KEVIN MCHENRY and JACK ATCHISON,

Grievants,

v. DOCKET NO. 02-HHR-306R

WEST VIRGINIA DEPARTMENT OF HEALTH AND

HUMAN RESOURCES/SHARPE HOSPITAL and

WEST VIRGINIA DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievants, Kevin McHenry and Jack Atchison, filed separate grievances against their employer, the West Virginia Department of Health and Human Resources/Sharpe Hospital ("DHHR") on July 8, 2002, protesting the classification of their positions as Purchasing Assistants, and seeking to be reclassified to Procurement Officers, with back pay, benefits and interest from March 23, 2001. The grievances were denied at levels one through three, and appeal was made to level four on September 24, 2002. The West Virginia Division of Personnel ("DOP") was joined as an indispensable party, and a level four hearing was held in the Grievance Board's Elkins, West Virginia, office on December 16, 2002. ALJ Mary Jo Swartz denied the grievance by decision dated March 4, 2003. Grievants appealed that decision for review to the Circuit Court of Lewis County.

By Order dated November 14, 2003, Judge Thomas H. Keadle remanded the matter to the Grievance Board for the purpose of taking testimony which had been missing from the level four transcript. Specifically, the testimony of Grievants and that of Ginny Fitzwater. Subsequently, a hearing was conducted on February 2, 2004, in compliance with the Circuit Court Order. Grievants represented themselves, DHHR was represented by Robert Miller, Esq., Assistant Attorney General, and DOP was represented by Karen O'Sullivan Thornton, Esq. Based upon a review of the record in its entirety, I find the following facts have been proven by a preponderance of the evidence.

FINDINGS OF FACT

1. Grievants are employed by DHHR/Sharpe Hospital and have held the division of Personnel (DOP) classification of Purchasing Assistants at all times pertinent to this grievance.

2. On or about March 23, 2001, Grievants completed and submitted position description forms,

requesting reclassification to Procurement Officers. The forms indicated they do the exact same level of work, but neither one is responsible for supervision nor serves in a supervisory capacity.

3. Based upon a review of the position description forms, Lowell Basford, Assistant Director for Classification and Compensation for DOP, determined that Grievants' positions were correctly classified as Purchasing Assistants.

4. Grievants appealed Mr. Basford's decision to Nichelle Perkins, Director of DOP. By letter dated May 20, 2002, Ms. Perkins affirmed Mr. Basford's decision that "this classification (Procurement Officer) is generally reserved for a ***single*** position that ***oversees*** a purchasing and procurement unit. Neither of the incumbents' position description forms clearly delineate this responsibility as being assigned to either position." G. Ex. 7 (emphasis added).

5. Grievants perform the same level of work but in different areas. Grievant Atchison is responsible for purchasing all food and medical equipment, while GrievantMcHenry is responsible for purchasing all furniture and household supplies. Grievants work independently and at the full performance level.

6. The Job Specification for the Purchasing Assistant classification provides as follows:

Nature of Work Under general supervision, at the full-performance level, performs complex clerical work, organizing and coordinating the purchasing activities within an agency. Performs related work as required.

Examples of Work Reviews purchase requisitions and determines if required merchandise is contracted or if manufacturer bids must be solicited; collects bids, if required, and screens to determine most cost efficient meeting the requirements of the requisition. Checks purchase orders for accuracy, completeness, and clarity; corrects any ambiguities in purchase orders and adds needed information. Types and/or composes purchase orders, correspondence, memoranda and reports. Obtains all necessary product information from requester including size, quantity and color in order to accurately complete the purchase order. Records order and requisition number and delivery data in ledger and retains for use in billing and order verification. Contacts contract vendors to confirm shipping channels and delivery costs. Oversees the order to assure that it meets the contract agreement and arrives in good condition and in a reasonable amount of time.

7. The Job Specification for the Procurement Officer classification provides as

follows:

Nature of Work Under general supervision, performs work at the full-performance level by overseeing a service unit within a state agency, which is responsible for providing purchasing, inventory, and records management activities. Obtains both goods and/or services in adherence to fluctuating state purchasing regulations. Contacts are extensive and include those both internal and external to state government. Uses discretion and independent judgment to select cost-effective goods/services within prescribed parameters. Performs related work as required.

Examples of Work

Establishes and/or maintains a system or conform with the statutes of the State rules and regulations.Prepares, or causes to be prepared, objective specifications for all items to be purchased. Analyzes commodities or services provided by vendor to assure conformity to user specifications. Establishes and/or maintains an inventory control system and a records retention and disposal system. Supervises clerical and other staff positions. Recommends policy changes and/or policies in the areas of property control, acquisition and/or management. Prepares technical or statistical reports.

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 the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (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. 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 that 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. V. Dep't 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 Grievants' current classification constitutes the "best fit" for their required duties. Simmons v. W. Va. Dep't of Health & HumanResources, 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 Services, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

Additionally, class specifications are descriptive only and are not meant to be restrictive. Mention of one duty or requirement does not preclude others. W. Va. Admin. Rule, § 4.04(a); Coates v. W. Va. Dep't of Health & Human Resources, Docket No. 94- HHR-041 (Aug. 29, 1994). Even though a job description does not include all the actual tasks performed by a grievant, that does not make the job classification invalid. W. Va. Admin. Rule, §§ 4.04(d). Finally, DOP's interpretation and explanation of the classification specifications at issue, if said language is determined to be ambiguous, should be given great weight unless clearly erroneous. *See*, W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681 (1993).

Grievants argue they should be reclassified as Procurement Officers because they perform work at the full-performance level that is responsible for providing purchasing, inventory and records management activities for Sharpe Hospital. Grievants' immediate supervisor, Margaret Collette supports Grievants' reclassification to Procurement Officers. DOP contends Grievants are properly classified as Purchasing Assistants because they are not responsible for overseeing a service unit within a state agency. DOP also argues the intent of the Procurement Officer classification, as originally drafted, was to provide for only one procurement officer within all of DHHR's statewide facilities. Furthermore, because Grievants do not supervise clerical and other staff positions, they are not "lead workers" and thus fall outside the scope of what was intended for the Procurement Officer classification. The agency deferred to DOP's judgment in this matter. This case is unique in that DOP is not questioning the duties performed by the Grievants at Sharpe Hospital, and concedes Grievants perform the majority of the duties set forth in the Examples of Work section of the Procurement Officer classification. However, DOP notes it is the Nature of Work section which is controlling, and the intent of the Procurement Officer classification was a position which oversees a service unit, and of which there can be only one.

Here, both Grievants are responsible for a different area of purchasing for Sharpe Hospital. If one

of the two Grievants was responsible for supervising the other, and therefore, overseeing the purchasing unit, that person probably would be reclassified as a Procurement Officer. However, Ms. Collette testified that both Grievants' tasks are equally important and independent of the other, and this falls outside the purview of what DOP intended when it created the Procurement Officer classification.

Grievants rely on Kimble v. W. Va. Dep't of Health & Human Resources, Docket No. 99-HHR-153 (Sept. 16, 1999), to support their argument that it makes no difference whether they supervise or act in a lead worker capacity in their positions because the Nature of Work section of the Procurement Officer classification better describes their positions than does the Nature of Work section of the Purchasing Assistant classification. In Kimble, the grievant was an Inspector III with DHHR at Sharpe Hospital, and wished to be reclassified to a Safety and Loss Control Inspector, a classification that only existed within the Workers' Compensation Section of the Bureau of Employment Programs. In that case, the issue of whether the grievant supervised other employees was addressed; however, it was not the controlling factor as the Administrative Law Judgefound the Nature of Work section for the Inspector III classification simply did not apply to the grievant's position. While the Safety and Loss Control Inspector classification did not accurately describe the grievant's duties, in the interests of fairness and equity, and the desire to place the grievant within a pay scale more appropriate to his actual duties, the Administrative Law Judge found the Safety and Loss Control Inspector classification was at least a better fit, if not the best fit, than the Inspector III classification.

While both Grievants are completely responsible for their respective areas of purchasing, and perform more than a clerical function, as contemplated in the Purchasing Assistant classification specification, the fact remains that because they share the purchasing duties, neither "oversee[s]" the unit. It is clear that oversight of a unit is a significant factor in the Procurement Officer classification specification, and Grievants have failed to show that DOP's interpretation of that classification specification to mean only one individual is clearly wrong.

CONCLUSIONS OF LAW

1. In order to prevail in a misclassification claim, 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. Dep't of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). 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). 2. The "Nature of the Work" section of a classification specification is its most critical section. *See generally*, Dollison v. W. Va. Dep't of Employment Security, Docket No. 89-ES-101 (Nov. 3, 1989).

3. Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly wrong. *See*, W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

4. While the Nature of Work section and the Examples of Work section of the Procurement Officer classification specification better describe Grievants' duties than the Nature of Work and Examples of Work sections of the Purchasing Assistant classification specification, Grievants have not proven DOP's interpretation of the Procurement Officer classification specification to mean only one individual who oversees a unit is clearly wrong.

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, andshould 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.

DATE: FEBRUARY 25, 2004 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE