WANDA REED, et al.,

Grievants,

v. DOCKET NO. 97-CORR-127

WV DIVISION OF CORRECTIONS/
PRUNTYTOWN CORRECTIONAL CENTER
and WV DIVISION OF PERSONNEL,

Respondents.

DECISION

Grievants, Wanda Reed, Mary Williams and Kimberly Pisino, employed as Cooks at Pruntytown Correctional Center, allege that they are working out of classification, performing the duties of Correctional Officers. They seek compensation at the same salary as Correctional Officers. This grievance was initiated at level one on December 18, 1996, where Grievants' immediate supervisor could not grant relief. The grievance was denied at level two by Frank Phares, Deputy Warden, on December 23, 1996. Grievants appealed to level three, where a hearing was conducted on February 18, 1997. A level three decision denying the grievance was issued by Clinton Semmler on February 27, 1997. A level four appeal was filed on March 10, 1997, and a hearing was held in the Grievance Board's office in Morgantown, West Virginia, on December 23, 1997. Grievants were represented by Elaine Harris and Jack Ferrell of the Communication Workers of America (See footnote 1) **; the Division of Corrections ("DOC") was represented by counsel, Stacy Parker; and the Division of Personnel ("DOP") was represented by Lowell Basford, Assistant Director of Classification and Compensation. This matter became mature for decision onFebruary 18, 1998.** (See footnote 2)

The following findings of fact are made from a preponderance of the evidence submitted at levels three and four.

Findings of Fact

1. Grievants are employed as Cooks at Pruntytown Correctional Center ("Pruntytown").

2. Pruntytown is a minimum security adult correctional facility, housing both male and female inmates. However, in spite of its minimum security status, it houses inmates of all security classifications. **(See footnote 3)**

3. The majority of the preparation of food, cooking, cleaning up, and stocking supplies is done by inmates, who are trained and supervised by Grievants.

4. Each Grievant supervises a group of inmates who are assigned to her every day for the entirety of an eight-hour shift, without the assistance or supervision of a Correctional Officer.

5. Grievants' duties during each shift include counting the inmates assigned to them and escorting the inmates to and from other locations in the institution. The only device given to Grievants to assist them in these activities is a radio. 6. When incidents occur, Grievants are responsible for "writing up" **(See footnote 4)** **inmates and appearing to testify at their disciplinary hearings.**

7. Grievants are responsible for keeping a daily log reflecting which knives and other kitchen implements have been assigned to inmates, and Grievants must account for each implement at the end of their shifts.

8. As Cooks, Grievants received three weeks of training, including self defense techniques.

Discussion

In a non-disciplinary grievance, Grievants bear the burden of proving their claims by a preponderance of the evidence. See W. Va. Code § 29-6A-6. Grievants have made two arguments. They allege that they are misclassified as Cooks, or, in the alternative, their present salaries do not adequately compensate them for supervising inmates.

In order to prevail in a claim of misclassification, grievants must prove by a preponderance of the evidence that their duties more closely matched those of another cited class specification, rather than that under which they are currently classified. Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). Class specifications are read in a "pyramid fashion" from top to bottom, with the different sections considered as going from

the more general and more critical to the more specific and less critical as one reads down the length of the document. Captain v. W. Va. Div. of Health, Docket No. 90-H-471 (Apr. 4, 1991). Thus, the "Nature of Work" section of a position specification is its most general and most critical section. Atchinson v. W. Va. Dept. ofHealth, Docket No. 90-H-444 (Apr. 22, 1991). This prioritization scheme must be considered in ascertaining whether the current classification constitutes the "best fit" for Grievants' required duties, but not necessarily the "perfect fit." See Propst v. W. Va. Dept. of Health and Human Resources, Docket No. 93-HHR-371 (Dec. 3, 1993). 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).

Grievants allege that the description of duties in the Correctional Officer class specification more closely fits their job duties than the specification for Cook. Pertinent provisions of those class specifications read as follows:

COOK

Nature of Work

Under general supervision, performs full-performance level work preparing and cooking and/or baking food items in a state facility. May select or vary methods and foods as needed. May supervise Food Service Workers or other positions assigned to this area, as directed by supervisor. Performs related work as required.

Examples of Work

Cooks meat, vegetables, and pastries in accordance with standard recipes or oral instructions.

Prepares regular and special diets.

Operates mixers, ovens, steamers, peelers, grills and other food preparation equipment.

Sets up cafeteria lines and serves meals on the line or in the dining room.

Receives and stores food and food service items.

Cleans stoves, refrigerators and work areas.

Trains new workers in food preparation and kitchen procedures.

May order or participate in ordering food and supplies.

CORRECTIONAL OFFICER I

Nature of Work

Under direct supervision, performs beginning level Correctional Officerwork. The employee is responsible for enforcing rules, regulations and state law necessary for the control and management of offenders and the maintenance of public safety. Performs related work as required.

Distinguishing Characteristics

This is the entry level into the Correctional Officer series. The employee is considered as having trainee status until the apprenticeship program is completed and the supervising officer determines that the Correctional Officer I can function independently.

Examples of Work

Reads and implements training materials, post orders, administrative regulations, log entries and/or memoranda.

Obtains information from previous shift regarding activities occurring on that shift.

Observes and monitors offenders to detect unusual or prohibited behavior and maintain custody and control within the correctional facility.

Performs counts at regular, or other, intervals to insure offender accountability. Escorts offenders to and from various facility areas. Searches persons, personal property and areas. Supervises offenders in performing assigned tasks. Conducts/assists with intake/discharge procedures for offenders. Maintains public safety and control of offenders by enforcing rules, regulations and state law. Reports violations. Testifies at internal disciplinary hearings and in court. Transports offenders to and from correctional facilities.

Interacts with offenders in order to facilitate development or improvement of living and social skills; reinforces positive behavior; listens and responds appropriately to offender requests, problems and complaints.

Recognizes and responds to potential or actual emergencies, such as, but not limited to, fires, physical altercations, disturbances, or escapes in a manner which is consistent with policy, procedure and state law and ensures public safety.

Participates in staff, team and committee meetings.

Handles/operates security/communications equipment and/or firearms as directed and in a manner which is consistent with policy, procedure and state

law and ensures public safety.

Inspects, inventories, maintains physical control of, and logs keys, tools, weapons and related equipment. Reports damaged or missing items or other noted irregularities.

Performs safety and sanitation inspections. Supervises cleaning of facility areas and inmate hygiene activities.

Grievants contend that they actually do very little of the cooking, preparation of food or cleanup, but merely supervise the inmates in those duties. Therefore, they argue thattheir primary responsibility is to supervise inmates, entitling them to classification as Correctional Officers. Grievants provided somewhat conflicting testimony regarding their exact duties. Grievant Pisino testified at level three that she personally performed all of the duties set forth in the Cook specification set forth above. However, at level four, she testified that she performs all of those duties at times, but mostly supervises the inmates. Grievants Reed and Williams also testified at level four that they only perform the actual cooking and related duties occasionally, and they primarily supervise the inmates in those activities. However, it is notable that Ms. Reed's grievance statement was that "in addition to my normal duties as a cook, I directly supervise . . . inmate kitchen workers." (Emphasis added.)

Lowell Basford, Assistant Director of Classification and Compensation for DOP, testified that, while supervising the inmates' activities is an element of Grievants' jobs, the primary purpose and function of their positions is to be Cooks. They are hired for their skills and experience in food preparation, which they must teach the inmates While security is involved, it is not the purpose of their positions. In addition, the Cook class specification includes supervision of other workers or positions; while inmates are not necessarily "positions," they are performing food preparation duties under the supervision of Cooks, which is clearly contemplated by the specification.

The undersigned finds that the Cook class specification is undoubtedly the "best fit" for Grievants' duties. They are employed to perform, teach, supervise, and make decisions regarding all aspects of food preparation for the institution, all of which is described in the "Nature of Work" section of the Cook specification. While they do, indeed, perform some of the duties listed under "Examples of Work," in the Correctional Officer I classspecification, such as escorting offenders and supervising them in assigned tasks, their positions are not

encompassed by the "Nature of Work" section, in that they are not employed for the purpose of "enforcing rules, regulations and state law necessary for the control and management of offenders and the maintenance of public safety." Employees can perform duties outside their job description, as class specifications are to characterize the type of work to be performed, not to identify every task of the position. Class specifications are descriptive, not exhaustive, and are to give a "flavor" of the difficulties, complexities, and duties of the position. Hager v. Health and Human Resources, Docket No. 95-HHR-241 (Sept. 29, 1995).

However, it is troubling that Grievants are performing duties that should be assigned to trained Correctional Officers. Since no Correctional Officer is present in the kitchen at any time, during their eight-hour shifts, Grievants alone are entrusted with the responsibility of maintaining the security of that area of the institution. Although there are many responsibilities and qualifications attributed to Correctional Officers that Grievants do not perform, it does seem that they are being required to perform an integral portion of Correctional Officer duties without proper training, qualifications, or compensation.

Reclassification in this case would be inappropriate; DOC should not be required nor expected to train Cooks to be Correctional Officers. As discussed above, the fact remains that Grievants are employed for the purpose of functioning as Cooks and to perform food preparation and associated duties. It has been previously held by this Grievance Board that, if an employer assigns "out of class" duties to an employee on a frequent or long-term basis, the employee may be entitled to deletion of the responsibilities and compensation for the period in which they performed out of their classification, if thoseduties were assigned to a higher paying classification. Beer v. Div. of Highways, Docket No. 95-DOH-161 (Feb. 27, 1996); Shremshock v. W. Va. Dept. of Trans., Docket No. 94- DOH-095 (Aug. 31, 1994). However, in those cases, the grievants requested to be relieved of the out-of-class duties, and Grievants here have not. Nevertheless, Grievants are entitled to be compensated for performing Correctional Officer responsibilities.

As stated in the Correctional Officer class specification, enforcement of rules and regulations, along with "control and management of offenders and the maintenance of public safety" is the responsibility of Correctional Officers, and should be at all times and in all areas of the institution, including the kitchen. Accordingly, if DOC is going to continue to require

Grievants to perform their responsibilities as Cooks, along with being responsible for all security-related issues in the kitchen, they must compensate Grievants.

Grievants' second contention is without merit. They argue that DOP has not complied with the provisions of W. Va. Code § 29-6-10, which requires "equal pay for equal work." Grievants contend that, because they perform duties similar to those of Correctional Officers, they should receive similar pay.

As discussed above, Grievants are not misclassified merely because they perform some duties outside of their assigned classification. The principle of "equal pay for equal work" has been determined to only require that employees with the same job responsibilities be placed within the same classification, and even employees within the same classification may receive varying salaries, so long as they are compensated within the pay grade for their assigned classification. Largent v. W. Va. Div. of Health, 192 W.Va. 239, 452 S.E.2d 42 (1994). Accordingly, since Grievants are appropriately classified as Cooks and are compensated within the pay grade for that classification, they are notentitled to be paid the salaries of Correctional Officers.

Grievants are entitled to the difference between their salaries as Cooks and the minimum salaries of Correctional Officers for the time period during which they have been solely responsible for inmates assigned to kitchen duties. Although Grievants have requested to be compensated for these duties since they began their jobs, relief must be limited to fifteen days preceding the filing of the grievance. See Syl. Pt. 5, Martin v. Randolph County Bd. of Educ., 465 S.E.2d 399, 195 W.Va. 297 (1995).

In accordance with the foregoing findings and discussion, the following conclusions of law are appropriate.

Conclusions of Law

1. In order to prevail in a claim of misclassification, grievants must prove by a preponderance of the evidence that their duties more closely matched those of another cited class specification, rather than that under which they are currently classified. Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989).

2. Grievants did not prove by a preponderance of the evidence that the Correctional

Officer class specification constitutes the "best fit" for their duties. See Propst v. W. Va. Dept. of Health and Human Resources, Docket No. 93-HHR-371 (Dec. 3, 1993). 3. If an employer assigns "out of class" duties to an employee on a frequent or long-term basis, the employee may be entitled to deletion of the responsibilities and compensation for the period in which they performed out of their classification, if those duties were assigned to a higher paying classification. Beer v. Div. of Highways, Docket No. 95-DOH-161 (Feb. 27, 1996); Shremshock v. W. Va. Dept. of Trans., Docket No. 94- DOH-095 (Aug. 31, 1994).

4. Grievants established that they have been required to perform security- related duties while supervising inmates assigned to the kitchen, which is outside of their job classification as Cooks, on a frequent, long-term basis.

Accordingly, this grievance is GRANTED, and the Division of Corrections is hereby ORDERED to compensate Grievants for all time periods they have been required to perform duties outside of their classification, dating back to fifteen days preceding the filing of this grievance, as set forth in this Decision.

Any party may appeal this decision to the Circuit Court of Kanawha County or 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.

Date: May 22, 1998 _____

V. DENISE MANNING

Administrative Law Judge

Footnote: 1

Grievants' representatives retained George Surmaitis, Esquire, to prepare their post-hearing brief.

Footnote: 2

Post-hearing submissions were initially due on January 26, 1998. Respondent submitted its brief in a timely

fashion, but Grievant's representative did not request an extension of time in which to file a brief until after having received Respondent's submission. Accordingly, Respondent was allowed to file a reply brief.

Footnote: 3

The record does not explain why maximum security class inmates are housed at Pruntytown.

Footnote: 4

"Writing up" is a disciplinary action taken against inmates who violate institutional rules.