RUTH MULLENS

v. Docket No. 96-HHR-226

WEST VIRGINIA DEPARTMENT OF HEALTH
and HUMAN RESOURCES/WEST VIRGINIA DIVISION
of PERSONNEL

DECISION

The grievant, Ruth Mullens, is employed by the West Virginia Department of Human Resources (HHR) as a Supervisor II assigned to Welch Emergency Hospital (WEH). She filed a grievance at Level I, on or about October 20, 1995, alleging that she had been misclassified since May 1994. Her supervisor was without authority to grant relief, and the grievance was denied at Levels II and III. Appeal to Level IV was made June 10, 1996. The West Virginia Division of Personnel (Personnel) was joined as an indispensable party, and a hearing was held August 1, 1996. The parties either made oral legal argument at the hearing or submitted proposed findings of fact and conclusions of law by September 19, 1996.

BACKGROUND

1 Then classified as a Supervisor I in charge of WEH's Admissions Department, the grievant was promoted to Supervisor II in May 1994. The new position required that she retain indirect supervision over the the Admissions Department, and assume direct supervision over WEH's Data Processing Unit (DPU), which employs two Data Entry Operators. The post also entailed limited supervision of two emergency room Clerks.

Shortly after assuming the duties of the position, the grievant filed a complaint with Personnel claiming that Personnel's job specifications for Data Processing Manager I (DPMI) constituted a better fit for her duties than those for Supervisor II. Personnel ultimately determinedthat its Office Automation Coordinator I (OACI) specifications most accurately described her duties; she was placed in that classification effective October 20, 1995.

Before the case reached Level IV, Personnel reconfigured the specifications for most, if not all,

computer information-related positions in the classified service and, for reasons which are not clear, returned the grievant to the Supervisor II classification. The change was effective July 16, 1996.

ARGUMENT

The grievant does not take issue with Personnel's more recent decision to designate her position as Supervisor II. (See footnote 1) She asserts only that she was misclassified as either a Supervisor II or OACI from May 1994, to July 1996, when she was returned to that classification, and that Personnel's specifications for DPMI most accurately described her duties and responsibilities during that period.

Personnel concedes that certain provisions of the OACI job description do not accurately depict the nature of the grievant's duties during the period in question, but maintains that overall, the specifications constitute the "best fit." Personnel claims broad discretion in reclassification matters, and asserts that its interpretation of the job specifications in issue should be granted deference per the holdings in W. Va. Dept. of Health and Human Resources v. Blankenship, 431 S.E. 2d 681 (W.Va. 1993). HHR essentially pleads that it had no control over Personnel's decision to place the grievant in the OACI classification.

FINDINGS AND CONCLUSIONS

Generally, an employee in the classified service seeking the benefits of a higher-ranked classification (See footnote 2) must show, by a preponderance of the evidence, that his duties more closely coincide with Personnel's job specifications for that classification than those for the position he currently holds. Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (March 28, 1989). The review in such cases entails a close examination of the job descriptions in issue, particularly the "Nature of Work" sections, and a comparison of the description to the employee's predominant tasks. Atchison v. W. Va. Dept. of Health, Docket No. 90-H-444 (April 22, 1991). Blankenship essentially holds that the employee must show that Personnel was clearly wrong in its interpretation of its job descriptions and/or its assessment of his or her duties. For the reasons discussed below, the undersigned concludes that the grievant has met that burden.

Personnel's specifications for Office Automation Coordinator I are as follows:

Nature of Work

Under general supervision, performs basic full-performance technical work assisting in the office automation of a state agency. Works with management, users and information systems staff in purchasing, installing and maintaining a statewide computer network. May specialize in telecommunications, data processing, or other area without accountability for the operation of the total network. Reviews literature and recommends purchase of hardware and software. May develop proposals and specifications. Performs related work as required.

Distinguishing Characteristics

This classification is intended for use by positions in an agency's central office with a large system of terminals/personal computers/LANs distributed throughout the central office and at offices throughout the state. The employee troubleshoots basic software and hardware problems, pulls cable, and installs hardware.

Examples of Work

Discusses installation assignments with supervisor; determines best method of set-up of microcomputers or terminals, faxes, printers, or other peripherals.

Pulls cable, makes arrangements to upgrading of power outlets, and inspects and tests systems after set-up.

Trains new users in the basics of equipment operation, typically in a one-on-one situation.

Installs equipment and software in central and outlying offices.

Attends conferences, vendor demonstrations, and workshops to learn the implementation of new products, procedures, and programs.

Receives equipment and software packages: logs inventory, completes licensure and warranty information, and maintains recor of inventory and its location.

May perform additional duties such as data job coordination, programming or other data related function.

The specifications for Data Processing Manager I provide:

Nature of Work

Under general supervision, performs administrative and supervisory duties in directing the data processing operations of a smaller agency system or as a first level or speciality function administrator in a large, comprehensive data processing program. Specific unit activities include systems or applications programming, or computer operations in addition to distribution, job coordination and/or data entry. Directly or through lower level supervisors, schedules work and sets unit priorities for the most efficient utilization of equipment and personnel. Resolves equipment problems, and coordinates system usage by agency personnel. Provides advice and assistance to higher level management. Performs related work as required.

Distinguishing Characteristics

The Data Processing Manager I is distinguished from the Data Processing Manager II by the specific unit activities in the central facility; work is in an area of comprehensive operations with a limited scope of duties and a discrete function. Inan agency, the Data Processing Manager I is responsible for overseeing the work of a staff involved in programming and operations; the staff is small in number. The employees supervised have a broad scope of duties in the daily operations for the agency. The incumbent may also supervise data entry, clerical support, and job coordination.

Examples of Work

Organizes, assigns, directs and reviews the work of a small group of professional, technical and/or clerical personnel in the operation of an agency data processing function; supervises programming, computer operations, job coordination, clerical and/or data entry activities.

Plans work schedules and sets priorities to make the most efficient use of available personnel and equipment.

Analyzes agency operations and determines feasibility and/or costs of conversion from manual to electronic records management and data analysis;

may assist management in special studies requiring computer data collection or analysis.

Analyzes and establishes data processing unit procedures and work standards; sets standards for equipment maintenance and troubleshooting.

Advises staff and coordinates the resolution of hardware and software problems.

Directs the design, development and implementation of new systems and new applications; reviews system expansion proposals and recommends approval and disapproval; recommends the purchase of new equipment; may develop equipment specification proposals or new system evaluation standards; may coordinate the installation of new equipment.

Confers with vendors and repair personnel on system features, new technology and on equipment usage problems' confers with software experts and system programmers on new applications and the correction of software problems.

Recommends agency data management, data retention, and data security.

Instructs staff in system operation; may instruct staff in programming or program execution; may direct start-up and system recovery operations.

Provides technical assistance to agency operating personnel on a broad range of data management problems; may write computer programs or prepare JCL job stream code, and operate a wide variety of electronic data processing equipment; may instruct agency personnel outside unit in system operation, program execution and problem resolution.

Prepares a variety of management reports on equipment utilization, production, down-time,and problems; may order supplies and direct the maintenance of equipment and supply inventory records.

May prepare and/or review documentation and procedures manuals for data entry, program execution, or long-range data processing plans.

May coordinate data processing activities performed by central information systems agency; confers with central computing agency staff on system features, program execution schedules, report generation, and improved applications.

What is clear from a careful review of these specifications and the evidence on the grievant's day-to-day duties and responsibilities is that significant provisions of both descriptions are not applicable to or incompletely portray certain of the grievant's functions. Neither description achieves the degree of accuracy typically expected of Personnel's classification plan. It could be said that the key question in the case is to what degree one or the other is the least inaccurate.

A preponderance of the evidence in the case and/or the parties' concessions on certain points establish that the grievant does not direct the "data processing operations of a smaller agency system" or function as a "specialty function administrator in a large, comprehensive data processing program" as the DPMI specifications indicate. The record also supports that she does not perform "basic full-performance technical work assisting in the office automation of a state agency," a key component of the OACI description. The grievant's detailed written summary of her duties, her testimony and that of her supervisor, David Gresham, rather clearly demonstrates that WEH is a facility and not an agency, and that the grievant is the manager of a relatively small computer information system which encompasses data processing for significant, but not all, portions of WEH operations.

Not surprisingly, the evidence further indicates that the numerous administrative tasks associated with the grievant's supervision of other employees are key and predominant duties. Personnel does not appear to dispute that the lack of a supervisory component in the OACI description distinguishes it from the DPMI specifications, and that the difference is a substantial one. Notice is taken that responsibility for the training and direction of other workers is an important, often determinative, distinction in job classification. For several reasons, the undersigned finds that the OACI's lack of supervisory authority is indicative of a significant error in Personnel's assessment of the grievant's proper classification.

If supervision is a large part of the grievant's job, it seems apparent that an accurate description of her duties must include some reference to the substance of her subordinates' work product. There is only brief mention of data processing in the OACI, but there is no dispute that the grievant's two DPU employees do exactly that. Moreover, the record otherwise establishes that the employees are properly and accurately designated Data Entry Operators, and that they and the grievant are accurately designated the Data Processing Unit.

The absence of a provision for supervisory responsibilities in the OACI description also reinforces the broader conclusion that the employee holding such posts performs primarily technical and even mechanical tasks, not necessarily computer or data processing-related, for other departments or divisions. The grievant's evidence establishes that while she does provide technical assistance to other WEH units, and performs many, if not all, of the "Examples of Work" in the OACI classification, she is less a "hands-on" technician than she is an administrator. It is not at all unexpected that the time she attends to training, scheduling, personnel evaluations, sick and annual leave approval, regularly-scheduled reports on the unit's workload and accomplishments, inventories, and the purchase of equipment and supplies exceeds the amount of time she spends providing technical assistance. In any event, the DPMI description also readily encompasses any of the grievant's duties which could be considered mechanical, i.e., they involve hardware installation, and computer maintenance and repairs. The grievant's largely unrebutted testimony regarding the nature of her day-to-day duties clearly establishes that the statement, "The employee troubleshoots basic software and hardware problems, pulls cable, and installs hardware," found in the Distinguishing Characteristics" section of the OACI description, is a much less accurate characterization of her job than the provision in the DPMI description that "In an agency, the [DPM] is responsible for overseeing the work of a staff involved in programming and operations; the staff is small in number."

Finally, while it appears that the emergency room clerks and the Admissions Unit Supervisor are not primarily involved in data processing, and the grievant spends less time supervising them than she does on the overall operation of the DPU, the record does reflect that the administrative tasks associated with their supervison is an important component of her job. It supports the conclusion that the grievant's supervisory duties are too extensive for

the OACI specifications to be an accurate description of her position. In summary, the undersigned concludes that the grievant has demonstrated that the DPMI specifications constitute a better fit for her job than the OACI description, and has otherwise established that Personnel's interpretation of the specifications and/or assessment of her duties was clearly wrong. To the extent that certain portions of the OACI description are more descriptive of her duties than the DPMI specifications, the similarities are outweighed by the lack of a supervisory component in the former.

Accordingly, the grievance is GRANTED, and the West Virginia Department of Health and Human Resources is hereby ORDERED to compensate the grievant for any loss of wages she mayhave incurred as the result of the improper classification of her position during the period in question, and award her pre-judgment interest on the amount owed.

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.

JERRY WRIGHT

Administrative Law Judge

JULY 31, 1997

Footnote: 1 ***At the Level IV hearing, counsel for the grievant first essentially moved to amend her complaint to encompass this decision, and then later indicated that she would address the issue, if at all, in a separate action.***

Footnote: 2 ***The parties appear to agree that if Data Processing Manager I was her proper classification for the period in question, the grievant would have earned a higher salary; there was no evidence presented on the issue.***