic evaluations of facilities and services.

Counsels clients/families in achieving goals of client service plan.

Counsels youth to correct delinquent and socially unacceptable behavior; prepares probation plans for juvenile offenders; monitors progress of probationers under the court supervision. Speaks before educational and community organizations and groups regarding services available and to develop community resources.

Writes reports on case findings and summaries of client social and financial circumstances.

PROTECTIVE SERVICE WORKER

Nature of Work: Under limited supervision, performs advanced and complex social casework in a specialized area. Work is characterized by cases involving abuse/ neglect/exploitation of children or adults. The nature of the situations require expertise and judgement to deal with problems that are potentially dangerous to the client and the worker. Work requires the use of personal automobile for local travel. Employee is subject to being on-call during non-business hours. Performs related work as required.

Examples of Work

Conducts investigations concerning allegations of abuse by talking with and visually observingaffected individual; talks with immediate family, relatives, neighbors, teachers, doctors, and reviews any relevant records.

Makes initial assessment of validity of the allegation and the degree of danger

that the child or adult is in; documents the results of the investigation.

Assesses family dynamics and problems that may be precipitating an abusive situation.

Prepares a complete client service plan to remedy contributing problems and stop behavior patterns of abuse/neglect/exploitation and solicits family cooperation.

Engages family in counseling to solve problems, refers them to other available resources, and monitors situation to prevent a reoccurrence of abuse.

Files petition with the court when a child is judged to be in imminent danger and testifies before the court in order to remove a child from the family; makes appropriate placement of a child with relatives, in foster homes, or in emergency shelter.

Persuades the family, relatives, or adult family care provider that it is in the best interest of the client to live elsewhere after the worker has substantiated significant abuse/neglect/ exploitation; arranges placement of the adult client in an alternative living environment.

Evaluates periodically the progress of family or living unit towards meeting objectives of the service plan, the need to modify the plan, and the eventual closing of the case.

Discussion

Grievants repeatedly argued that OSS's offer to promote one of them, and the positive response to their demands by decreasing their duties, proves they have been working out-of-classification. Grievants also compared their duties and on-call system with the duties and on-call system in Cabell and Kanawha Counties. Grievants did not compare their duties and on-call system withother small counties, even when a comparison was requested by the undersigned. (See footnote 3)

Ms. Margaret Waybright, Grievants' former second level supervisor and current Regional Director of the Bureau for Family and Child in Region IV, testified the Grievants are properly classified and are not working outside their job descriptions. She explained that, although a lot of their current caseload is listed as CPS, the majority of the duties they perform with this caseload is child-oriented or "Foster Care like" and does not involve the type of in-depth assessment and intervention performed by PSWs. Ms. Waybright also stated if she were still the Grievants' upper level supervisor she would not have acceded to their demands. (See footnote 4)

Mr. Lowell Basford, Division of Personnel ("DOP"), Assistant Director of Classification and Compensation, testified the Grievants were appropriately classified. He noted the SSW III class specification allows for on-call service, without specifying limits and also requires SSW IIIs to work in potentially dangerous situations. Mr. Basford discussed the difference between administrative definitions of CPS cases and the work identified by the class specifications. He testified the DOP definitions and class specifications are controlling in assigning work, not the in-house definitions. He noted the class specification for SSW IIIs was broadly written because the work assigned to these employees varies greatly. The goal in writing this class specification was to assist the agency in getting work done and not to limit what necessary duties can be assigned. Mr. Basford pointed out the main and essential duties of a PSW are identified by the "Examples of Work" section and are listed in order from more complex to less complex. He noted the key duties involve investigating family situations, assessing allegations, the degree of danger, and family dynamics and problems, and preparing the complete case plan to intervene into the identified problems. Mr. Basford utilized Grievant Sayre's position description form to demonstrate that not only did Grievant

Sayre not do a predominant amount of CPS work, he did not even do the significant amount allowed by the SSW III class specification. Grievant Sayre's position description form stated he spent one percent of his time investigating CPS referrals. Mr. Basford also pointed out Grievants' Area of Assignment sheets indicate Grievant Francis spends twenty percent of his time in CPS and Grievant Sayre spends fifteen percent of his time in CPS.

Ms. Joyce Campbell, Grievants' former supervisor from January, 1990 to March 1, 1995, also testified. She stated Grievants were properly classified and spent the majority of their time working with children, not with families or doing in-depth assessments. She reviewed Grievants' caseload, which demonstrated that, although many of the children were classified as CPS, the work performed by Grievants usually involved interaction with the children. Ms.Campbell noted Grievants had performed only one or two CARF assessments even though several more were assigned. These assessments were typically reassigned to other workers.

Grievants testified at length that the majority of their caseload was CPS cases. Grievants submitted portions of their Caseload Reports at Level III from January, 1994 to August, 1994 to demonstrate the high number of CPS cases they were assigned. Level III Exh. 4. The numbers in the reports for January, February, March, and April, 1994, have been changed from the original report to indicate a much higher number of CPS contacts than originally reported. **(See footnote 5)** **Both supervisors stated the Grievants' caseloads have remained basically unchanged.**

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 the one 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 "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). The key to the analysis is to ascertain whether

the Grievants' current classification constitute 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 should be given great weight unless clearly erroneous. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993).

Under the foregoing legal analysis, the West Virginia Supreme Court of Appeals' holding in Blankenship presents these employees with a substantial obstacle to overcome in attempting to establish they worked out-of-classification. In the instant matter, Grievants' evidence falls well short of demonstrating DOP's determination that the work required of Grievants was within their classification was "clearly wrong." The duties Grievants performed are clearly within the class specifications. Apparently, some of the expectations of their position have changed and may continue to change with OSS's desire to provide better service to troubled families and their children. This change does not make theGrievants' misclassified as these expected duties fall within the current classification. Thibault, et al. v. Div. of Rehab. Services and Div. of Personnel, Docket No. 94-RS-061/404 (May 31, 1995).

The remainder of this opinion will be set out as formal findings of fact and conclusions of law.

Findings of Fact

1. Grievants are SSW IIIs who work in rural Wayne County.

2. Grievants have been required to be on 24-hour emergency call more frequently than they were in the past.

3. OSS has changed not only the way it labels CPS children, but has increased the complexity of assessment requirements with each case, and chosen to be more goal-directed in the treatment of children and family in their care.

4. Because of a change in the way CPS children are counted, Grievants' caseloads reflect an increase in CPS cases. Grievants, however, continue to perform much the same duties as they have in the past.

Conclusions of Law

1. Grievants have the burden of proving their case by a preponderance of the evidence. Silver v. W. Va. Dept. of Health and Human Resources, Docket No. 90-DHS-440 (Mar. 10, 1990).

2. Although some of Grievants' duties were changed and the expectations of OSS workers have increased, this adjustment is possible under the Grievants' current classification. Thibault, etal. v. Div. of Rehab. Services and Div. of Personnel, Docket No. 94-RS-061/404 (May 31, 1995).

3. Grievants have failed to demonstrate that they worked out-of-classification for any period of time.

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 28, 1995

Footnote: 1CARF stands for Child-at-Risk Field and is a different way of assessing these children. This method focuses on identifying risks, developing a treatment plan and carrying out intervention with the family unit.

Footnote: 2Grievant Sayre had been a PSW in the past.

Footnote: 3The witnesses testified that the method of handling cases in Cabell and Kanawha Counties is substantially different from Wayne County.

Footnote: 4*Ms. Waybright, who no longer supervises the Grievants, also stated that "hard decisions", at times, have to be made and that one solution to Grievants' problem is to hire workers willing to perform the work necessitated by OSS's desire to offer their clients more appropriate and in-depth services.*

Footnote: 5*For example, for Grievant Sayre, the contacts originally noted on the form for January, 1994 were CPS-6 and Foster Care-32. These numbers were changed to CPS-31 and Foster Care-17. Grievant Francis' forms reflect similar changes. For example, the February, 1994 reports original numbers were CPS-4, Foster Care-89. The changed numbers are CPS-82, Foster Care-11.*