LAWRENCE PETTEY and ROBERT RHODES,

Grievants,

v.

DOCKET NO. 03-CORR-117

WEST VIRGINIA DIVISION OF CORRECTIONS/

MT. OLIVE CORRECTIONAL COMPLEX and

WEST VIRGINIA DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievants, Lawrence Pettey and Robert Rhodes, filed this grievance against their employer, the West Virginia Division of Corrections/Mt. Olive Correctional Complex ("Corrections"), and the West Virginia Division of Personnel ("Personnel"), on March 23, 2003: (See footnote 1)

> Currently, we perform the same duties, responsibilities as a captain (14), without the discretionary authority or pay of a captain (14). Additionally, we are responsible for ensuring the appropriate staffing levels for the housing units, in which, unit managers (14), the same pay grade as captains (14) are responsible.
>
> Relief sought: Current positions held should be reallocated to captain (CO VI) pay grade (14). Good consideration should be given for reimbursement of any loss of benefit, in part o[r] in full.

The grievance was denied at level one on March 24, 2003, by William Vest, Associate Warden, and at level two on April 1, 2003, by Michael V. Coleman, DeputyWarden and T. L. McBride, Warden. A level three hearing was held on April 17, 2003, and the grievance denied by Grievance Evaluator Paula K. Gardner on April 18, 2003, with Commissioner Jim Rubenstein concurring on April 22, 2003. Grievants appealed to level four on April 30, 2003, and a level four hearing was held on June 2,

2003. This matter became mature for decision on June 23, 2003, the deadline for the parties' submission of proposed findings of fact and conclusions of law. Grievants represented themselves, Corrections was represented by Charles Houdyschell, Jr., Esq., Assistant Attorney General, and Personnel was represented by Lowell D. Basford.

SUMMARY OF EVIDENCE

Level Three Grievants' Exhibits

Ex. 1 -

April 4, 2003 memorandum from Grievants re: rebuttal to level II response to Grievance Number EG-574; April 7, 2003 memorandum from Robert Rhodes re: statement of fact; April 1, 2003 memorandum from T. L. McBride to Grievants; April 1, 2003 memorandum from M. V. Coleman to Grievants; Grievance form; March 24, 2003 memorandum from William Vest to Grievants; Grievance documents from 1995 grievance filed by Robert Rhodes; July 26, 2002 memorandum from Lawrence Pettey to Paul Parry; June 19, 2002 memorandum from Michael Coleman to Unit Managers/Commanders; June 26, 2001 memorandum from Teresa Waid, Paul Parry to Unit Managers/Watch Commanders; General Population Housing Unit Corporals; March 26, 2003 memorandum from Terri Arthur to All Security Staff; May 21, 2001 memorandum from Howard Painter to All Watch Commanders; Operational Procedure 3.01; Operational Procedure 3.13; Clifford v. W. Va. Div. of Corrections, Docket No. 02-CORR-124 (Aug. 29, 2002); Grievance Board Summaries; Vaught v. W. Va. Div. of Corrections, Docket No. 99-CORR-070 (Sept. 7, 1999).

Level Four Grievants' Exhibits

Ex. 1 -

Operations Officer General Guidelines.

Level Four Respondents' Exhibits

Ex. 1 -

Employee Performance Appraisal for Robert Rhodes, April 16, 2003.

Ex. 2 -

Classification Specification for Correctional Officer 5.Ex. 3 -
Classification Specification for Correctional Officer 6.

Ex. 4 -

Employee Performance Appraisal for Lawrence Pettey, April 25, 2003.

Testimony

Grievants testified in their own behalf. Respondents presented the testimony of Terri Arthur; Lowell Basford, and Michael Coleman.

Based upon a review of the testimony and exhibits introduced in this matter, I find the following facts have been proven by a preponderance of the evidence.

FINDINGS OF FACT

1. Grievants are employed as Correctional Officer V's at Corrections' Mt. Olive Correctional Complex.

2. Mt. Olive is the state's maximum security prison and its security staff are organized utilizing a paramilitary structure.

3. Employees are first hired as Correctional Officer I, which is an entry-level position. They are reallocated to Correctional Officer II after the completion of certain training requirements.

4. Above Correctional Officer II is the position of Correctional Officer III, which is also referred to as Corporal.

5. The next rank above Correctional Officer III is Correctional Officer IV, which is a Sergeant.

6. Above a Sergeant is a Correctional V or Lieutenant.

7. Next is the Correctional Officer VI or Captain.

8. Finally, the highest ranking uniformed officer at Mt. Olive is the Major, or Chief Correctional Officer. 9. The rank structure is designed as a pyramid, meaning the higher the rank, the fewer positions there are at that level.

10. The Warden of Mt. Olive determines, from time to time, the number of positions needed to properly staff the institution, depending upon its needs at any given point in time.

11. At the present time, there are four (4) Captain positions at Mt. Olive.

12. There is a Captain assigned to each shift, one day and one night. There is a Captain

assigned to the segregation unit, and a Captain assigned to administration.

13. Under each shift Captain (day and night) are two Lieutenants.

14. Day shift is divided into A group and B group. The two groups work opposite ends of the week in 12 hour shifts of alternating 3 and 4 day work weeks. The night shift is composed of C and D groups, which also work in this same fashion.

15. The Captain over the segregation unit also manages two groups, one for each segregation unit, i.e., Quilliams I and Quilliams II, each of which have a Lieutenant.

16. The classification specification for Correctional Officer V provides, under the Nature of Work section, as follows:

> Under general supervision, performs administrative or supervisory duties as a shift or unit supervisor, Chief Correctional Officer, or in a mid-level specialized supervisory or administrative position. The officer manages or supervises the enforcement of rules, regulations and state law necessary for the control and management of offenders and the maintenance of public safety. The officer plans, directs and reviews the work of subordinates or performs administrative duties related to the security or operation of a specialized unit. Performs related work as required.

17. The classification specification for Correctional Officer V provides, under the Distinguishing Characteristics section, as follows:

> Factors such as size of correctional officer complement or offender population are considered in determining assignment of a position to this rank. Holds the assigned rank of Lieutenant.

18. The classification specification for Correctional Officer VI provides, under the Nature of Work section, as follows:

> Under general supervision, performs administrative or supervisory duties as a shift or unit supervisor, Chief Correctional Officer, or in a mid-level specialized supervisory or administrative position. The officer manages or supervises the enforcement of rules, regulations and state law necessary for the control and management of offenders and the maintenance of public safety. The officer plans, directs and reviews the work of subordinates or performs administrative duties related to the security or operation of a specialized unit. Performs related work as required.

19. The classification specification for Correctional Officer VI provides, under the Distinguishing Characteristics section, as follows:

> Factors such as size of correctional officer complement or offender population are

considered in determining assignment of a position to this rank. Holds the assigned rank of Captain.

20. A review of the Division of Personnel classification specifications indicates that the general duties and type of work is very similar, if not the same, for both Lieutenant and Captain. However, the distinguishing characteristic is the level of accountability and responsibility, as well as the needs of the facility.

21. The Captains are accountable to the administration for all actions that occur during their respective shifts (if over a shift), or within their respective units and areas (i.e., segregation and administration). This accountability extends to matters which might occur within their area of responsibility even though they were not working on that specific day.

22. By contrast, the Lieutenants are responsible for their respective sub-set of the Captain's overall area of responsibility. For example, a Lieutenant overseeingQuilliams II would not be responsible for an incident in Quilliams I, whereas the Captain overseeing the entire segregation unit would be held accountable to administration.

23. Similarly, a Lieutenant responsible for A group is not responsible for incidents occurring on B group, whereas the Captain over the day shift is responsible for all incidents occurring on both units. This is not to say that an A group Lieutenant might not be called to assist the B group Lieutenant if necessary, and vice versa.

DISCUSSION

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 W. Va. Educ. & State Employees Grievance Bd., 156 C.S.R. 1 § 4.21 (2000); Payne v. W. Va. Dept. of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). Grievants, Correctional Officer Vs (Lieutenant) contend they should be reallocated to Correctional Officer VI (Captain) because they perform the same duties and responsibilities as those outlined in the classification specification for Correctional Officer VI.

There is no dispute that many, if not all, of the day-to-day tasks performed by Grievants in their capacity as Lieutenants are also performed by Captains. The key distinguishing feature is the level of accountability. In a para-military organization it is essential to have fewer staff the further up the chain of command. However, the higher up the chain of command one gets, the broader the scope of

one's accountability. Grievants, as Lieutenants, share some of the same duties with their Captains in that they are all general supervisory staff members. However, the Lieutenants do not have to account for what might occur during another group's watch or what might occur within another unit. By contrast, Captains have full accountability. In order to prevail upon a claim of misclassification, a grievant must prove by a preponderance of the evidence that his duties for the relevant period more closely match those of another cited classification specification than the classification to which he is currently assigned. See generally, Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). Personnel job descriptions generally contain five sections as follows: first is the "Nature of Work" section; second, "Distinguishing Characteristics"; third, the "Examples of Work" section; fourth, the "Knowledge, Skills and Abilities" section; and finally, the "Minimum Qualifications" section. These 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. 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 the employee's current classification constitutes the "best fit" for his required duties. Simmons v. W. Va. Dept. of Health and Human Resources, 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). Importantly, Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly wrong. See W. Va. Dept. of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681 (1993).

The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." Siler v. W. Va. Div. of Corrections, Docket No. 02-CORR-44 (Mar. 27, 2003). There has been no significant change in Grievants' duties and responsibilities. They perform the same duties as always; it just so happens that those duties also fit squarely within the Correctional Officer VI classification specification. However, based upon the organizational structure necessary within Corrections, Grievants are properly placed within the Correctional Officer V classification. Quite simply, they cannot all be chiefs.

Grievants alternatively claim they are entitled to be compensated at a higher pay grade because,

from time to time, they work as Captains when their Captain is absent. However, again, because Lieutenants and Captains share the same duties and responsibilities, Grievants cannot be said to be working out of classification when their Captain is absent. The Captain is still ultimately responsible for his entire unit whether he is present or not.

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 W. Va. Educ. & State Employees Grievance Bd., 156 C.S.R. 1 § 4.21 (2000); Payne v. W. Va. Dept. of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988).

2. In order to prevail upon a claim of misclassification, a grievant must prove by a preponderance of the evidence that his duties for the relevant period more closely match those of another cited classification specification than the classification to which he is currently assigned. See generally, Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989).

3. The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." Siler v. W. Va. Div. of Corrections, Docket No. 02-CORR-44 (Mar. 27, 2003).

4. Grievants have failed to prove by a preponderance of the evidence that they are misclassified or should be reallocated.

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. The appealing 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.

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MARY JO SWARTZ

Administrative Law Judge

Dated: July 21, 2003

Footnote: 1

Steven Hale and David Ballard were original parties to the grievance, but withdrew at level four.