JOSEPH BOLAR, et al.,

Grievants,

v. **Docket No. 02-HHR-330**

DEPARTMENT OF HEALTH and HUMAN SERVICES/OFFICE of ACCOUNTS PAYABLE and DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievants, Joseph Bolar, Linda Fields, Victoria Carrel, Cheryl Nimmo, Sandra Medley, and Wanda Casto, are employed by the Department of Health and Human Resources ("HHR" or "Agency"), and filed this grievance on July 17, 2003. They are grieving their classification as Accounting Technician 3's, and assert they should be reallocated as Accounting Technician 4's because they perform the duties of that classification, and function as Lead Workers. The Division of Personnel ("DOP") asserts Grievants are correctly classified, and the Accounting Technician 3 classification is the "best fit" for their duties. HHR defers to DOP in matters dealing with classification.

This grievance was waived at Levels I and II and denied at Level III. Grievants appealed to Level IV on July 16, 2003, and the first Level IV hearing was held on July 28, 2003. Because the recording equipment malfunctioned, a second Level IV hearing was held on September 25, 2003. This case became mature for decision on that date, as the parties elected not to submit proposed findings of fact and conclusions of law. (See footnote 1) After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievants are employed as Accounting Technician 3's by the Department of Health and

Human Resources in the Office of Accounts Payable, assigned to the Charleston office.

2. Grievants sought reallocation, and to support their request, they completed Position Description Forms and submitted them to the Division of Personnel on March 20, 2002. On July 8, 2002, Lowell Basford, Assistant Director of Classification and Compensation for DOP, determined Grievants were properly classified as Accounting Technician 3's. Grievants then filed this grievance on July 17, 2003.

3. Grievants receive documents such as invoices, purchase orders, and returned checks, etc., from other areas of the state and review these for accuracy and correctness.

4. Each Grievant has a separate area in which they perform these functions. For example, Grievant Bolar works with purchase orders, statewide blanket release orders, and grants; Grievant Carrel works with telephone invoices, temporary personnel service invoices, and court orders; and Grievant Casto works with travel expense account settlements, early intervention program invoices, and out-of-pocket payments.

5. The nature of Grievants' work requires them to follow set rules and regulations in performing the duties of their position. 6. Occasionally, Grievants are required to devise a method for dealing with a complex matter that does not follow these set regulations. This does not occur with any frequency.

7. Changes frequently occur in their work process and the governing regulations, and Grievants are required to incorporate these changes.

8. When Grievants find an error or a problem in the work they receive from the other parts of the state, they work to resolve them. This process includes talking to the staff member with the problem, answering questions, and attempting to find a way to rectify the issue.

9. Grievants assist their supervisor with training staff in other parts of the state.

10. Co-workers are employees who are within the same work unit.

11. Grievants do not supervise any other workers, and they do not engage in any of the quasi-supervisory duties frequently associated with Lead Worker duties; such as assigning, approving, and revising the work of co-workers; approving leave time; giving input on evaluations; and participating in interviews, while at the same time performing the same duties as the employees they supervise.

12. Although Grievants do advise employees in the other areas of the state about errors and answer questions, they are not in these employees' supervisory chain of command.

The pertinent sections of the classification specifications at issue are written below:

ACCOUNTING TECHNICIAN 3

Nature of Work

Under general supervision, performs full-performance accounting support duties. The incumbent is responsible for performing moderately complex posting, encumberingof funds, and examining records to assure adherence to accounting laws and regulations. Performs related work as required.

Distinguishing Characteristics

This is the full-performance level of paraprofessional accounting. Responsibilities may include training and reviewing work of subordinate staff.

Examples of Work

Classifies/codes a variety of transactions which may require considerable knowledge.

Reviews accounts, ledgers, claims, invoices, purchase orders, receipts, or similar materials for completeness, accuracy, and compliance with laws and regulations.

Prepares bank deposits and/or checks.

Makes correcting and/or adjusting entries on ledger.

Examines accounting records to assure adherence to accounting laws and regulations; verifies calculations and ensures accuracy and validity of transactions.

Prepares and illustrates statements and reports which reflect the relationships among accounts and which require occasional searching and analysis.

Performs moderately complex posting, encumbering of funds, and balancing receipts of others.

Maintains accounting records; gathers data and prepares moderate to complex financial statements and reports from records maintained.

May assist supervisor in preparing budget by compiling data, preparing summaries and requests, and developing cost projections.

May train and review work of clerical staff.

ACCOUNTING TECHNICIAN 4

Nature of Work

Under general supervision, performs advanced accounting support duties. The incumbent is responsible for posting complex journal entries that require the use of specialized accounting procedures, assisting the supervisor in preparing agency budgets, and examining records to assure adherence to accounting laws and regulations. Performs related work as required.

Distinguishing Characteristics

This is advanced level paraprofessional accounting work. Job duties include performing complex balancing and reconciling of multiple accounts. Employees in this class are responsible for accuracy of accounts for others and require little supervision. Responsibilities may also include being a lead worker.

Examples of Work

Classifies/codes a variety of transactions which may require considerable knowledge.

Transfers funds and balances multiple accounts such as hospital billing.

Examines accounting records to assure adherence to accounting laws and regulations; verifies calculations and ensures accuracy and validity of transactions.

Prepares and illustrates specialized statements and reports which reflect the relationships among accounts and which require steady searching and analysis.

Makes complex journal entries and other transactions which require use of specialized accounting procedures.

Maintains accounting records; gathers data and prepares complex financial statements and reports from records maintained.

Assists supervisor in preparing budget by compiling data, preparing summaries and requests, and/or developing cost projections.

Contacts associates, administrators, and general public in order to obtain information, discuss changes in documents, or resolve problems with more complex accounts.

Makes recommendations on the development or revision of agency policies and procedures.

May assign account/department codes.

May train Accounting Technicians and subordinate staff.

May lead and review work of other Accounting Technicians.

Discussion

W. Va. Code § 29-6-10 authorizes Division of Personnel to establish and maintain a position classification plan for all positions in the classified service. State agencies, such as HHR which utilize such positions, must adhere to that plan in making their employees' assignments. Toney v. W. Va. Dep't of Health & Human Resources, Docket No. 93-HHR- 460 (June 17, 1994).

Grievants asserts their positions are misclassified, and they have requested their positions be reallocated. DOP's Rule 3.78 defines "Reallocation" 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 level of duties and responsibilitiesassigned to the position." The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." An increase in number of duties and the number of employees supervised does not necessarily establish a need for reallocation. Kuntz/Wilford v. Dep't of Health and Human Resources, Docket No. 96-HHR- 301 (Mar. 26, 1997). "An increase in the type of duties contemplated in the [current] 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." Id.

Additionally, 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 the one under which they are currently assigned. See generally, Hayes v. W. Va. Dep't 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. Div. of Health, Docket No. 90-H-444 (Apr. 22, 1991). See generally, Dollison v. W. Va. Dep't of Employment Security, Docket No. 89-ES-101 (Nov. 3, 1989). The key to the analysis is to ascertain whether the Grievants' current classification constitutes the "best fit" for their required

duties. Simmons v. W. Va. Dep't of Health and Human Resources/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 Serv., Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Finally, Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. W. Va. Dep't of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993).

Under the forgoing legal analysis, the West Virginia Supreme Court of Appeals' holding in Blankenship presents employees contesting their current classification with a substantial obstacle to overcome in attempting to establish that they are currently misclassified.

Further DOP Rule 4.4 states:

> The Director shall consider the class specification in allocating positions and shall interpret it as follows:
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> (a) Class specifications are descriptive only and are not restrictive. The use of a particular expression of duties, qualifications, requirements, or other attributes shall not be held to exclude others not mentioned.
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> (b) In determining the class to which any position shall be allocated, the specifications for each class shall be considered as a whole. The Director shall give consideration to the general duties, specific tasks, responsibilities required, qualifications and relationships to other classes as affording together a picture of the positions that the class intended to include.
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> (c) A class specification is a general description of the kinds of work characteristics of positions properly allocated to that class and not as prescribing what the duties of any position are nor as limiting the expressed or implied authority of the appointing authority to prescribe or alter the duties of any position.
>
> (d) The fact that all of the actual tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken withoutrelation to the other parts of the specification be construed as determining that a position should be allocated to the class.

Mr. Basford testified that in order to be classified as an Accounting Technician 4, an employee

must either function as a lead worker, or perform advanced, complex, specialized, non routine accounting work. These issues will be addressed separately.

I. Lead Worker

Grievants argued they function as Lead Workers because they correct the work of employees in the other areas of the state, answer questions, and help with the training of these individuals. DOP defines a Lead Worker as one who is "assigned the on-going responsibility of scheduling and/or reviewing the work of other co-workers and guiding and training them while performing identical or similar kinds of work."

Mr. Basford testified Grievants do not meet DOP's written definition of a Lead Worker. He explained a Lead Worker is a position which has regular and recurring responsibility for the assignment and review of the work of co-workers, while also performing identical kinds of work. He testified it was intended to be a quasi-supervisory type position within a work unit. (Emphasis added). He stated a Lead Worker trains co-workers, assigns and reviews work, and approves leave; but would not discipline an employee, recommend hiring or firing, or hear grievances. He also explained co-workers are employees within the same work unit. Mr. Basford noted the employees Grievants maintain they supervise already have supervisors, and Grievants are not within this chain of command. Grievants may disagree with Personnel's definition, but that does not mean the definition is wrong. Personnel is responsible for defining the terms used in itsclassification system, and this definition is not clearly wrong or arbitrary and capricious. Loudermilk v. Dep't of Health and Human Serv., Docket No. 00-HHR-304 (Dec. 29, 2003).

II. Work performance

DOP has formulated the following definition to explain the differences in performance levels. The Full-Performance Level is "characterized by the performance of a full range of duties relative to the work in the class series. Incumbent has some latitude for independent judgment and may vary work methods and procedures, but usually within prescribed parameters. Work is usually performed under general supervision. Work is frequently of some variety and incumbent may set priorities." The Advanced Level is "assigned to duties and responsibilities which are complex, difficult and varied, relative to the work in the class series. Work requires the development and adoption of non-standard procedures and has more impact and consequence of error than the full-performance level. Work may be performed under limited supervision or under limited direction. Incumbent possesses

considerable latitude to accomplish tasks; may include lead worker duties."

Grievants' positions are obviously very important, and their work requires attention to detail and an understanding of various rules and regulations; however, they have not demonstrated they perform advanced accounting support duties, and are "responsible for posting complex journal entries that require the use of specialized accounting procedures, assisting the supervisor in preparing agency budgets, and examining records to assure adherence to accounting laws and regulations." Additionally, Grievants have not shown their job duties frequently include the utilization of special and unusual accountingprocedures. Essentially, what Grievants do is a repetition and final check of what has been done before. Test. Basford, Level IV Hearing.

Further, Mr. Basford, is regarded as an expert in the area of classification, and he testified at Levels III and IV that Grievants were correctly classified because the duties they perform more closely match the duties identified in the Accounting Technician 3 classification, as opposed to the Accounting Technician 4 classification. He supported this interpretation with examples and comparisons. As previously stated, Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. Blankenship, supra. Grievants have failed to demonstrate the Division of Personnel was “clearly wrong” in its interpretation of the duties and differences between the two class specifications at issue.

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

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (2000); Howell v. W. Va. Dep't of Health & Human Resources, Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6. See also Holly v. Logan County Bd. of Educ., Docket No. 96- 23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. In order for a grievant to prevail upon a claim of misclassification, he must prove by a preponderance of the evidence that his duties for the relevant period moreclosely match another cited Personnel classification specification than the one under which he is currently assigned. See generally, Hayes v. W. Va. Dep't of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989).

3. 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. Div. of Health, Docket No. 90-H- 444 (Apr. 22, 1991). See generally, Dollison v. W. Va. Dep't of Employment Security, Docket No. 89-ES-101 (Nov. 3, 1989).

4. The key to the analysis is to ascertain whether the Grievants' current classification constitutes the "best fit" for their required duties. Simmons v. W. Va. Dep't of Health and Human Resources/Div. of Personnel, Docket No. 90-H-433 (Mar. 28, 1991). 5. The predominant duties of the position in question are class-controlling. Broaddus v. W. Va. Div. of Human Serv., Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

6. The Division of Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. W. Va. Dep't of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993).

7. Grievants have not demonstrated by a preponderance of the evidence that they are misclassified, or that the position of Accounting Technician 4 is the "best fit" for their duties.

Accordingly, this grievance is **DENIED**.

Any party, or the West Virginia Division of Personnel, may appeal this decision to the Circuit Court of Kanawha County, or to the "circuit court of the county in which the grievance occurred." Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 29-6A-7 (1998). 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. Theappealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

_____ **JANIS I. REYNOLDS**

Administrative Law Judge

Dated: September 30, 2003

Footnote: 1

Grievants were represented by Grievant Bolar, HHR was represented by Robert Miller, Esquire, Assistant Attorney General, and Personnel was represented by Karen O'Sullivan Thornton, Esquire.