DONALD KUNTZ and VICTOR WILFORD,

Grievants,

v. **Docket No. 96-HHR-301**

DEPARTMENT OF HEALTH AND HUMAN

RESOURCES/BUREAU OF PUBLIC HEALTH

and DIVISION OF PERSONNEL,

Respondents.

DECISION

Grievants, Donald Kuntz and Victor Wilford, are employed as the Director and Assistant Director, respectively, of the Division of Environmental Engineering ("DEE"), within the Office of Environmental Health Services, which is within the Bureau of Health in the Department of Health and Human Resources ("HHR"). They originally grieved their classification as Engineers III and II, respectively, and sought reallocation. After Grievants filed this action, they agreed to hold their grievance in abeyance while Mr. Lowell Basford, Division of Personnel's ("DOP") Assistant Director of Compensation and Classification, reviewed their requests. On September 26, 1994, Grievants were reclassified to Engineers V and IV respectively. There was no increase in salary with these reclassifications as Grievants' salaries were well within the pay scales. Grievants then pursued this action, again requesting reallocation, and the accompanying ten percent pay increase. These grievances were denied at Level III. Upon appeal to Level IV, a hearing was held on September 6,1996. This case became mature for decision on October 17, 1996, the deadline for the parties' proposed findings of fact and conclusions of law.

The majority of the facts are not in dispute and will be set out below as formal findings.

Findings of Fact

1. Grievant Kuntz has been the Director of DEE since the 1980's and has continued in that position through the present.

2. Grievant Wilford has been the Assistant Director of DEE since the 1980's and has continued in that position through the present.

3. In 1990, Grievant Kuntz was reclassified as an Engineer III and Grievant Wilford was reclassified as an Engineer II pursuant to a reclassification of the engineering positions in HHR. There was no pay decrease as a result of this reclassification. In fact, the records reflect Grievants received a pay increase during this time period.

4. In 1992, the employees of HHR were reclassified as part of the statewide reclassification project. At this point in the reclassification project there were only three classifications in the Engineering Series. On December 16, 1992, Grievant Kuntz was reclassified as an Engineer III and Grievant Wilford was reclassified as an Engineer II, within that new series.

5. As the reclassification project continued, and DOP reclassified more employees in different agencies, including the Division of Environmental Protection ("DEP") and Division of Highways ("DOH"), Mr. Basford concluded the Engineering Class Series needed to be expanded. In October 1993, the whole series was revised and rewritten, to include classifications I through V, with levels IV and V clearly having supervisory and administrative duties. 6. On October 21, 1993, Mr. Basford wrote the following letter to Mr. Mike McCabe, HHR's Director of Personnel, with a carbon copy to Mr. Joseph Schock, Director of Office of Environmental Health. Mr. Schock is Grievant Kuntz's direct supervisor.

In the reclassification plan developed for the Department of Commerce, Labor and Environmental Resources, the State Personnel Board approved revisions to the Engineer Class series. The definition for Engineer I, II, and III has been revised considerably. In addition, an engineering supervisor (Engineer IV) and engineer manager (Engineer V) have been developed. I am enclosing copies of the revised class specifications.

I am requesting that the Department review the classification allocations of each Engineer position relative to the revised class specifications. Any changes necessary as a result of this review should be submitted to the Division of Personnel for consideration. This action constitutes a reclassification under the Pilot Administrative Guidelines.

Please let me know if you have further questions in this regard.

7. On October 26, 1993, Mr. Schock responded to Mr. Basford's letter stating he was pleased

with the changes, but neither Mr. Schock or Mr. McCabe responded to Mr. Basford's request that HHR review their Engineer positions and submit changes to DOP for consideration. A copy of Mr. Schock's October 26, 1993 letter, discussing the changes in the Engineering Class Series, was sent to Grievant Kuntz.

8. DOP is required to obtain input from the authorizing agency before it reclassifies employees.

9. In July 1994, Mr. Schock, after discussion with Grievants, requested they be reallocated.

10. On August 15, 1994, Grievants filed grievances requesting reallocation; Grievant Kuntz to Engineer V, Grievant Wilford to Engineer IV. 11. Grievants agreed to waive the grievance procedure time frames while DOP reviewed their requests.

12. On September 9, 1994, Mr. Shock submitted Grievants' Position Description Forms to DOP for Mr. Basford's review.

13. Mr. Basford responded to this request on September 26, 1994. He determined Grievant Kuntz should be reclassified as an Engineer V and Grievant Wilford should be reclassified as an Engineer IV, both as of December 16, 1992, the date of reclassification of all HHR employees. He stated the basis for Grievants' reclassification was the revision and redefinition of the Engineering class series as a result of the statewide reclassification project. Because Grievants were above the minimum pay amount for their reclassified positions, they could not receive a pay increase.

14. After this determination and subsequent action by DOP, Grievants pursued this grievance, requesting their positions be reallocated, which requires a ten percent increase.

15. Grievants testified their duties have increased significantly since their initial reclassification on December 16, 1992, and this increase in duties occurred because of federal regulations and implementation of the Safe Drinking Water Act (“SDWA”).

16. The increase in duties caused by the SDWA began in 1990. In Spring 1992, the Legislature increased the number of positions within DEE by ten. Level IV hrg; DOP Exh. #1.

17. DOP was aware of the SDWA and the increased number of positions and duties prior to the time all DEE employees were reclassified.

18. If the complete Engineering Class Series had been in place when Grievants were originally reclassified they would have been originally classified as Engineer IV and V because of their administrative and supervisory duties. Basford test., Level IV hrg.

The class specifications at issue will be set out below:

Class Specifications

ENGINEER IV

Nature of Work:

Under limited supervision, performs professional engineering work at the supervisory level providing a wide variety of engineering services. Plans, designs, directs construction, maintenance, renovation, or inspection and/or reviews and evaluates projects, structures and facilities such as buildings, roads, dams, environmentally regulated operations, water supply and sewage systems, and/or reviews engineering plans and applications, and/or assesses the environmental impact of any such project. Work is in a specialty area such as construction/ maintenance, coal, environmental assessment and control, mining, permit review, sanitation, transportation, utility regulation or water quality and pollution control. May involve occasional field activities. Performs related work as required.

Distinguishing Characteristics:

Applies engineering techniques, procedures, and criteria within rules, regulations and operating procedures of the specialty area of assignment. The Engineer IV supervises a recognized organizational unit of engineering staff, professional or technical staff, and clerical support staff. May serve as staff expert in a particular area of emphasis. As a supervisor of an engineering unit, is responsible for the integrity of the unit's work projects.

Examples of Work

Supervises a unit of engineers and other staff assigning and reviewing work, approving work from the unit for construction, and representing the unit within the agency, and before various boards and groups.

Reviews data analysis to determine subordinates' accuracy in establishing standards/limits.

Performs data analysis to determine (establish) performance standards/limits.

Coordinates complex construction projects with utility companies.

Determines horizontal and vertical construction alignments.

Conducts interim and final inspections of construction projects to determine compliance with applicable laws, regulations, and specifications.

Reviews subordinates' project analyses of plans and/or contracts for projects; recommends alternative construction methods; works closely with engineering interns to assure quality of work and adherence to agency standards and procedures.

Writes reports detailing recommendations, conclusions, and findings from inspections and reviews.

Attends meetings or hearings to observe or attest to the findings of environmental impact.

Read professional journals and trade publications to gain knowledge of new technologies; assigns reading materials to subordinates.

Attends state and national meetings and seminars to gain and share engineering knowledge.

ENGINEER V

Nature of Work:

Under administrative direction, performs professional engineering work at the administrative and supervisory level in charge of a section of an agency. Directs the activities of engineering and support staff (through subordinate supervisors) within an engineering program(s) designed to ensure

compliance with state and federal laws, rules and regulations. Work is in a specialty area such as environmental, mining, civil, utility or transportation engineering. Performs related work as required.

Distinguishing Characteristics:

Has full responsibility for developing procedures, organizing operations, planning, scheduling, and evaluating. Performs predominantly administrative duties involving budgeting, staffing, coordinating and reporting activities. Supervises multiple recognized organizational units of engineering staff and professional and technical staff. Staffing level should exceed ten professionals. As administrative head of an organizational unit, is ultimately responsible for the integrity of all engineering projects for the agency; engineering duties are performed only in conjunction with administrative responsibilities.

Examples of Work

Directs the activities of several units of engineers and other staff; defines the mission and goals of each unit, assigns a budget, and evaluates the efficiency of the units by results received.

Represents the agency before various boards and other groups.

Reviews data analysis to determine subordinates' accuracy in the performance of their work.

Attends meetings with agency management to establish policy and procedure, budget and staffing allotments, legislation, and other matters as they pertain to the primary engineering unit.

Attends state and national meetings and seminars to gain and share engineering knowledge.

Coordinates construction projects with utility companies.

May conduct final inspections of construction projects to to ensure quality of construction and assure local residents of the environmental and physical safety.

Issues

The issues in this case are not the typical ones found in a misclassification grievance. Grievants do not request or want reclassification to Engineer IV and V; they request reallocation to these positions. Although Grievants are now in the higher level positions they requested, they still argue the action of reclassification was incorrect and state their positions should have been reallocated because their duties substantially increased after the 1992 reclassification.

Respondents argue the proper action, reclassification, has been taken. Mr. Basford notes that if Grievants had been reclassified after DEP and DOH, instead of before, the class series would have been complete, and they would have been properly reclassified at Engineer IV and V from the outset. Respondents note they were aware of the SDWA and the increase in administrative duties it required in 1992, and this issue was taken into consideration during the reclassification. DOP also notes the kind and difficulties of Grievants' duties did not significantly increase for the two positions. Although Grievants may have more work to do and more employees to supervise, it was the same type of work as contemplated by the class specifications. The type of work Grievants did in 1988, 1990, 1992, and 1997 has not changed.

Discussions

All the parties agree Grievant Kuntz should be classified as an Engineer V, and Grievant Wilford should be classified as an Engineer IV. The issue is by what process should they receive their classification change; reclassification or reallocation.

The West Virginia Supreme Court of Appeals' holding in W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993), presents employees contesting their classification, and the process by which it occurred, with a substantial obstacle to overcome. In the instant matterGrievants have failed to demonstrate DOP was “clearly wrong” in its interpretation of its rules governing reclassification and reallocation.

Personnel's rules define reclassification as “revision by the State Personnel Board of a class or class series which results in redefinition of the nature of the work performed and a reassignment of

positions based on the new definition and may include a change in the title, pay grade, or minimum qualifications for the classes involved." W. Va. Admin. Rule 3.00(77). Reallocation is defined as "[r]eassignment by the Director of Personnel of a position from one classification to a different classification on the basis of a significant change in the kind or difficulty of duties and responsibilities assigned to the position or to correct a position misclassification." Id. at (78).

Prior to the statewide reclassification of employees, Grievants were classified as Engineer II and III. There were only three titles in the Engineer classification. During the statewide reclassification, but after Grievants were initially reclassified, this class series was enlarged because of a need for differing levels of Engineers, including specifications which clearly identified supervisory and managerial duties. Grievants were classified in their new positions as a result of this statewide reclassification project, and they, like all other state employees who were reclassified during this process, were only entitled to a raise if their salaries fell below the minimum of the new salary range. (See footnote 1) To allow Grievants to receive a ten percent increase in their salaries as a result of their reclassification would be inequitable to all other state employees whose pay grades and positions were also changed during the reclassification project, but who did not receive a salary increase because their salary level was above the minimum. As for Grievants' claim their duties have increased since their reclassification in December 1992, there are two essential areas to examine and discuss. One, Grievants' own supervisor, Mr. Schock, wrote DOP, through HHR's Division of Personnel, on July 20, 1992, stating:

[t]he responsibilities of the Environmental Engineering Division have expanded greatly during the last two years to meet the tremendous increase in requirements of state primacy under the Federal Safe Drinking Water Act. The 1992 Legislature increased allocation for the Drinking Water Program of $440,000, ten positions. Most of these new requirements are being vested in our district offices.

Level IV hrg., DOP Exh. #1. Thus, this increase in duties began in 1990, and DOP was well aware of DEE's workload at the time of the Grievants' reclassification.

Two, although clearly Grievants' duties have increased in number, and the number of employees supervised has increased, these changes alone do not indicate a need for any type of reallocation. An examination of Grievants' duties versus the Engineer IV and V classifications, clearly indicate Grievants are properly classified. The duties they perform fall within their class specification. (See footnote 2) An increase in the type of duties contemplated in the class specification, does not require

reallocation. The performing of a duty not previously done, but identified within the class specification also does not require reallocation.

The above discussion will be supplemented by the following conclusions of law.

Conclusions of Law

1. In a classification grievance, grievants are required to prove their allegation by a preponderance of the evidence. Crow v. W. Va. Dept. of Corrections, Docket No. 89-DOC-043 (Mar. 29, 1989). 2. Reclassification is defined as "revision by the State Personnel Board of a class or class series which results in redefinition of the nature of the work performed and a reassignment of positions based on the new definition and may include a change in the title, pay grade, or minimum qualifications for the classes involved." W. Va. Admin. Rule 3.00(77).

3. Reallocation is defined as "[r]eassignment by the Director of Personnel of a position from one classification to a different classification on the basis of a significant change in the kind or difficulty of duties and responsibilities assigned to the position or to correct a position misclassification." Id. at (78).

4. When the salary of a reclassified employee is at or above the pay rate in the new classification, the employee's salary remains the same. W. Va. Admin. Rule, 5.04(f)(2)(a)(2).

5. DOP's interpretation and explanation of classification specifications and DOP's rules governing reclassification should be given great weight unless clearly wrong. See W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993).

6. The increase in Grievants' duties from 1990, caused by the Safe Drinking Water Act, were included in DOP's assessment of their classification.

7. The increase in Grievants' duties are the type contemplated in Grievants' class specifications.

8. DOP did not violate any rules or regulations, and properly reclassified Grievant Kuntz as an Engineer V and Grievant Wilford as an Engineer IV.

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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JANIS I. REYNOLDS

Administrative Law Judge

Dated: March 26, 1997

Footnote: 1

W. Va. Admin. Rule 5.04(f)(2)(a)(2) states: "[w]here the salary of the incumbent coincides with a pay rate in the new range, the salary remains unchanged."

Footnote: 2

Neither party submitted the former class specifications that were later revised and expanded. It is noted that in both series, the former and the latter, Grievants were placed in the top two levels.