KAREN L. ASHLEY, .

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Grievant, .

.

v. . Docket No. 94-HHR-070

.

WEST VIRGINIA DEPARTMENT OF HEALTH .

AND HUMAN RESOURCES and DEPARTMENT .

OF ADMINISTRATION/DIVISION OF .

PERSONNEL, .

.

Respondents. .

D E C I S I O N

Karen L. Ashley (Grievant), filed three separate grievances against her employer, the Respondent Department of Health and Human Resources (DHHR). Grievant filed her first grievance on August 5, 1993, contesting her non-selection for a posted position as an Administrative Secretary. Grievant's second grievance was initiated on August 13, 1993, challenging her reclassification by Respondent Division of Personnel (DOP) as a "Secretary II," retroactive to December 16, 1992. Grievant contends her proper classification should then have been "Administrative Secretary." Her third grievance was submitted on December 21, 1993, contesting an office reorganization which resulted in her further reclassification as a Secretary I. All three grievances were consolidated at Level III where an evidentiary hearing was conducted on February 2, 1994. Thereafter, DHHR Deputy Commissioner Garrett E. Moran issueda decision denying the grievance at Level III. (See footnote 1) Grievant appealed to Level IV on March 3, 1994.

By Order dated March 7, 1994, DOP was joined as an essential party. Following several continuances, each of which was granted for good cause, a hearing was convened in this Board's Charleston office on January 11, 1995, the parties reconvening on February 22, 1995, for further

testimony. This matter became mature for decision upon receipt of timely post-hearing briefs on April 11, 1995.

Background

While many facts in this case are uncontroverted, several matters are in dispute, requiring appropriate credibility determinations.

Prior to DOP's statewide reclassification project, Grievant served as the secretary for the Director of DHHR's Office of Social Services (OSS), Mr. Harry Burgess. In that capacity, she was classified as a "Secretary III" under the then-prevailing classification scheme. Although Grievant was aware that DOP was in the process of reclassifying all employees, she did not complete an updated position description (PD) for DOP's use in the reclassification project because of a phone call which she received from an unidentified woman. The woman indicated she was calling from"Personnel," and that Grievant should not fill out the standard PD form. Instead, the caller stated she would send a form which Grievant was to return directly to Mr. Basford's office in DOP. This same unidentified woman told Grievant to relay the same guidance to one of her co-workers, Bonnie Boggs. Grievant indicated that Ms. Boggs was present when she received this call. However, Grievant never received the promised forms.

Thereafter, in late December 1992, Grievant was notified that she was being reclassified as a Secretary I. Grievant appealed to DOP in January 1993, requesting classification as an Administrative Secretary. In May 1993, Grievant submitted a new proposed PD to Mr. Burgess. J Ex 31. When she did not hear back from Mr. Burgess, Grievant submitted another draft PD on May 17, 1993. J Ex 27. Subsequently, Grievant's appeal was partially granted by DOP on July 7, 1993, and she was reclassified as a Secretary II, retroactive to December 16, 1992. J Ex 10.

Mr. Burgess made the following notation on the draft PD:

> I agree in general to the employee's description of the work performed. However, I do not agree with the emphasis on administrative support. The majority of the employee's time is spent on clerical vs administrative support functions, i.e., wordprocessing, copying, filing, taking calls, etc.

Grievant took exception to this statement, noting that Mr. Burgess did his own filing. She estimated that she spent 60 per cent of her time on the phone, dealing with various matters, including high-level inquiries.

Shortly after her reclassification as a Secretary II, Grievant became aware that an Administrative Secretary position had beenposted in OSS. J Ex 6. Grievant applied for the position (J Ex 7), and a panel consisting of Mr. Burgess, Ron Nestor, Claire Leviner, and Tom Strawderman (See footnote 2) interviewed Grievant and the other internal candidate, Pamela Gandee.

Grievant complains that she was not asked about her qualifications for the position during the interview but was questioned by Mr. Strawderman as to what she would do if someone called at the end of the day after everyone else had left and asked how to shoe a horse. She also complained that Ms. Leviner asked her if she held any positions involving supervisory responsibilities in a church, such as chairing a committee. She also noted that Mr. Nestor asked her how she would go about getting other people in the group to work with her and how she would handle problems that might arise from lack of cooperation. Grievant denied having any problems working with other people in her "work group."

Ms. Gandee, Ms. Leviner's secretary in Contracted Services, was selected for the Administrative Secretary position. Grievant noted that Ms. Gandee had been working on a part-time basis prior to her selection. Following Ms. Gandee's selection, the office was reorganized and Grievant was notified on November 30, 1993, that she was being demoted to a Secretary I position, effective December 16, 1993. J Ex 12. This was a "demotion without prejudice" and Grievant suffered no loss of pay. See W. Va. Div. of Personnel Administrative Rule §§ 3.26 & 11.04 (Series I, 1993). Grievant wasreassigned to work as secretary for Betty Rivard, Mr. Burgess' Executive Assistant, but stated she was given minimal secretarial work to do, only "light typing, mailouts and copy work."

Grievant alleges that she was treated differently from other Secretary I's in the combined work group in that she was not given her own office. Instead, she was placed in an office with two audit clerks from another unit. In addition, she was required to share a printer while other secretaries had their own printer connected to their personal computer. She also noted that the other secretaries reported to Directors and had traditional secretarial duties, such as answering phones and processing mail.

In 1992, an initiative had been launched to develop a plan for reorganizing the clerical staff because the program staff was complaining that their paperwork was not being completed in a timely manner. Grievant believed that the primary emphasis for this initiative was to relieve the secretaries of unrelated and less important duties, such as maintaining office equipment, ordering supplies, and

processing personnel forms, thus allowing concentration of effort on projects directly supporting their supervisors. All clerical personnel attended these meetings on a monthly basis. Grievant recalled that Mr. Burgess stated in 1993 that no one would be demoted as a result of these initiatives.

Their initial proposal called for creation of a new "Office Manager" position to assume the ancillary duties. That proposal was not accepted by management. Grievant was not aware of any proposal emanating from the Work Group calling for her position tobe downgraded to a Secretary I. However, following Ms. Gandee's selection as Administrative Secretary, Grievant was placed in a "clerical pool," which included three other secretaries: Bonnie Boggs, Marilyn Bowe and Vickie Pauley. Grievant complained that most of the "pool" work was assigned to her, rather than Ms. Boggs or Ms. Bowe.

Grievant testified that, in her previous capacity as Mr. Burgess' secretary, she normally spent 25 hours per week performing "administrative" duties, including resolving problems brought to her by people in the field, such as the four Regional Administrators. Grievant estimated that Mr. Burgess was out of the office an average of 30 hours per week. Thus, she acted as a "liaison" between these Regional Administrators and her boss. Many of these discussions focused on "action referrals," inquiries or complaints from various offices and officials requiring a formal and prompt response. Grievant developed a tracking system to maintain accountability for action referrals within OSS. Grievant stated that she sent these referrals to the appropriate office for reply, maintained a log of the assignments, and screened responses for format and content, as well as proofreading for typographical errors.

As Mr. Burgess' secretary, Grievant also provided administrative support to Mr. Burgess' Executive Assistant, Betty Rivard, including setting up certain statewide conferences. Grievant testified that she made "administrative decisions regarding office procedures" by insuring that group travel and personnel actionswere performed in accordance with established guidelines. Grievant would sort incoming mail, handling what she could and referring to Mr. Burgess those matters requiring his attention. She claimed to have drafted correspondence for either her signature or Mr. Burgess'. Grievant also stated that she had regular high-level face-to-face and telephone contact with the Governor's Office, judges, legislators, department heads, executive directors of private agencies and various staff for these individuals. She indicated that she acted as liaison between such offices and the appropriate staff member in responding to inquiries.

Grievant indicated that during the "latter part of 1992" she was the statewide coordinator for all group travel in OSS for approximately six to nine months. She also made travel arrangements for Mr. Burgess while serving as his secretary. She also routinely signed Mr. Burgess' name to outgoing correspondence. She prepared status reports on action referrals. Grievant also maintained a "tickler system" for staff assignments Mr. Burgess made in addition to the action referrals. Grievant supervised the receptionist in the office and temporary summer help working as support staff. She also provided some computer training to support staff and participated in the selection of the receptionist.

Grievant noted that the new Administrative Secretary position as posted included some duties that involved Contracted Services. Otherwise, the position involved essentially the same duties she had performed while Mr. Burgess' secretary. Grievant indicatedthat, to her knowledge, Ms. Gandee is only supervising one Audit Clerk in her capacity as Administrative Secretary.

Susan Salmons, Assistant Director of Youth Services in OSS, testified that Grievant sometimes did typing of "sensitive" reports she prepared for Mr. Burgess. Ms. Salmons gave Grievant typing regarding personnel matters, as directed by Mr. Burgess. She also recalled Grievant providing assistance in regard to group travel for one particular conference.

Ms. Salmons confirmed that she left messages with Grievant for Mr. Burgess when he was not in and that Mr. Burgess would either respond directly or through Grievant. To that extent, Grievant did act as a "liaison" between her and Mr. Burgess. However, she had no specific memory of Grievant handling any problem or question independent of Mr. Burgess. As for action referrals, Grievant would provide information regarding content to Ms. Salmons who then prepared a written response, had it typed by her secretary and returned to Grievant for approval by Mr. Burgess.

Ms. Salmons compared and contrasted the duties performed by Grievant as Mr. Burgess' secretary and Ms. Gandee as the Administrative Secretary, observing that Ms. Gandee scheduled and coordinated meetings, including participants and location, and that she provided more information in regard to pending issues and upcoming events. Ms. Gandee also arranged for typing of various projects, not just matters prepared specifically for Mr. Burgess.

Margaret Waybright, a Regional Director in DHHR reporting directly to Mr. Burgess from January 1990 to January 1995,testified that Mr. Burgess was often out of the office when she called. However, she seldom confided the nature of her business to Grievant, and Grievant generally did not

assist in resolving her problems, simply taking a message for Mr. Burgess. According to Ms. Waybright, when she called for Mr. Burgess, Grievant would indicate that Mr. Burgess was not in, she did not know where he was, and she could not otherwise help Ms. Waybright. Ms. Waybright did recall that Grievant worked on group travel arrangements on occasion.

As to action referrals, the same process as described by Ms. Salmons was followed. Ms. Waybright recalled that action referrals generally had a cover sheet containing general instructions and a prescribed response date. She also noted that Ms. Gandee, since becoming Mr. Burgess' Administrative Secretary, has been much more involved with the Regional Administrators and has been more helpful, particularly in regard to obtaining and exchanging information and setting up meetings or conferences. While both Grievant and Ms. Gandee may have performed some of the same functions, Ms. Waybright stated Grievant "would do more work to get out of work than she would do to get something done." In Ms. Waybright's opinion, Grievant's typical attitude was "[that's] not my job" and she did not want to spend time being helpful.

Ms. Waybright recalled that Grievant would return an action referral because the required mailing envelope was not prepared and attached to the response, while Ms. Gandee would simply note the problem and prepare the required envelope. Ms. Waybright observedthat action referrals were more often returned by Grievant for rewording or changes in format than for substantive reasons. Ms. Bonnie Boggs, another Secretary I in OSS, recalled being present when Grievant received a phone call regarding reclassification. Despite that phone call, Ms. Boggs later received a form on which she completed and submitted her PD. She was reclassified from a Stenographic Secretary II to a Secretary I. Ms. Boggs indicated that she worked "closely" with Grievant when she was Mr. Burgess' secretary. However, she was not aware of Grievant making travel arrangements or appointments, other than for Mr. Burgess.

Ms. Boggs recalled Mr. Burgess stating in one of the work group meetings that no one would be demoted as a result of their initiatives. Ms. Boggs indicated that she shared an office with Grievant from December 1989 to June 1993. While agreeing that some secretaries went to Grievant for assistance with various office-related problems, everyone in the office helped each other out to a similar degree.

Rosella Knight, an employee of West Virginia University assigned to OSS, testified that she worked there while Grievant was serving as Mr. Burgess' secretary. She recalled approaching

Grievant on behalf of her supervisor to set up meetings with Mr. Burgess and to find meeting rooms for conferences. Grievant would relay messages from Mr. Burgess through her for her supervisor. Grievant would send back action referrals as being "too long" without specifying if the correction was requested by Mr. Burgess or Grievant. Ms. Knight always found Grievant "very helpful" whenshe needed information or assistance. On occasion, Grievant would sign routine, recurring correspondence for Mr. Burgess.

Jean Humphries, Executive Secretary to the Secretary of DHHR, testified that she would call Grievant to relay assignments from the Secretary to Mr. Burgess or his staff. Infrequently, Grievant would advise Ms. Humphries regarding the status of a particular assignment. Grievant would also report, either orally or in writing, on the status of open action referrals. Due to a 1994 reorganization in OSS, she believes that action referrals now go to multiple offices rather than to Mr. Burgess or his Administrative Secretary.

Pamela Gandee, currently Mr. Burgess' Administrative Secretary, testified that she previously worked as a Secretary I in Contracted Services. At the time of her application for the Administrative Secretary position Ms. Gandee was working on a part-time basis. While working in Contracted Services, Ms. Gandee maintained several logs tracking over $2 million in contracts. She supervised two audit clerks at one point in time, and later supervised an Office Assistant/Accounting Clerk. Ms. Gandee recalled that Mr. Burgess announced the Administrative Secretary position opening in a support staff meeting in June of 1993. While she did not see the notice of posting for the Administrative Secretary position before it was issued, she vaguely recalled having seen the PD for this new position before it was announced, although she did not type that PD. However, she was aware of the history of the position from her service on the work group.

Prior to being selected as Administrative Secretary, Ms. Gandee trained Grievant as her "back-up" in Contracted Services, so that Grievant could perform her duties while she was absent. Likewise, Grievant provided some training to Ms. Gandee so she could fill in as Mr. Burgess' secretary during Grievant's absence. Ms. Gandee testified that all secretaries were trained to handle action referrals in the same manner in accordance with a written "correspondence guide." She also indicated that her current duties as Administrative Secretary were broader in scope than the duties performed by Grievant as Mr. Burgess' secretary. Moreover, Ms. Gandee stated that she had more interaction with the entire support staff in her Administrative Secretary role. In particular, Ms. Gandee conducts

regular meetings with the support group staff and serves as a "bridge" to conduct their concerns back to the Directors they support. She also indicated that a "back-up system" for absent support staff had been formally established and she had more authority to adjust for heavy workloads by assigning work among the clerical staff.

Ms. Gandee and Marilyn Bowe were designated as "Co-Chairs" of the Clerical Work Group as early as September 1992. See J Ex 18. This Clerical Work Group was tasked with improving the service provided by the OSS support staff. Ms. Gandee recalled that the Clerical Work Group developed a position description for an Office Manager position. J Ex 4. However, this proposal was rejected by management. In October 1992, Mr. Burgess issued a set of "expectations" developed by the Group, setting forth certain officeprocedures to be followed by the staff. J Ex 2. Additional "expectations" or procedures were issued in January 1993. J Ex 5 at 2.

Ms. Gandee's description of her interview for the Administrative Secretary position was generally similar to Grievant's experience, including a question regarding dealing with an unexpected development after everyone else had left for the day. She was not asked about shoeing a horse. Ms. Gandee also noted that she had been employed in OSS when Grievant started working there and participated in Grievant's orientation to the organization.

Ms. Boggs testified that since Ms. Gandee became Mr. Burgess' Administrative Secretary, Ms. Gandee assigns work to the "pool" secretaries, whereas Grievant did not assign work to other secretaries while serving as Mr. Burgess' secretary. Ms. Boggs is a Secretary I assigned to the secretarial pool coordinated by Ms. Gandee. Unlike Grievant, Ms. Boggs primarily supports one of the four Directors reporting to Mr. Burgess, and has a private office.

Lloyd O'Brien, Jr., another Regional Administrator reporting to Mr. Burgess, had contact with Grievant two or three times each week during the four years Grievant served as Mr. Burgess' secretary. Mr. O'Brien recalled Grievant serving as a conduit for information between himself and Mr. Burgess. He did not recall Grievant making travel arrangements for him or doing research to assist in responding to action referrals. Mr. O'Brien indicated healways found Grievant "helpful," but had heard complaints regarding Grievant from other administrators.

John Boles, Jr., Director of Income Maintenance for DHHR, discussed various meetings of the senior DHHR staff during the reclassification process. In the course of these meetings, it was proposed that all Office Directors' secretaries be classified alike. Although Mr. Boles' secretary was

ultimately reclassified as an Administrative Secretary, the staff only reached agreement in regard to Regional Administrators' secretaries being classified as Secretary I's.

Ronald Nestor, Director of Adult Services in OSS for the past fifteen years, was one of the managers who interviewed Grievant and Ms. Gandee for the Administrative Secretary vacancy. Mr. Nestor's recollection of the interview process was similar to that of Grievant and Ms. Gandee. Mr. Nestor did not recall Mr. Strawderman questioning Grievant about how to shoe a horse. However, he did recall Mr. Strawderman asking the applicants how they would handle an unexpected "crisis" when everyone else had left for the day.

Mr. Nestor stated that the interviewers discussed the applicants after the interview, reaching a consensus that Ms. Gandee was the best candidate. He recalled this determination being based upon the interviews and prior knowledge of the candidates' work. Mr. Nestor opined that Ms. Gandee had better "people skills" and displayed more initiative than Grievant. Mr. Nestor recalled a six-month time period when Grievant and his secretary,Ms. Boggs, were not talking with each other, even though they were sharing an office.

Frances Chambers, employed as a Secretary I in OSS, participated in meetings of the Clerical Work Group. She recalled that the Group's purpose involved proposing better ways for doing their jobs, including reorganization as appropriate. Although a PD for an Office Manager position was developed, Ms. Chambers understood that a lack of funding prevented creation of any new position. She did not recall any discussion by the Work Group in regard to creating an Administrative Secretary position in lieu of the Office Manager position.

Marilyn Bowe worked as a Secretary I in OSS until January 1995. She served as Co-Chair of the Clerical Work Group in 1992 and 1993. Ms. Bowe indicated that creation of the Administrative Secretary position was not discussed in the Work Group. She had minimal contact with Grievant while she was Mr. Burgess' secretary. Claire Leviner, Director of Contracted Services in OSS, testified that she participated in selection of the Administrative Secretary. Grievant and Ms. Gandee were interviewed as the only internal applicants who qualified for the position. Ms. Leviner recalled the interview process similarly to Mr. Nestor, Grievant and Ms. Gandee. She did not recall Mr. Strawderman making reference to shoeing a horse but she did recall that he asked about a problem arising when Grievant was the only person in the office.

Ms. Leviner recalled that Ms. Gandee's responses during the interview were more in depth and

showed more insight than Grievant,particularly in dealing with people. Based upon her dealings with both employees, Ms. Leviner indicated that Ms. Gandee showed more initiative in getting tasks accomplished than Grievant.

Ms. Leviner particularly recalled asking Grievant for assistance in typing a cover form, preparing an envelope and mailing a time-sensitive federal application that needed to be in the mail that afternoon. Grievant told Ms. Leviner that she would be glad to type the form for her but her typewriter was broken. Ms. Leviner suggested that she use another typewriter in the same office which was not being used. After Grievant typed the form, Ms. Leviner asked her to prepare an envelope for the application. Grievant responded that the document was not going to go out that day as the mail had already been picked up. Ms. Leviner explained that the application needed to be sent by overnight mail or Federal Express. Grievant responded that she did not know how to do overnight mail or where the supplies were. Ms. Leviner found the required container and mailing label and brought them back to Grievant. Grievant asked Ms. Leviner what address the package was being mailed to and was told to use the same address as in the cover letter and form which she typed earlier. Grievant then prepared the envelope and required number of copies. When she brought this package to Ms. Leviner, Grievant was asked to take it to the Mail Room to see if it could be sent out that day. Grievant responded that the Mail Room had recently moved and she did not know where it was. Ms. Leviner instructed Grievant to find the Mail Room, which she did, and the application was mailed that day. In contrast, Ms. Leviner noted that during over 12 years that Ms. Gandee worked for her, Ms. Gandee would simply get the job done without making excuses or finding obstacles to completing the job. Ms. Leviner also expressed concern that action referrals and freedom of information requests had not been promptly relayed to her by Grievant on multiple occasions, thus delaying the response or making preparation of a time-sensitive response more difficult.

Ms. Leviner observed that the Administrative Secretary position entails more coordination and interaction with other offices than the secretarial position previously held by Grievant. In addition, there is more systems administration and less pure typing, filing, etc.

Thomas Strawderman, Director of Fiscal Administration in OSS, was one of the managers who interviewed Grievant and Ms. Gandee for the Administrative Secretary position. He recalled asking a question of each applicant seeking to discern their problem-solving approach, thus deliberately proposing a scenario to which there would be no known answer. Although he did not recall asking

Grievant about shoeing a horse, he acknowledged that he might have used such a scenario as a "metaphoric example" of the question he was asking. He agreed that Ms. Gandee's responses were more complete and that she demonstrated more creativity and insight than Grievant.

Mr. Strawderman's experience with Grievant when she performed secretarial functions for him was that she frequently responded to assignments by stating: "I don't know how to do that; I don't knowwhere that is; that's not something that I do." Based upon these dealings with Grievant, he did not believe that she would perform the Administrative Secretary's duties as effectively as Ms. Gandee.

Harry Burgess, Director of OSS since December 1989, recalled that he noted problems in the operation of the clerical support function shortly after taking the job. He began meeting with the support staff in an effort to resolve some of these problems. This process was formalized in August of 1992 when he established a Clerical Work Group, designating Ms. Gandee and Ms. Bowe as co-chairpersons. J Ex 1. Following a series of changes that were largely implemented within the existing support structure, Mr. Burgess elected to reorganize the clerical support function, including creating an Administrative Secretary position with many of the responsibilities which had been proposed for an Office Manager.

Mr. Burgess drafted the Administrative Secretary PD with assistance from his Executive Assistant, Betty Rivard, as well as Mike McCabe in DHHR's Personnel Division. Mr. McCabe, DHHR's Director of Personnel Services, confirmed that he provided advice and consultation to Mr. Burgess in regard to his various reorganization proposals. Mr. Burgess also obtained input on the PD from his managers, including Ms. Leviner and Mr. Strawderman. Prior to posting the position, Mr. Burgess sent a memo to Mr. Nestor and Mr. Strawderman advising of his plan to post the Administrative Secretary position. Grievant typed this memo which included a copy of the proposed PD for the new position. J Ex 6. The memoindicates that Grievant received a copy of the documents. J Ex 6. Mr. Burgess recalled that the selection of Ms. Gandee over Grievant for the Administrative Secretary position was based upon a determination that Ms. Gandee had better leadership skills and displayed more initiative and creativity. Mr. Burgess further discussed the reorganization that took place following Ms. Gandee's selection as Administrative Secretary. This ultimately included Grievant's non-disciplinary demotion from Secretary II to Secretary I. See J Ex 12. Additionally, while Ms. Gandee's duties as Administrative Secretary were similar to many tasks Grievant performed on

occasion, Mr. Burgess noted that Ms. Gandee's predominant responsibility involves coordination and oversight for various clerical functions throughout OSS.

While Grievant worked as Mr. Burgess' secretary, she did not routinely draft his correspondence. Grievant might occasionally draft simple notices of meetings or comparable administrative correspondence in response to general directions from Mr. Burgess. Mr. Burgess affirmed the comments he had made on Grievant's draft PD (J Ex 27) regarding her assigned duties.

Lowell Basford, DOP's Assistant Director for Pay and Classification, opined that Grievant had been properly classified as a Secretary II, rather than an Administrative Secretary, during the time she served as Mr. Burgess' secretary. Mr. Basford indicated that Grievant's duties did not involve supervisory or "lead work" responsibility, as Grievant regularly provided oversight to only a single Receptionist. He concluded that Grievant mischaracterizedmany of her duties as administrative rather than clerical in her PD (J Ex 27) and her testimony at Level IV. Mr. Basford indicated that DOP does not credit answering phones, taking messages, processing action referral documents and similar tasks as being "administrative" as opposed to clerical or secretarial duties. Based upon all the testimony and evidence presented, Mr. Basford affirmed that DOP correctly classified Grievant as a Secretary II while she served as Mr. Burgess' secretary.

Mr. Basford noted that the new Administrative Secretary PD contains a discernible difference in the level of responsibility assigned, including specific authority to supervise various functions. Moreover, the new position provides support for two units, the Director's office and the Office of Contracted Services, expanding the scope of responsibility beyond that of Grievant as the Director's secretary.

Classification Specifications at Issue

The relevant portions of the classification specifications for the Administrative Secretary and Secretary II positions at issue in this case are reproduced herein as follows:

ADMINISTRATIVE SECRETARY

Nature of Work

Under general direction, performs advanced level work by assuming responsibility for adjunctive administrative duties under the guidance of an administrator. Applies in-depth knowledge of program areas, the mission of the division, and the administrator's jurisdiction, policies and views. Provides support services to administrator by supplying specific information, composing reports and

correspondence, and taking initiative to recommend actions, or by taking action in modifying and/or improving unit procedures, policies, rules and regulations. Depending on size of organizational unit, may offer some clerical support to administrative superior, often in matters which must remain confidential. Typically performs administrative support for an agency/division administrator. Performs related work as required.

Distinguishing Characteristics

The paraprofessional work at this level is generally confidential and requires a working knowledge of program areas within the division or organizational unit to which assigned. Administrative support duties are predominant; clerical/secretarial duties typically comprise less than 20% of work time.

Examples of Work

Attends meetings for supervisor to take notes and offer input vis-a-vis supervisor's views, or is briefed on meetings after the fact in order to assist the implementation of new procedures.

Studies and analyzes operational procedures; prepares reports of findings and recommendations for implementation of new procedures or the modification of existing procedures.

Collects and prepares operating reports such as time and attendance records, terminations, new hires, transfers, budget expenditures, and statistical inquiries.

Receives telephone calls, personal callers and incoming mail.

Makes arrangements for conferences, including date, time, location and space.

Plans, schedules, assigns, and reviews the work of other employees.

Oversees office services such as the completion of maintenance reports, ordering of supplies, filing.

Supplies administrator with specific detailed information for completion of reports, speeches, etc.

Types a variety of documents, often confidential in nature.

May conduct initial job interviews and recommend candidates for employment.

May monitor particular programs, draft reports on programs status, assist in applications for grants or outside monies, and draft correspondence for division heads concerning the

program areas.

May delegate work to other sections.

May write news releases and otherwise interact with the public on behalf of or in lieu of the administrator.

[J Ex 17.]

SECRETARY II

Nature of Work

Under general supervision, at the full-performance level, provides clerical and administrative relief, exercising discretion and independent judgment. May sign supervisor's name to routine memorandums, correspondence and forms. Attends meeting in the supervisor's absence or on the supervisor's behalf. Necessity fordictation, familiarity with word processor and other special requirements vary depending upon supervisor's preference.

Distinguishing Characteristics

Work at this level is characterized by the level of administrative support preformed. Typically, duties such as researching a variety of sources (library, division archives, past-practice documents, outside private sources, etc.), attending meetings for supervisor where interpretation of information gathered is necessary, and coordinating the activities of section, unit, etc., are characteristic of this level.

At this level, the work requires the application of specific knowledge necessary to complete complex procedural or unusual assignments. Incumbent determines appropriate procedures from among various and variable methods, resources, and processes, or devises innovative methods to accomplish assignment. Incumbent is responsible for his/her own work, and may assign, direct, or supervise the work of others. Although some tasks are defined and self-explanatory, the incumbent works closely with supervisor to set objectives, priorities, and deadlines; may independently set goals and time frames for individual work assignments. Work is typically reviewed randomly upon completion for adherence to guidelines. Contacts at this level are frequent, typically varied and non-routine. Incumbent answers procedural or program inquiries, whenever possible, or refers. Contacts

are frequently of a confidential or sensitive nature and require tact.

Examples of Work

Coordinates activities associated with the functions of the division/section/unit, planning and implementing office procedures.

Researches basic statistical work in the compilation of reports involving the activities of the division/sec tion/unit.

Responds to inquiries where considerable knowledge of unit policy, procedures, and guidelines is required.

Answers telephone, screens calls, and places outgoing calls.

Screens mail and responds to routine correspondence.

Schedules appointments and makes travel arrangements and reservations for supervisor.

Signs, as directed, supervisor's name to routine correspon dence, requisitions and other documents.

Attends meetings with or on behalf of supervisor to take notes or deliver basic information.

Takes and transcribes dictation, or transcribes from dictation equipment.

Composes form letters, routine correspondence, and factual reports requiring judgment and originality.

Gathers, requests, and/or provides factual information, requiring reference to a variety of sources.

Types, using standard typewriter or word processing equipment, reports, manuscripts, and correspondence; proofreads and corrects to finished form.

May delegate routine typing, filing and posting duties to subordinate clerical personnel.

May maintain bookkeeping records for grants, contract or state appropriated funds or related departmental accounts.

May prepare payrolls, keep sick and annual leave records, act as receptionist, and perform other clerical duties as needed.

May assign and review the work of others.

[J Ex 16.]

SECRETARY I

Nature of Work

Under general supervision, at the full performance level, relieves supervisor of clerical and minor administrative duties, exercising discretion and independent judgment. Necessity for dictation, familiarity with word processors, and other special requirements vary depending upon supervisor's preference. Performs related work as required.

Distinguishing Characteristics

This class is distinguished from the Office Assistant series by the assignment of support duties to a specific individual overseeing a section or a division. The incumbent composes routine correspondence for the supervisor, screens calls and visitors and responds to inquiries requesting knowledge regarding office procedure, policy and guidelines, and program information. The position has limited authority to speak for the supervisor.

At this level, the work requires the knowledge necessary to complete complex procedural assignments. Incumbent determines appropriate procedures from among a variety of resources, methods and processes. Incumbent is responsible for his/her own work, and may assign and direct the work of others. Although some tasks are defined and self-explanatory, the objectives, priorities, and deadlines are made by the supervisor. Work is reviewed, usually upon completion, for conformance to guidelines. Contacts at this level are frequent and often non-routine and/or of a confidential or sensitive nature, requiring tact and the ability to judge which inquiries can be answered or must be referred.

Examples of Work

Responds to inquiries where knowledge of unit policy, procedure, and guidelines is required.

Answers telephone, screens calls, and places outgoing calls.

Screens mail and responds to routine correspondence.

Signs, as directed, supervisor's name to routine corre spondence, requisitions and other documents.

Schedules appointments and makes travel arrangements and reservations for supervisor.

Takes and transcribes dictation, or transcribes from dictation equipment.

Composes form letters, routine correspondence, and factual reports.

Types reports, manuscripts, and correspondence using standard typewriter or word processing equipment; proofreads and corrects to finished form.

Gathers, requests, and/or provides factual information, requiring reference to a variety of sources.

May delegate routine typing, filing, and posting duties to subordinate clerical personnel.

May maintain basic bookkeeping records for grants, contract or state appropriated funds.

May prepare payrolls, keep sick and annual leave records, act as receptionist and perform other clerical duties as needed.

May attend meetings, take notes and relay information; typically would not interpret information or speak on behalf of supervisor.

[J Ex 15.]

Discussion

In order for Grievant to prevail upon a claim of misclassification, she must prove by a preponderance of the evidence that her duties for the relevant period more closely matched another cited Personnel classification specification than the one under which she 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 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 Grievant's current classification 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 No. 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 forgoing legal analysis, the West Virginia Supreme Court of Appeals' holding in Blankenship presents employees contesting their current classification with a substantial obstacle to overcome in attempting to establish that they are currently misclassified. In the instant matter, Grievant's evidence falls well short of proving as "clearly wrong" DOP's determination that, while she was assigned as Mr. Burgess' secretary, Grievant was performing the duties of a Secretary II, rather than an Administrative Secretary. While Grievant performed some functions normally done by an Administrative Secretary, these activities did not comprise a predominant portion of her assigned duties and do not make her misclassified. See Darby v. W. Va. Dept. of Health & Human Resources, Docket No. 93-HHR-356/357 (Jan. 18, 1994); W. Va.Div. of Personnel Administrative Rules, Series I (Amended) § 4.04(d) (1993).

While Grievant properly pointed to certain tasks which she accomplished as falling within the Administrative Secretary classification, a preponderance of the evidence indicates that her predominant duties were included in the Secretary II class specification, and these duties provide the controlling basis for classifying her position in that class. See Broaddus v. W. Va. Div. of Human Services, Docket No. 89-DHS-606, 607, 609 (Aug. 31, 1990). In reaching this conclusion the undersigned has credited the testimony of Grievant's immediate supervisor, Mr. Burgess, in regard to the primary emphasis of Grievant's duties while she served as his secretary. Moreover, Grievant's characterization of various clerical duties, such as passing information back and forth between her supervisor and his subordinates as "administrative," misapplies DOP's use of that term in the context of the Administrative Secretary classification specification. Grievant submitted no significant evidence to establish that she has been misclassified as a Secretary I since her nonprejudicial administrative demotion became effective on December 16, 1993.

This Grievance Board recognizes that promotion decisions are largely the prerogative of management. While individuals selected for promotion should be qualified and able to perform the duties of their new positions, absent the presence of unlawful, unreasonable, or arbitrary and capricious behavior, such promotion decisions will not generally be overturned. McClure v. W. Va. Workers' Compensation Fund, Docket No. 89-WCF-208/209 (Aug. 7, 1989). See Freeman v. W. Va. Div. of Health, Docket No. 91-H-035 (Aug. 8, 1991). In the instant matter, the testimony of Mr. Burgess, Ms. Leviner, Mr. Nestor and Mr. Strawderman credibly and consistently described Ms. Gandee as the superior candidate for the Administrative Secretary position. This conclusion was based upon the applicants' responses in the interview process, as well as their experience as managers with these particular employees. Ms. Leviner and Mr. Strawderman provided specific examples of Grievants' lack of initiative in performing assigned tasks. This trait was similarly noted in the testimony of Ms. Waybright.

In the course of her testimony, Ms. Gandee was forthright and candid, displaying the crisp efficiency and courteous demeanor attributed to her by her supervisors. It was apparent to the undersigned that Ms. Gandee was capable of making the favorable impression attributed to her by the personnel who interviewed her for the Administrative Secretary vacancy.

While Ms. Gandee's prior knowledge of the PD established for the Administrative Secretary position may be irregular, this factor did not have a significant impact on the outcome of the

competition for that position. Similarly, it does not appear that Ms. Gandee abused her position as Co-Chair of the Clerical Work Group to influence the decision to create an Administrative Secretary position or to secure her appointment to that position. As Ms. Gandee's current duties were described by Mr. Burgess, Mr. Strawderman and Ms. Leviner, it is apparent that the AdministrativeSecretary is presently functioning in the capacity of an office manager. Indeed, the undersigned finds that the Administrative Secretary position was created as management's ultimate response to the Clerical Work Group's proposal for creation of an Office Manager position in OSS. (See footnote 3) Thus, the creation of this new position arose out of a continuing process to improve the clerical support function within OSS and not from any improper or unlawful motive. Turning to Grievant's demotion to Secretary I, it is noted that this was a demotion without prejudice based on a reorganization within OSS and a change in Grievant's assigned duties. (See footnote 4) Grievant suffered no loss of pay as a result of this demotion. The preponderant evidence of record indicates that, following Ms. Gandee's selection for the Administrative Secretary position andimplementation of the next phase of management's reorganization of the clerical staff in OSS, the nature of Grievant's work changed so that she was no longer functioning as a Secretary II. As this was not a demotion "for cause," DHHR need only show that these changes were effected for legitimate reasons. See Coddington v. W. Va, Dept. of Health & Human Resources, Docket No. 93-HHR-265/266/267 (May 19, 1994). DHHR met that burden.

Grievant also complains that because she was the only Secretary I forced to share an office, she has been subject to prohibited discrimination as defined under W. Va. Code § 29-6A-2(d) as "any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees." This Grievance Board has determined that a grievant, seeking to establish a prima facie case (See footnote 5) of discrimination under § 29-6A-2(d), must demonstrate the following:

(a) that he is similarly situated, in a pertinent way, to one or more other employee(s);

(b) that he has, to his detriment, been treated by his employer in a manner that the other employee(s) has/have not, in a significant particular;

and,

(c) that such differences were unrelated to actual job responsibilities of the grievant and/or the other employee(s) and were not agreed to by the grievant in writing.

Parsons v. W. Va. Div. of Highways, Docket No. 91-DOH-246 (Apr. 30, 1992).

Applying this prima facie analysis to the facts presented here, Grievant has demonstrated that she is similarly situated to one or more other employees who are employed by DHHR in OSS as a Secretary I. Moreover, Grievant is treated differently from other Secretary I's in OSS in that she does not have a private office and has to share a computer printer with other clerical personnel. (See footnote 6) However, unlike the other Secretary I's, Grievant directly supports an Executive Assistant, rather than a Director. Thus, her actual job responsibilities are different from the Secretary I's with private offices. Moreover, Ms. Boggs noted in her testimony that she had shared an office with Grievant from 1989 to 1993, an indication that this was not a unique or unusual arrangement in OSS. Accordingly, Grievant has not established a prima facie case of discrimination. See Runyon v. W. Va. Dept. of Transp., Docket No. 94-DOH-376 & 377 (Feb. 23, 1995). Moreover, even if Grievant had established a prima facie case of discrimination, because Grievant does not directly support a Director, unlike the other Secretary I's in OSS who have their own office, this would establish a difference related to her actual job responsibilities sufficient to rebut any inference of unlawful discrimination in the assignment of work space or equipment. See Id. See also Tex.Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981); Graley v. W. Va. Parkways Economic Dev. & Tourism Auth., Docket No. 91-PEDTA-225 (Dec. 23, 1991).

In addition to the foregoing discussion, the following findings of fact and conclusions of law are appropriate in this matter.

FINDINGS OF FACT

1. Prior to reclassification on December 16, 1992, Grievant was classified as a Secretary III working as the personal secretary to Harry Burgess, Director of the Office of Social Services (OSS) in the Department of Health and Human Resources (DHHR).

2. Grievant was initially reclassified as a Secretary I, effective December 16, 1992.

3. Upon appeal of Grievant's reclassification as a Secretary I, DOP granted partial relief on July 7, 1993, reclassifying her as a Secretary II, retroactive to December 16, 1992. J Ex 10.

4. While serving as Mr. Burgess' secretary, Grievant performed a variety of administrative and clerical duties but the majority of her duties were of a secretarial or clerical nature. See J Ex 27.

5. Grievant and Pamela Gandee were the sole applicants interviewed and considered for a posted position of Administrative Secretary in OSS. Both Grievant and Ms. Gandee met the minimum qualifications for promotion to Administrative Secretary. Ms. Gandee, previously employed in OSS' Division of Contracted Services as a Secretary I, was the successful applicant for the position.

6. Since Ms. Gandee became the Administrative Secretary in OSS, Grievant has had primary responsibility for providing secretarial support to Mr. Burgess' Executive Assistant, Betty Rivard, and has been included in a "pool" of secretaries who provide support to the OSS Director and Office of Contracted Services.

7. While other Secretary I's in OSS have private offices and are not required to share a computer printer, those other secretaries provide primary secretarial support to a Director rather than an Executive Assistant.

8. Effective December 16, 1993, following a reorganization of the clerical support staff in OSS, Grievant was demoted without prejudice from Secretary II to Secretary I, without loss of pay, based upon the changes in her assigned duties.

CONCLUSIONS OF LAW

1. Grievant has not proven by a preponderance of the evidence that the classification of Administrative Secretary constitutes the "best fit" for the duties she performed from December 16, 1992, to December 16, 1993. See Simmons v. W. Va. Dept. of Health and Human Resources, Docket No. 90-H-433 (Mar. 28, 1991).

2. Although Grievant performed some duties that were outside her classification as a Secretary II, this does not render her misclassified. Dooley v. W. Va. Dept. of Health and Human Resources, Docket No. 90-H-498 (Mar. 19, 1991). See Div. of Personnel Administrative Rules, Series I (Amended), §4.04(d)(1993); Broaddus v. W. Va. Div. of Human Services, Docket No. 89-DHS-606, 607, 609 (Aug. 31, 1990).

3. Personnel's interpretations of the classification specifications for the positions of Administrative

Secretary, Secretary II and Secretary I, as they apply to the duties being performed by Grievant at the times at issue in this grievance, were not clearly erroneous and, therefore, should be accorded great weight. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W. Va. 1993).

4. Grievant's job duties while assigned as secretary to Mr. Burgess in OSS from December 16, 1992, to December 16, 1993, as demonstrated by a preponderance of the evidence, best fit within the classification specification for Secretary II.

5. Grievant failed to establish by a preponderance of the evidence that she was better qualified for the position of Administrative Secretary in OSS than the applicant selected, Pamela Gandee. See Flint v. W. Va. Dept. of Transp., Docket No. 92-DOH-119 (Sept. 23, 1992); Miller v. W. Va. Div. of Human Services, Docket No. 90-DHS-328 (Nov. 27, 1990); Riffle v. W. Va. Dept. of Health, Docket No. 89-H-053 (July 21, 1989).

6. Grievant failed to show that her demotion without prejudice from Secretary II to Secretary I, effective December 16, 1993, was contrary to or in violation of any applicable law, rule or regulation.

7. Grievant failed to establish a prima facie case of discrimination under W. Va. Code § 29-6A-2(d) in regard to the factthat other Secretary I's in OSS are not required to share an office or a computer printer with other personnel, inasmuch as Grievant's job responsibilities were different from the other employees. See Runyon v. W. Va. Dept. of Transp., Docket No. 94-DOH-376 & 377 (Feb. 23, 1995); Parsons v. W. Va. Div. of Highways, Docket No. 91-DOH-246 (Apr. 30, 1992).

Accordingly, the 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.

LEWIS G. BREWER

Dated: June 2, 1995 Administrative Law Judge

Footnote: 1The Certificate of Service indicates that the Level III decision was mailed to Grievant on January 22, 1994. This is obviously in error since the February 2, 1994, Level III hearing had not yet been conducted. In any event, Grievant represented in her pleadings that she did not receive the Level III decision until March 3, 1994, and Respondent has not challenged the timeliness of Grievant's appeal to Level IV.

Footnote: 2Mr. Nestor, Ms. Leviner and Mr. Strawderman are Directors of various departments in OSS, reporting directly to Mr. Burgess.

Footnote: 3It is totally insignificant that the Clerical Work Group did not propose establishing the Administrative Secretary position. As noted by Mr. Burgess, none of the secretaries wanted to be supervised by the Office Manager or anyone other than a Director. However, assigning work and determining reporting relationships is part of the inherent authority of agency management, absent any restriction on this authority by law, rule or regulation.

Footnote: 4The W. Va. Division of Personnel officially defines "demotion" as follows:

> *A change for cause in the status of an employee from a position in one class to a position in another class of lower rank as measured by salary range, minimum qualifications, or duties, or a reduction in an employee's pay to a lower step in the pay range assigned to the classification. The two types of demotions are: a) Disciplinary Demotion - A reduction in pay or a change in classification to a lower classification due to the inability of an employee to perform the duties of a classification or for improper conduct. b) Demotion Without Prejudice -A change in classification of an employee to a lower classification or a reduction of pay due to work necessity. W. Va. Administrative Rule, W. Va. Div. of Personnel, Series I (Amended), §3.26 (Aug. 1993) (emphasis added).*
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> *Footnote: 5A prima facie case generally refers to a set of facts which, if not rebutted or contradicted by other evidence, would be sufficient to support a ruling in favor of the party establishing such facts. See Black's Law Dictionary 1353 (4th Ed. 1968).*
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> *Footnote: 6It is questionable whether Grievant demonstrated that this sharing requirement resulted in her detriment to any significant degree. However, that issue need not be decided here, in view of Grievant's failure to otherwise establish a prima facie case.*