RICK SMITH, .

Grievant, .

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v. . Docket Number: 94-CORR-624

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WEST VIRGINIA DIVISION OF .

CORRECTIONS at HUNTINGTON WORK .

RELEASE CENTER / WEST VIRGINIA .

DIVISION OF PERSONNEL, .

Respondents. .

D E C I S I O N

Rick Smith (hereinafter Grievant) is employed by the West Virginia Division of Corrections in the business office of its Huntington Work Release Center. Grievant's in-house title is Business Manager; however, his position has been classified by the West Virginia Division of Personnel (hereinafter Personnel) as an Accounting Assistant III. Grievant claims that his position should be classified as a Business Manager. (See footnote 1) This grievance was filed on August 10, 1994, pursuant to the provisions of West Virginia Code §29-6A-1, et seq., and proceeded through the lower levels until an appeal was received at level four on October 26, 1994. Thereafter, an evidentiary hearing was held in this Board's Charleston office on December 15, 1994. (See footnote 2) The case became mature for decision on that date.

On April 1, 1994, the Division of Corrections implemented the results of Personnel's

reclassification project which was started back in 1991. As a result, Grievant's position was reallocated from the position of Business Manager I to Accounting Assistant III. As an overall result of the implementation of Personnel's reclassification project, various classifications in the then-existing plan were either eliminated or revised. There is currently only one Business Manager classification as the series was eliminated.

Grievant contends that he should currently be classified as a Business Manager because the duties of his position best fit the language within that classification's specification. He contends that he performs the hands-on work associated with the duties performed by the typical staff supervised by other Business Managers; therefore, it should be considered that he is the business manager of his institution. Personnel contends that Grievant's position should not be classified as a Business Manager because he does not "manage" the affairs of a business office within a large state facility. It further asserts that Grievant does not plan, organize, schedule, coordinate or direct office employees involved in the fiscal, personnel, accounting, payroll and/or purchasing operations of his institution.

The West Virginia State Personnel Board, a part of Personnel, was created in 1989 to replace the former Civil Service Commission. W. Va. Code §29-6-6 (1989). The duties and responsibilities of the former Director of the Civil Service System were also transferred to the Director of Personnel. Code §29-6-9 (1989). Pursuant to Code §29-6-10(1), the State Personnel Board has been delegated the discretionary authority to promulgate, amend or appeal legislative rules governing the

> preparation, maintenance and review of a position classification plan for all positions within the classified service . . . based upon a similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class.

The Personnel Board has the same authority and responsibility to establish a pay plan for all positions within the classified service, guided by the principle of equal pay for equal work. Code §29-6-10(2). The Personnel Board has wide discretion in performing its duties although it cannot exercise its discretion in an arbitrary or capricious manner. Also, the rules promulgated by the Personnel Board are given the force and effect of law and are presumed valid unless shown to be unreasonable or not to conform with the authorizing legislation. See, Callaghan v. West Virginia Civil Service Comm'n, 273 S.E.2d 72 (W.Va. 1980). Finally, and in general, a governmental agency's determination of matters within its expertise is entitled to substantial weight. Princeton Community

Hospital v. State Health Planning, 328 S.E.2d 164 (W.Va. 1985).

In order for Grievant to prevail upon a claim of misclassification, he must prove by a preponderance of the evidence that his duties for the relevant period more closely matched another cited Personnel classification specification than that under which he is 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 mostcritical section. 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 Grievant's current classification constitutes the "best fit" for his 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, if said language is determined to be ambiguous, should be given great weight unless clearly erroneous. See, W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (1993).

The major issue in this case is whether Personnel properly assigned Grievant's position to the classification of Accounting Assistant III or whether it abused its discretion in taking said action. The answer to this question can be derived from a review of the language of the classification specifications at issue, in connection with the administrative regulations promulgated by Personnel. The specifications' texts are reproduced herein as follows:

Accounting Assistant III

Nature of Work

Under general direction, performs advanced level work by participating in all accounting transactions for the organizational unit. Audits complex accounts and transactions for accuracy and compliance with applicable regulations, analyzes complex financial records to monitor status and make projections. Performs related work as required.

Distinguishing Characteristics

Work at this level is responsible for the processing, posting, and/or reconciliation of financial and numerical data. Verifies data, reviews compliance, identifies discrepancies, reconciles ledgers with controls, and makes necessary adjusting entries. Analyzes statements for budgetary controls and projections and prepares financial and numerical reports. Interprets and applies operational policies to specific working situations.

Examples of Work

Analyzes accounts, expenditures, and financial statements to determine such things as preliminary budget projections.

Assigns, directs and reviews the work of clerical staff.

Compares data with other prescribed sources to verify accuracy, completeness and compliance to standards set by agency or by state and federal regulations.

Verifies accuracy of arithmetic calculations and legal compliance; lists discrepancies for adjustment or reconciles errors.

Posts transactions to multiple-entry ledgers, journals and/or spreadsheets and balances.

Compiles information, prepares financial and other numerical reports.

Reconciles individual ledgers with control ledgers.

Compares monthly and yearly statements and notes discrepancies or corrects errors.

Writes checks, receives money and makes bank deposits; posts debits and credits.

May assist in the preparation of various budgets and related reports.

May type, file, answer the telephone, and perform other clerical tasks as necessary.

Business Manager

Nature of Work

Under general supervision, performs full-performance professional work planning, organizing, and directing the operation of a business office in a large state facility. Responsible for the budget, fiscal, staffing, purchasing, inventory, and other business activities. Has latitude to vary methods and procedures within parameters, to achieve desired results. Typically supervises clerical staff. Performs related work as required.

Examples of Work

Plans, organizes, schedules and directs office employees and fiscal, personnel, accounting, payroll and purchasing operations.

Coordinates the business management activities of the institution with other institutional programs.

Prepares or directs preparation of, implements and monitors budget and supporting fiscal statements.

Coordinates the planning, development and implementation of federal funding programs.

Directs the processing and maintenance of accounting and office records.

Monitors and prepares payrolls, personnel records and transactions, and maintains inventory; requisitions supplies and equipment as necessary.

Maintains various records, writes necessary reports and correspondence and attends meetings, conferences and seminars.

Collects, analyzes and reviews financial data.

Instructs employees in proper work methods and procedures.

May organize and direct auxiliary functions such as food service, mail, laundry and maintenance.

May recommend revisions to and adoption of general operating and management policies.

Section 4.04 of Personnel's Administrative Regulations, describing how class specifications are to be interpreted, contains the following relevant subsections:

(a)

Class specifications are descriptive only and are not restrictive. The use of a particular expression of duties, qualifications, requirements, or other attributes shall not be held to exclude others not mentioned.

(b)

In determining the class to which any position shall be allocated, the specifications for each class shall be considered as a whole. Consideration shall be given to the general duties, specific tasks, responsibilities required, qualifications and relationships to other

classes as affording together a picture of the positions that the class intended to include.

(c)

A class specification shall be construed as a general description of the kinds of work characteristics of positions properly allocated to that class and not as prescribing what the duties of any position are nor aslimiting the expressed or implied power of the appointing authority now or hereafter vested with the right to prescribe or alter the duties of any position.

(d)

The fact that all of the actual tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class.

These legislative rules are both helpful and instructive as to how classification specifications should be interpreted. After a thorough review of the evidence of record, it is determined that Personnel did not abuse its discretion in classifying Grievant's position as it did.

The following findings of fact have been properly deduced from the evidentiary record developed in the case.

Findings of Fact

1. Within the Division of Corrections, the various institutions vary drastically with regard to the number of officers and staff employed, e. g., the West Virginia Penitentiary has approximately 378 employees with ten of those assigned to its business office. On the other hand, the three work release centers in the State each has only 16 employees and each facility has only one employee assigned to its business office.

2. In the large facilities, the position in charge of the business office is classified as a Business Manager. In the small institutions, with only one exception, the employee assigned tooperate the business office maintains the position of Accounting Assistant.

3. Grievant's basic duties and responsibilities revolve around the following: tracking the facility's

financial data through the State's automated accounting network; maintaining inmate payroll accounts; paying expenses for the institution with relation to all aspects of its operation including, but not limited to, commodities, supplies, meals, laundry, and maintenance; completing payroll for the facility's staff; preparing monthly reports for overtime, the inmates' association with the Farm Commission, rent, meal and phone expenses and the inmate accounts.

4. Grievant performs the typical accounting functions such as paying invoices, reconciling accounts and ledgers, analyzing accounts for budgetary compliance, comparing expenditures for determining budgetary projections and closing books on cash, inventory, accounts receivable, etc.

5. Grievant is also responsible for purchasing, sorting mail, and attending training seminars and meetings to remain current with trends in the State's methods of accounting and other related subjects.

6. Grievant does not supervise a staff.

The language of the Nature of Work section of the Business Manager classification specification is clear and unambiguous in that it states an incumbent must perform "full-performance professional work planning, organizing, and directing the operation of a business office in a large state facility" (Emphasis added). It is clear from the record that Grievant does not perform within the confines of a large state facility. Therefore, his position should not be classified as a Business Manager.

Further, Personnel correlates the term "manage" not only with relation to a program or function but with regard to a staff. One must manage a staff of subordinates in order to be classified as a manager under Personnel's scheme. See, Moore v. W. Va. Dept. of HHR/Personnel, Docket No. 94-HHR-126 (Aug. 26, 1994). In this case, it is clear that Grievant does not manage a staff of employees within the business office at the Huntington Work Release Center. This is a another reason why Grievant's position is not best-described by the Business Manager classification which Grievant seeks.

While it is accepted that Grievant does perform some duties consistent with the examples used to describe the classification specification of Business Manager, the performance of those duties cannot transform the nature of the position which he now holds. Consistent with the administrative regulations cited earlier, the classification specifications are to be read as a whole and the examples of work should simply be viewed in light of the language of the preceding sections of the specifications in order to give more meaning to the Nature of Work section. Overall, Grievant's

position is best-described by the Accounting Assistant III classification according to the nature of the predominant duties which he is required to perform.

The foregoing discussion of the case is hereby supplemented by the following appropriately made conclusions of law.

Conclusions of Law

1. Grievant bears that burden of proving his claim by a preponderance of the evidence. W. Va. Code §29-6A-6.

2. Grievant has failed to establish that his position should be reallocated to the classification of Business Manager based upon the doctrine of best-fit and the predominant duty rule. Simmons v. W. Va. Dept. of HHR/Div. of Personnel, Docket No. 90-H-433 (Mar. 28, 1991); Broaddus v. W. Va. Div. of Human Services, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

3. Grievant has failed to establish that Personnel abused its discretion in classifying his position under the specification of Accounting Assistant III taking into consideration the language of its own administrative regulations. 143 CSR 1.4.04.

Therefore, this grievance is hereby **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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ALBERT C. DUNN, JR.

Administrative Law Judge

March 2, 1995

Footnote: 1In Grievant's statement of grievance he stated that he had been "effectively demoted" as his position's pay grade had been lowered as a result of Personnel's reclassification study implemented by his employer on April 1, 1994. It

suffices toconclude that Grievant was not demoted but that his position was reallocated. Not only did his pay grade change but his position's classification was also changed. Further, his pay grade was lowered five places, in part, because Personnel created a new pay plan which now contains fewer pay grades. Grievant's salary has not changed.

Footnote: 2At this hearing, Grievant made a request for costs and fees based upon his assertion that neither his employer nor Personnel had acted in good faith throughout the proceedings in this grievance. Pursuant to W. Va. Code §29-6A-8, all parties are responsible for their own costs and expenses incurred through the first three levels of the grievance procedure. Only upon a finding of bad faith by an administrative law judge at level four may a party be entitled to the costs associated with that hearing. Code §29-6A-7. There is no evidence in this case upon which such a finding may be supported.