SUE CATER, et al.,

Grievants,

v.

DOCKET NO. 96-HHR-094

DEPARTMENT OF HEALTH AND HUMAN

RESOURCES/BUREAU OF PUBLIC HEALTH

AND DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievants Bob Brauner, Sue Cater, Sandra Daubman, and Jeannie Miller, filed this grievance on July 20, 1995 alleging that:

> [t]he July 3 posting of a position in the Bureau for Medical Services is for a Program Manager II. . . Based on a comparison of the job descriptions of a Program Manager I and Program Manager II, . . . we, the grievants believe that our classification should be HHR Program Manager II (pay grade 18) instead of the current HHR Program Manager I (pay grade 16). The duties and responsibilities currently performed by the grievants, in comparison with the description in the 7/3/95 posting for a Program Manager II, are equal, and in some areas, more extensive. Additionally, the only differences in the two grades, according to the department's job description, are included in the program areas of “Distinguishing Characteristics,” and requirements for experience.

Grievants seek a reclassification to Health and Human Resources Program Manager II. A level three hearing was held on November 27, 1996, and a decision was rendered denying the grievance by the level three Grievance Evaluator on January 10,1996. Grievants timely appealed to level four but their grievance form was apparently lost in the mail. The level three Grievance Evaluator vouched for the Grievants that they had timely appealed her decision, and their level four appeal was acknowledged on March 7, 1996. Following several continuances for good cause, a hearing was held

on December 9, 1996, and this case became mature for decision on January 24, 1997, the deadline for the parties' submission of proposed findings of fact and conclusions of law.

Grievants are employed in Respondent Health and Human Resource's ("HHR") Bureau for Public Health, Office of Health Facility Licensure and Certification ("OHFLAC") as Program Manager Is. When HHR underwent reclassification in 1992, the Program Manager position occupied by Grievants was evaluated by Respondent Division of Personnel ("Personnel") through the position description forms filled out by each employee and job audits performed by Personnel for all program managers throughout State government. Based upon the information submitted, Personnel determined, in consultation with HHR, that, relative to the level of complexity of other programs in State government, Grievants "best fit" the Program Manager I classification. Grievants did not challenge or file a grievance over their classification as Program Manager Is at that time.

In 1995, the Office of Medical Services within HHR underwent a significant reorganization and expansion at the direction of the Governor and the Legislature, and it became the Bureau of Medical Services. Programs were expanded and additional personnel were recruited to aid in the expansion. Several positions were posted, including three Program Manager II positions. Grievants saw these postings and felt the job specifications, duties, and requirements were identical to the jobs they were performing, and filed this grievance, alleging they should be reclassified to Program Manager IIs. In order for Grievants to prevail upon a claim of misclassification, they must prove by a preponderance of the evidence that their duties for the relevant period more closely match another cited Personnel classification specification than that under which they are currently assigned. See generally, Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). Personnel specifications are to be read in "pyramid fashion," i.e., from top to bottom, with the different sections to be considered as going from the more general/more critical to the more specific/less critical, Captain v. W. Va. Div. of Health, Docket No. 90-H-471 (Apr. 4, 1991); for these purposes, the "Nature of Work" section of a classification specification is its most critical section. Atchison v. W. Va. Dept. 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 Grievants' current classification constitutes the "best fit" for their required duties. Simmons v. W. Va. Dept. of HHR/Div. of Personnel, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of the position in question are class-controlling. Broaddus v. W. Va. Div. of

Human Services, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

Additionally, class specifications are descriptive only and are not meant to be restrictive. Mention of one duty or requirement does not preclude others. W. Va. Admin. Rule, § 4.04(a); Coates v. W. Va. Dept. of Health and Human Res., Docket No. 94-HHR- 041 (Aug. 29, 1994). Even though a job description does not include all the actual tasks performed by a grievant, that does not make the job classification invalid. W. Va. Admin. Rule, § 4.04(d). Finally, Personnel's interpretation and explanation of the classification specifications at issue, if said language is determined to be ambiguous, should be givengreat weight unless clearly erroneous. See, W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993).

The classification specifications at issue are reproduced in part as follows:

HEALTH AND HUMAN RESOURCES PROGRAM MANAGER I

Nature of Work

Under general direction, performs complex administrative and professional work at the advanced level in managing a major program component within an office or organizational unit in the Department of Health and Human Resources. Programs are managed over a specified geographic region of the state, or statewide, and are of equivalent size and complexity. Responsibilities include planning, policy development, direction, coordination and administration of the operation of a major program component in the area of health or human resources. Complexity level is evidenced by the variety of problem-solving demands and decisions for the assigned area. Issues may be controversial in nature and work requires the ability to persuade or dissuade others on major policy and program matters. Performs related work as required.

Distinguishing Characteristics

Positions representative of the kind and level of work intended for the class include program areas such as Health Statistics, Health Promotion, Mental Retardation/Developmental Disabilities, Alcohol and Drug Abuse, Government Donated Foods, and other organizational units with similar size, scope and complexity.

HEALTH AND HUMAN RESOURCES PROGRAM MANAGER II

Nature of Work

Under general direction, performs complex administrative and professional work at the advanced level in managing a major program component within an office or organizational unit in the Department of Health and Human Resources. Programs are

managed over a specified geographic region of the state, or statewide, and are of equivalent size and complexity. Responsibilities include planning, policy development, direction, coordination and administration of the operation of a major program component in the area of health or human resources. Complexity level is evidenced by the variety of problem-solving demands and decisions for the assigned area. Issues may be controversial in nature and work requires the ability to persuade or dissuade others on major policy and program matters. Performs related work as required.

Distinguishing Characteristics

Positions representative of the kind and level of work intended for the class include program areas such as Surveillance and Disease Control, Family and Children Services, Quality Control, and other organizational units with similar size, scope and complexity.

Attached to both classification specifications is a list of areas of assignment, as follows:

Behavioral Health

Community Health

Emergency Medical Services

Environmental Health

Health

Health Facilities Licensure and Certification

Health Planning

Health Promotion

Investigation

Legal

Rural Health

Social Services

Volunteer Services

LIVE, G. E's. 1, 2.

There is no dispute that the Nature of Work sections of the two classification specifications are identical, or that Grievants' duties fall within those described in both the Program Manager I and Program Manager II specifications. This Grievance Board has held that, when the specifications for two classified positions are so similar that no rational basis exists for a finding that either constitutes a “best fit” for a grievant's position, he or she is entitled to the higher classification. Gillenwater v. W.

Va. Dept. of Health and Human Res., Docket No. 90-H-146 (Dec. 18, 1991). Just as an ambiguous specification must be construed so as to benefit the employee (see Rumbaugh v. W. Va. Dept. of Highways, Docket No. 89-DOH-389 (Dec. 18, 1989)), where two classification specifications are essentially identical, with no rational basis for choosing one over theother, the higher classification must be found appropriate. Smith v. W. Va. Div. of Health, Docket No. 91-H-525 (Apr. 5, 1991). Thus, the inquiry in this case is limited to whether Respondents have offered a rational basis for determining the best fit for Grievants' classification is Program Manager I.

Lowell D. Basford, Assistant Director of Compensation and Classification for Personnel, testified that the similarity in the two job specifications is by design. Both classifications perform complex administrative and professional work in managing a major program within an office or organizational unit for HHR. Thus, the managerial duties Grievants' perform are the same type of managerial duties performed by Program Manager IIs. The distinguishing characteristics between the two classifications are the relative level of complexity and difficulty of the programs administered by the program manager. Mr. Basford testified that factors considered to determine a program's level of complexity include the size and scope of the program, the complexity of the work performed, the program's mission, the amount and type of subordinate staff a program manager is responsible for, the amount of federal oversight a program has and the Legislative framework and public policy behind the program's creation. Mr. Basford stated that no one factor is controlling, but all of the factors are weighed by Personnel in making this determination.

OHFLAC is within HHR's Bureau for Public Health, and is headed by a Director who reports directly to the Commissioner of the Bureau. Nancy Tyler was the Director of OHFLAC and supervised the Grievants until her departure from that agency shortly before the level four hearing in this matter. There are currently four program managers, the Grievants, who report directly to the Director of OHFLAC. OHFLAC is responsible for thelicensing and certification of hospitals and other health care facilities throughout the entire State of West Virginia. Each Grievant is responsible for different programs: Ms. Cater manages Behavioral Health Services; Mr. Brauner manages Long-term Care; Ms. Miller manages Medicare and Hospitals; and Ms. Daubman manages Residential Licensure, Nursing Assistants and Labs. Various sub-entities make up each program; for instance, Mr. Brauner's area includes nursing homes, portable x-rays, rural health, scheduling, surety bonds, and swing beds.

Each Grievant supervises several employees, including health care workers, nurses, and physicians, who act as surveyors, and are responsible for going into the various facilities, performing surveys, and making recommendations regarding licensure and certification. Grievants make the final recommendation regarding licensure and certification to the Director. Grievants are also responsible for writing and revising proposed state and federal regulations; appearing before the Legislature; providing training programs to staff and customers; as well as the day-to-day management of their respective programs, including budgetary and personnel matters.

Grievants submitted a Program Manager II position description from the Office of Environmental Health Services in an effort to show that they are performing the same level of managerial duties as a Program Manager II. Grievants also provided testimony from Program Manager IIs currently working in the Bureau of Medical Services to compare their duties to those positions. As noted above, there is no dispute that Grievants perform the same type of duties encompassed in the Program Manager II classification specification.

Mr. Basford testified that the operational setup of the Bureau of Medical Services is different from the operations of OHFLAC. He also testified that the predominant functionof OHFLAC is to survey health care providers for the purpose of approving licensure and certification. According to Personnel, this function is very narrow in terms of providing services. The Bureau of Medical Services, on the other hand, carries a much broader function in that it is responsible for the development, design, coordination and planning of medical services. Mr. Basford also testified that the Program Manager II position with the Office of Environmental Health Services contained a much broader level of activity in terms of the various managerial functions that make up the title of “managing” than what Personnel found in Grievants' positions within OHFLAC. Thus, Mr. Basford concluded that the size, scope and complexity of OHFLAC more closely fit the examples contained in the Distinguishing Characteristics section of the Program Manager I than those contained in the Program Manager II classification specification.

Additionally, despite the fact that there seemed to be no dispute that Grievants performed the same type of duties as a Program Manager II, Mr. Basford testified that their duties were really less “managerial” than those individuals holding a Program Manager II classification. Mr. Basford testified that, because the Grievants not only managed their program areas, but from time to time actually engaged in hands-on survey work with their employees, wrote policies and regulations, and provided

training to their employees and their customers, this somehow “diluted” their management function. The undersigned does not find that argument convincing and finds rather that Mr. Basford's example more conclusively illustrates an attempt by an agency to get as much out of its employees as it can under the limited resources necessarily available to state government, and especially HHR. Grievants should be commended, not insulted, for doing everything they are called upon to do in the day-to-day operations of their managerial areas of assignment. Ifanything, Grievants exemplify the types of managers any organization would and should be proud to have, who undertake a variety of many tasks, and no doubt inspire their employees to do the same.

While it is clear that Grievants perform a wide variety of managerial tasks, and that their duties and responsibilities fit both the Program Manager I and Program Manager II classification specifications, Respondents, through Mr. Basford, explained that the relative size, scope and complexity of the agency determines whether the managers of those agencies will be placed in a Program Manager I or II position. Respondents' have offered a rational basis for determining that Program Manager I is the best fit for Grievants, and that reason cannot be found to be clearly wrong or arbitrary and capricious. See, Blankenship, supra.

Findings of Fact

1. Grievants are employed as Program Manager Is for Respondent HHR, Bureau of Public Health, Office of Health Facility Licensure and Certification.

2. The Nature of Work sections of the Program Manager I and the Program Manager II classification specifications are identical.

3. The Distinguishing Characteristics sections of those classification specifications indicates it is the relative size, scope and complexity of an agency which determines whether the managers will be classified as Program Manager Is or IIs.

4. Respondents HHR and Personnel, in classifying positions during the reclassification project, determined OHFLAC to be a smaller, less complex agency with a narrower focus than other agencies within State government.

Conclusions of Law

Grievants have failed to prove by a preponderance of the evidence that Respondents' rationale

for designating their agency as smaller and less complex, thus justifying their classification as Program Manager Is, to be clearly wrong, arbitrary or capricious. See, Blankenship, supra.

Accordingly, this grievance is **DENIED.**

Any party or the West Virginia Division of Personnel may appeal this decision to the circuit court of the county in which the grievance occurred, and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal, and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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MARY JO SWARTZ

Administrative Law Judge

Dated: March 26, 1997