

SPIRO T. MITIAS,

Grievant,

v. DOCKET NO. 95-PSC-029R

WEST VIRGINIA PUBLIC SERVICE

COMMISSION,

Respondent.

D E C I S I O N

Comes now the undersigned Administrative Law Judge, in response to an Order from the Honorable Tod J. Kaufman, Kanawha County Circuit Judge, in the matter of Mitias v. David J. Ellis, et al., Case No. 96-AA-10 (June 5, 1996), remanding this matter back to the undersigned for a factual determination of the accuracy of the job description prepared by Wayne Crowder for the Manager of Administration position, and the significance of that job description in obtaining approval of Mr. Crowder for the Manager of Administration position.

Grievant, Spiro Mitias alleged the Division of Personnel based its approval of Mr. Crowder's appointment to the Manager of Administration position on an erroneous position description form, prepared by Crowder, in violation of W. Va. Code § 29-6-21, which provides, in pertinent part:

(a) No person shall make any false statement, certificate, mark, rating or report with regard to any test, certification or appointment made under any provisions of this article or in any manner commit or attempt to commit any fraud preventing the impartial execution of this article and the rules. . . .

The job announcement for the vacant Manager of Administration for the Public Service Commission was posted on October 21, 1992, with a Duties Statement and the official Division of Personnel classification specification attached. The Duties Statement included the duty to "prepare

budget request and expenditure schedules for the Public Service Commission." G Ex. 17. The Duties Statement was a form prepared internally at the Public Service Commission. The official classification specification for Manager, Administration, indicates that an employee in that class "performs highly responsible administrative and managerial duties in supervising a bureau or division within an agency", and lists the primary responsibilities of the position as "fiscal control and budgeting, supervision of audit personnel, and compliance with state regulations." G Ex. 17.

Mr. Crowder applied for the position and was interviewed by Public Service Commission Chairman Boyce Griffith ("Chairman"). During the interview, there was some discussion of removing the budget and financial aspects of the job from the Manager of Administration's responsibility, and transferring those duties to the Director of Data Processing, Sharon Snead. The Manager of Administration would still be responsible for procurement, accounts receivable and payable, and would assist and cooperate with Mrs. Snead regarding financial matters relating to the Division. Crowder, 8/15/96 Tr., pp. 103-108. On January 11, 1993, the Chairman informed Beth Sharp, the Director of Personnel, that he was naming Mr. Crowder as Acting Manager of Administration, and also informed her that the duties of budget and finance were being deleted from the Manager of Administration's authority and transferred to Data Processing. G Ex. 18. By memorandum dated January 22, 1993, the Chairman so informed Mr. Crowder. G Ex. 19.

On January 22, 1993, the Chairman requested that Beth Sharp prepare the necessary paperwork to delete the financial affairs from the job description of Manager of Administration. A Ex. 3. Ms. Sharp contacted Lowell Basford of the Division of Personnel to make sure that the original posting of Manager of Administration was still valid, given the deletion of the financial affairs from the Manager's duties. Mr. Basford informed Ms. Sharp that the duties were still appropriate for the position and suitable for the classification of Manager, Administration. Sharp, 8/16/96 Tr., p. 14.

Ms. Sharp also forwarded Mr. Crowder's application to the Division of Personnel for verification that Mr. Crowder was eligible and qualified for the position. The Division of Personnel responded confirming that Mr. Crowder was qualified for the position of Manager of Administration. Sharp, 8/16/96 Tr., p. 15; G Ex. 20. On February 8, 1993, Ms. Sharp informed the Chairman that the Division of Personnel had approved Mr. Crowder for the position of Manager of Administration. She also informed the Chairman that she had directed Mr. Crowder to prepare a position description form for submission to Personnel. A. Ex. 5. A WV-11 Personnel Action Form dated March 16, 1993

shows final approval of Division of Personnel for Mr. Crowder's classification as Manager of Administration. A. Ex. 7.

The portions of Mr. Crowder's position description form that are in controversy are listed as Numbers 26 and 27 on an attachment to the form. Number 26 describes the function of the unit, indicating that the unit has responsibility for fiscal control, budget oversight, acquisition of agency funding through assessment of public utilities, and is responsible for procurement and purchasing of supplies. Number 27 describes the function of the position, and includes within the primary responsibilities "fiscal control, budget funding, and agency purchasing." G Ex. 20.

Grievant alleges these statements are false due to the deletion of the budgetary functions from the Manager of Administration position, and that, based upon these false statements, the Division of Personnel approved Mr. Crowder's appointment as Manager of Administration.

No one from the Division of Personnel was called to testify in these grievance proceedings regarding this matter. Nevertheless, the undersigned takes administrative notice that the function of the Division of Personnel in approving individuals for positions in State government is limited to ensuring those individuals meet the minimum qualifications for the position as listed on the official classification specification. Ms. Sharp testified, and G Ex. 20 shows, that the Division of Personnel informed her that Mr. Crowder met the qualifications and was thus eligible for the position of Manager of Administration. This approval was given to Ms. Sharp on February 8, 1993, at which time she so informed the Chairman. Of course, the Chairman had already selected Mr. Crowder for the position on January 11, 1993. Once the Division of Personnel acknowledged that Mr. Crowder was eligible for the position, there was nothing more for Personnel to do with regard to the selection process.

Mr. Crowder prepared and submitted his position description form on or about February 23, 1993, more than a month after he was selected for the position by the Chairman, and several weeks after Division of Personnel approved the selection. The purpose of preparing the position description form was to upgrade Mr. Crowder's position for classification purposes. Ms. Sharp testified she told Mr. Basford before the form was submitted that the budget functions were being deleted from the Manager of Administration position, and he indicated to her that it would not be a problem in getting approval for Mr. Crowder's classification. The approval for his classification was an entirely separate matter than the approval received from the Division of Personnel regarding Mr. Crowder's qualifications and eligibility for the position.

It must be noted that the official classification specification for Manager, Administration (G Ex. 20) is statewide and not confined to the Public Service Commission. The Division of Personnel reviews the duties of a position and assigns a classification to that position. It is the position that is classified, not the person. The budget and fiscal duties listed constitute only a portion of the duties listed on the classification specification for Manager, Administration. Thus, the fact that Mr. Crowder did not have responsibility for some of the budget and fiscal duties within the Public Service Commission did not mean that he was not properly classified as Manager, Administration. Further, as Ms. Sharp testified, Mr. Basford knew in advance of receiving Mr. Crowder's position description form that he was not responsible for budget and financial matters. As G Ex. 20 indicates, Mr. Basford signed off on and approved the position description form submitted by Mr. Crowder, classifying the position as Manager, Administration.

The undersigned was ordered by Judge Kaufman to make factual determinations regarding whether Mr. Crowder violated W. Va. Code § 29-6-21, and what significance the position description had in obtaining approval of Mr. Crowder as Manager of Administration by the Division of Personnel.

The undersigned finds that Mr. Crowder did not violate W. Va. Code § 29-6-21 in preparing his position description form. While Mr. Crowder may have embellished his financial duties, or, more than likely, simply copied down the duties from another existing position description form, the position description form was not instrumental in Mr. Crowder's appointment as Manager of Administration by Chairman Griffith.

As to the second issue, the position description form played no part in the Division of Personnel's approval of Mr. Crowder for the position of Manager of Administration. The Division of Personnel's role in the selection process was limited to confirming that Mr. Crowder met the minimum qualifications for the position as stated in the classification specification. The position description form was used to find the appropriate classification for the position. In this instance, the Division of Personnel approved the classification of Manager, Administration for the Manager of Administration within the Public Service Commission, even though the budgetary functions had been removed from that position. Again, determining the correct classification for the position was in no way related to the appointment of Mr. Crowder to the position.

Findings of Fact

1. Mr. Crowder did not falsify his position description form in an attempt to procure his appointment as Manager of Administration.
2. The position description form submitted by Mr. Crowder played no part in the Division of Personnel's approval of Mr. Crowder for the Manager of Administration position.

Conclusion of Law

Mr. Crowder did not violate W. Va. Code § 29-6-21 in preparing his position description form.

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.

MARY JO SWARTZ

Administrative Law Judge

Dated: August 7, 1996