JAMES WHORTON

v. Docket No. 95-CORR-070

WEST VIRGINIA DIVISION OF CORRECTIONS

D E C I S I O N

At all pertinent times, James Whorton was a Correctional Officer IV (CO4) assigned to the West Virginia Penitentiary (WVP). He filed a grievance alleging he was "made to work out of job classification - operations officer" and seeking back wages. Respondent West Virginia Division of Corrections (CORR) claims the short-term supervisory work performed by Grievant was within the purview of his classification. Grievant appealed to level four and requested a hearing. Ultimately, the parties agreed that a decision could be made on the evidence adduced below. The matter became mature for decision on July 3, 1995, the final date for submission of fact/law proposals and/or rebuttal.1

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1The record consists of the pleadings, lower level decisions, rendered September 6, 1994, December 27, 1994, and February 8, 1995, respectively, and the transcript/evidence of the January 26, 1995, level three hearing.

There is little dispute over the facts in this case. As a CO4, Grievant's in-house rank is Sergeant. During portions of June, July and August 1994, Grievant was temporarily assigned to perform the duties of an operations officer, also known as "shift commander," while the Correctional Officer V (CO5) personnel normally assigned these duties were on vacation.2

It would be helpful at this juncture to list the pertinent

provisions of the West Virginia Division of Personnel's (Person nel) classification specification for both the CO4 and CO5 positions.

Correctional Officer IV

Nature of Work: Under general supervision, serves as a shift or unit supervisor or in a mid-level specialized supervi sory capacity. The officer supervises the enforcement of rules, regulations and state law necessary for the control and manage ment of offenders and the maintenance of public safety. The officer supervises and reviews the work of subordinates to ensure the orderly functioning of a facility or unit. Performs related work as required.

Distinguishing Characteristics: Factors such as size of correctional officer complement or offender population are considered in determining assignment of a position to this rank. Holds the assigned rank of Sergeant.

Examples of Work

Supervises orientation and/or on-the-job training of subordinate officers.

Maintains public safety and control of offenders by effi ciently supervising the enforcement of rules, regulations and state law.

Conducts roll call and obtains pertinent information from previous shift to communicate to staff coming on duty.

2A list prepared by Grievant states that he worked as operations officer on June 7, 11-15, 18-20, 22-23, and 25-29, 1994; July 17-18, 20-22, and 24-28, 1994; and August 4, 8-12, 16-19, 22-26, and 29-30, 1994. CORR does not dispute that these

are the days Grievant was assigned to perform the duties of the operations officer.

Assigns duties to subordinates and supervises work per formed.

Ensures adequate coverage of posts, prepares work sched ules, makes required adjustments and maintains attendance records.

Ensures subordinates complete required training. Ensures performance evaluations are completed. Makes referrals to employee assistance program. Recommends staff commendations and disciplinary action.

Performs supervisory duties related to the security of a facility or operation of a specialized unit.

Conducts or supervises inquiries or investigations and takes appropriate action.

Chairs or participates in staff, team or committee meet ings.

Ensures security of perimeter and points of ingress/egress.

Recognizes and directs the response to potential or actual emergencies such as, but not limited to fires, physical alterca tions, disturbances or escapes in a manner consistent with policy procedure and state law.

Ensures offender escort/transport security.

Ensures key and weapon control.

Handles and operates security/communications equipment and/or firearms as required and in a manner consistent with policy and procedure.

Participates in or conducts segregation reviews.

Testifies at internal disciplinary hearings and in court.

Ensures monitoring of disruptive and high profile offend

ers.

Initiates and supervises contraband searches.

Supervises offender intake and release procedures.

Initiates offender counts to verify location and status of offenders.

Ensures housekeeping, security and safety policies are enforced.

Assists in selection, hiring and promotion.

Correctional Officer V

Nature of Work: Under general supervision, performs administrative or supervisory duties as a shift or unit supervi sor, Chief Correctional Officer, or in a mid-level specialized supervisory or administrative position. The officer manages or supervises the enforcement of rules, regulations and state law necessary for the control and management of offenders and the maintenance of public safety. The officer plans, directs and reviews the work of subordinates or performs administrative duties related to the security or operation of a specialized unit. Performs related work as required.

Distinguishing Characteristics: Factors such as size of correctional officer complement or offender population are considered in determining assignment of a position to this rank. Holds the assigned rank of Lieutenant.

Examples of Work

Ensures security of perimeter and points of ingress/egress.

Identifies posts and ensures adequate coverage. Ensures controls are in place regarding searches to detect and discour age the introduction, manufacturing and trafficking.

Functions as the designee for chief executive officer of

the operational unit, as directed.

Maintains public safety and control of offenders through efficient management of correctional officer work force.

Conducts, assigns, supervises and/or evaluates required security audits and inspections and takes appropriate follow-up action.

Chairs or participates in staff team or committee meetings.

Conducts, assigns, supervises and/or evaluates inquiries or investigations and takes appropriate action.

Participates in or conducts segregation reviews.

Testifies at internal disciplinary hearings and in court.

Ensures monitoring of disruptive and high profile offend ers.

Assists in selection, hiring and promotion of staff.

Prepares work schedules, makes required adjustments and maintains leave, overtime and attendance records. Ensures equitable rotation of correctional officers. Ensures subordi nates complete required training. Ensures performance evalua tions are completed. Delegates and monitors subordinates assignments.

Encourages staff mentoring, development and advancement.

Listens to problems and concerns of staff and resolves them through appropriate action. Makes referrals to employee assis tance programs. Recommends staff commendations and disciplinary actions.

Recognizes and directs the response to potential or actual emergencies such as, but not limited to fires, physical alterca tions, disturbances or escapes in a manner consistent with policy procedure and state law.

Ensures offender escort/transport security.

Ensures key and weapon control.
Handles and operates security/communications equipment and/or firearms as required and in a manner consistent with policy procedure.
Testifies at internal disciplinary hearings and in court.
Ensures monitoring of disruptive and high profile offend ers.
Initiates and supervises contraband searches.
Supervises offender intake and release procedures.
Initiates offender counts to verify location and status of offenders.
Ensures housekeeping, security and safety policies are enforced.
Assists in selection, hiring and promotion.

Grievant is not seeking reclassification to CO5 in this case. Rather, he claims he is entitled to a temporary salary upgrade pursuant to Personnel's policy for "Temporary Classifi cation Upgrades."3 In this particular instance, Grievant failed to meet his burden of proof that CORR's temporary, intermittent assignment of him as an operations officer at WVP amounted to any kind of misclassification situation, thereby obligating CORR to upgrade his wages during the time in question.
Notably, the CO4 and CO5 classification specifications are very similar. Both classification specifications state that the incumbent is permitted to serve as a "shift or unit supervisor" and to supervise "the enforcement of rules, regulations and state law necessary for the control and management of offenders and the maintenance of public safety." In addition, employees in each class monitor, in some fashion, "the work of subordi nates." These critical factors are set forth within the most

important "Nature of Work" section of each specification. See Atchison v. W.Va. Div. of Health, Docket No. 90-H-444 (Apr. 22, 1991).

It is true that, once in the past, Grievant had received a temporary upgrade for performing supervisory duties. However, this happened at a time when Grievant had not attained his

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3The policy provides for a pay differential, within a three to nine percent range, for employees needed to perform duties in a higher job class for a specified time, under certain stringent circumstances. It also requires Personnel's approval, and the completion of a WV-11 prior to placement in the "temporary upgrade status."

present supervisory rank and classification of CO4. The circum stances are entirely different this time. Had Grievant been required to perform supervisory work during Summer 1994 while in a lower classification which did not include supervisory duties as an integral part of the classification, he may have been eligible for a temporary classification upgrade and attendant wages. See Bunch v. W.Va. Div. of Corrections, Docket No. 93-CORR-205 (Nov. 22, 1993); Crow/Chambers v. W.Va. Div. of Corrections, Docket No. 92-CORR-091 (Jan. 29, 1993); Howard v. W.Va. Div. of Corrections, Docket No. 92-CORR-051 (Jan. 29, 1993); Steele/Frey v. W.Va. Div. of Corrections, Docket No. 92-CORR-048 (Jan. 29, 1993).

Findings of Fact

1. As a Correctional Officer IV (CO4) with the in-house rank of Sergeant at the West Virginia Penitentiary (WVP), Grievant held a supervisory position.

2. For forty-three days in Summer 1994, Grievant was assigned to perform the duties of a shift commander or operations officer at WVP.

3. Traditionally, shift commander or operations officer duties were assigned to a Correctional Officer V (CO5), ranked as a Lieutenant, at the WVP.

Conclusions of Law

1. The grievant must prove all of the allegations constituting the grievance by a preponderance of the evidence. Crow v. W.Va. Dept. of Corrections, Docket No. 89-CORR-116 (June 30, 1989); Bonnett v. W.Va. Dept. of Highways, Docket No. 89-DOH-043 (Mar. 29, 1989).

2. Grievant failed to prove he was misclassified when he performed high-level supervisory duties during the period in question.

3. Grievant is not entitled to back wages on the basis of a temporary classification upgrade, because the short-term supervisory work he performed at WVP in Summer 1994 came within the purview of his present classification.

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 appeal and provide the civil action number so that the record can be prepared and

transmitted to the appropriate court.

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NEDRA KOVAL

Administrative Law Judge

Date: July 12, 1995