WEST VIRGINIA PUBLIC EMPLOYEES

GRIEVANCE BOARD

VIC BUTLER, et al.,

Grievants,

v. Docket No. 07-CORR-314

DIVISION OF CORRECTIONS/
NORTHERN CORRECTIONAL
FACILITY and DIVISION
OF PERSONNEL,

Respondents.

DECISION

On April 18, 2007, Grievant Vic Butler initiated a grievance, seeking reallocation of his position from Corrections Program Manager 1 (“CPM 1") to Corrections Program Manager 2 (“CPM 2"). Shortly thereafter, Grievants Richard Lohr and Karen Pszcolokowski filed similar grievances. After the grievances were denied at levels one and two, they were consolidated for consideration and hearing at level three, which hearing was held on June 19, 2007. The grievance was denied by level three decision dated June 19, 2007, and Grievants appealed to level four on July 2, 2007.

Due to legislative changes affecting the grievance procedure and the Grievance Board, a level four hearing was not held until March 10, 2008. Grievants were represented by Greg Yahnke; Respondent Division of Corrections (“DOC”) was represented by Senior Assistant Attorney General Charles P. Houdyschell, Jr.; and Respondent Division of Personnel (“DOP”) was represented by Assistant Attorney General Karen O. Thornton. This matter became mature for consideration upon receipt of the parties' fact/law proposals on April 7, 2008.

Synopsis

Grievants, employed as Associate Wardens at the Northern Correctional Facility, seek to have their positions reallocated from Corrections Program Manager 1 to Corrections Program Manager 2. The primary basis for Grievants' request is that Associate Wardens at the state's largest correctional facilities were reallocated to the higher classification. However, evidence in this case established that Grievants' duties are fully encompassed within the Corrections Program Manager 1 classification specification, and the reason for the reallocation of the other Associate Wardens was based upon specific provisions of the Corrections Program Manager 2 job description. The size of those facilities and the numerous staff increase the level of complexity of those employees' duties, due to the increased supervisory and administrative responsibilities associated with running such large institutions. Grievants failed to establish that they are not properly classified, and the grievance must be denied.

Findings of Fact

1. Grievant Butler is Associate Warden of Programs at Northern Correctional Facility ("Northern"), and his classification is CPM 1. The primary purpose of his position is supervision and oversight of all treatment programs at the facility. He also oversees the administration of all psychiatric evaluations for inmates, educational programs, deathbed visits, and victim services during the parole process. Mr. Butler supervises eight employees, and the programs under his supervision encompass approximately 35-40 employees, including counselors, unit managers, program directors and coordinators, and office assistants. 2. Grievant Pszcolokowski is the Associate Warden of Operations at Northern. She serves as the facility's liaison for contracted services, such as food service. She supervises two employees, a Supervisor 2 and the Buildings and Grounds Maintenance Supervisor. Each of these employees supervises three subordinate employees.

3. Grievant Lohr is the Associate Warden of Security at Northern. The primary purpose of his position is to oversee all security operations and personnel at the facility. He supervises nine shift supervisors, who supervise 40 correctional officers.

4. Northern houses inmates at all security levels, including those rated as maximum security. It also serves as a temporary holding unit for "special management" inmates, who are to eventually be

sent to other facilities, including child molestors and former law enforcement officers. However, Northern is much smaller than other DOC maximum security facilities, housing approximately 250 inmates.

5. The two largest DOC facilities are Mount Olive and Huttonsville Correctional Center ("HCC"), which house 1000 and 1100 inmates, respectively. They are maximum security facilities, and also maintain permanent special management units whose inmates are segregated from the general population. At Mount Ollive, there are approximately 100 inmates housed in each of its two segregation units.

6. In approximately 2000, DOP evaluated the Associate Warden positions at Mount Olive and HCC, determining that the size of the facilities, with the attendant number of subordinate employees and size and number of units supervised, along with increased level of associated administrative responsibilities, should distinguish these positions from Associate Wardens at smaller facilities. Accordingly, these positions at Mount Olive and HCC were reallocated to CPM 2. 7. All of the Associate Wardens at Northern are asked to fill in for the Warden on an occasional basis, making decisions in her absence, because the facility does not have a Deputy Warden.

8. The classification specification for CPM 1 provides, in pertinent part:

Nature of Work

Under general supervision, performs managerial work in coordinating and evaluating operational and special services programs for the Division of Corrections or Regional Jail and Correctional Facility Authority. Programs administered are typically major organizational units at the largest correctional institutions or special services of a comparable size and complexity. Responsibilities include program implementation and evaluation, direction of supervisory, professional and support staff and the maintenance of required records and reports. Performs in accordance with established policies and procedures in the functional area; limited authority to vary work methods and procedures. Performs related work as required.

Distinguishing Characteristics

Positions assigned to this level would typically be responsible for a major unit at the largest correctional facilities or statewide programs or grants of a specialized nature with small staffs.

Examples of Work

Assists in the development of policies and procedures in the area of assignment or program specialty.

Coordinates the program or grant area with agency units and institution and with state, federal and local agencies.

Plans and evaluates the work of subordinate staff.

Develops and implements specialized treatment programs such as drug/alcohol programming on a statewide basis.

Develops and implements specialized staff training in the area of assignment.

Oversees major functional units in correctional facilities such as security, inmate services or equivalent programs.

Assists in the recruitment and selection of staff; recommends discipline, staff development and other personnel matters.

Monitors and evaluates program or unit operations and the services provided to inmates.

Cooperates with educational, social service, health and rehabilitation agencies in program/service delivery.

Develops curricula and training programs for correctional officers and other staff; administers corrections academy budget.

Maintains records in program area; prepares regular and special reports for area of assignment.

9. The classification specification for CPM 2 provides, in pertinent part:

Nature of Work

Under general supervision, performs managerial work in coordinating and evaluating operational and treatment programs for the Division of Corrections or the Regional Jail and Correctional Facility Authority. Programs administered are typically specialized in nature or a secondary element of a statewide program. Responsibilities include inter and intra-

coordination and program evaluation. Work is effectuated through supervisor, and subordinate staff. Exercises independent judgement and considerable latitude in the execution of assigned duties and responsibilities. Performs related work as required.

Distinguishing Characteristics

Typically, positions at this level include responsibility for a specialized statewide program such as prison industries or corrections academy administration or programs/units of comparable size and complexity.

Examples of Work

Assists in the development of policies and procedures in the area of assignment or program specialty.

Coordinates the operational program with other institutional units and collateral agencies.

Plans and evaluates the work of supervisors and other staff; makes assignments and reviews operational plans.

Assists in the recruitment and selection of staff; recommends disciplinary matters, staff development and other personnel actions.

Monitors and evaluates program or unit operations and the services provided to inmates.

Cooperates with educational, social service, health and rehabilitation agencies in program/service delivery.

Develops curricula and training programs for correctional officers and other staff; administers corrections academy budget.

Maintains records in program area; prepares regular and special reports for area of assignment.

Discussion

In order for an employee to prevail upon a claim of misclassification, he must prove by a preponderance of the evidence that his duties for the relevant period more closely match another cited DOP classification specification than that under which he is currently assigned. *See generally, Hayes v. W. Va. Dep't of Natural Res.*, Docket No. NR- 88-038 (Mar. 28, 1989). DOP 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. Dep't of Health*, Docket No. 90-H-444 (Apr. 22, 1991); *See generally, Dollison v. W. Va. Dep't of Empl*. Security, Docket No. 89-ES-101 (Nov. 3, 1989). DOP's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. *See W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 348, 431 S.E.2d 681, 687 (1993).

The basis of Grievants' filing of this grievance was the reallocation of other Associate Wardens at Mount Olive and HCC to the CPM 2 classification. Grievant Butler testified at level three that he had a conversation with one of these individuals, whose description of his own job duties was very similar to Mr. Butler's. However, as has been recognized by the West Virginia Supreme Court of Appeals, when determining whether or not an employee is correctly classified, it is *not* appropriate to look at duties performed byother employees, due to the possibility that the comparative employees may themselves be misclassified. *See Akers and Boggs v. Dep't of Tax and Rev.,* 194 W. Va. 456, 460 S.E.2d 702 (1995).

As discussed in *Keys v. Department of Environmental Protection*, Docket No. 06- DEP-307 (Apr. 20, 2007), the key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." Grievants also contend that, because there is no deputy warden at their facility, their duties have increased, in that they intermittently take turns filling in for the warden and are on call on a rotating basis. Nevertheless, as explained by Lowell Basford of DOP, this is a common practice throughout Corrections, and an occasional and intermittent duty does not change the purpose of one's position. "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." *Kuntz/Wilford v. Dep't of Health and Human Res*., Docket No. 96-HHR-301 (Mar. 26, 1997).

Grievants have not demonstrated that their predominant job duties have changed, nor that their current job duties do not fall within the parameters of the classification specification for CPM 1. As described in the “Nature of Work” section of that specification, the primary focus of Grievants' positions is “managerial work in coordinating and evaluating operational and special services programs” at their facility. In addition, the “Distinguishing Characteristics” of Grievants' positions is described quite accurately by the statement that they are each “responsible for a major unit at [a large] correctional facility.” Accordingly,the undersigned finds that the evidence conclusively establishes that the best fit for Grievants' assigned duties is their current classification of CPM 1.

Moreover, as was the case in *Siler v. Division of Juvenile Services*, Docket No. 06- DJS-331 (May 29, 2007), DOP has specifically determined that the size of the facility to which a position is assigned may be a major distinguishing factor for positions within the corrections system. As described in the specification for CPM 2, the distinguishing characteristic for such positions is that they are assigned

to programs or units of such a substantial size that they are comparable to specialized statewide programs. Therefore, while it may be true that Grievants' duties are similar to those of Associate Wardens at the larger facilities, this does not render them misclassified. As explained by Mr. Basford, Classification and Compensation Director, the size of the larger facilities renders the administrative and supervisory duties of those positions more complex and involved than the duties performed by Associate Wardens at much smaller facilities, warranting their higher classification.

Accordingly, Grievants have failed to prove by a preponderance of the evidence that they are entitled to reallocation to CPM 2. The following conclusions of law are appropriate in this matter.

Conclusions of Law

1. In order for an employee to prevail upon a claim of misclassification, he must prove by a preponderance of the evidence that his duties for the relevant period more closely match another cited DOP classification specification than that under which he iscurrently assigned. *See generally, Hayes v. W. Va. Dep't of Natural Res.*, Docket No. NR- 88-038 (Mar. 28, 1989).

2. DOP's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. *See W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 348, 431 S.E.2d 681, 687 (1993).

3. Classification determinations are not made based upon comparison to other employees, but upon which classification specification is the best fit for that employee's duties. *See Akers and Boggs v. Dep't of Tax and Rev.,* 194 W. Va. 456, 460 S.E.2d 702 (1995); *Baldwin v. Dep't of Health and Human Res.*, Docket No. 99-HHR-142 (Oct. 28, 1999).

4. The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." *Keys v. Department of Environmental Protection*, Docket No. 06-DEP-307 (Apr. 20, 2007); *Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96-HHR-301 (Mar. 26, 1997).

5. Grievants have failed to prove by a preponderance of the evidence that they should be reallocated to Corrections Program Manager 2.

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. *See* W. Va. Code § 29-6A-7 (repealed) (See footnote 1) . Neither the West Public EmployeesGrievance 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.

Date: July 9, 2008

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DENISE M. SPATAFORE

Acting Chief Administrative Law Judge

Footnote: 1

In 2007, the Legislature, 2007 Acts ch. 207, abolished the West Virginia Education and State Employees Grievance Board, replacing it with the Public Employees GrievanceBoard. W. Va. Code §§ 18-29-1 to 18-29-11 and W. Va. Code §§ 29-6A-1 to 29-6A-12 were repealed and replaced by W. Va. Code §§ 6C-2-1 to 6C-2-7 and W. Va. Code §§ 6C- 3-1 to 6C-3-6 (2007). Grievances which were pending prior to July 1, 2007, are decided under the former statutes, W. Va. Code §§ 18-29-1 to 18-29-11, for education employees, and W. Va. Code §§ 29-6A-1 to 29-6A-12, for other state and higher education employees. See Executive Order No. 2-07, May 8, 2007. References in this decision are to the former statutes, which continue to control the proceedings in this case.