THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

ROXANNE CHANEY, et al.,
Grievants,

v. **DOCKET NO. 2012-0728-CONS**

DEPARTMENT OF HEALTH & HUMAN RESOURCES,
BUREAU FOR BEHAVIORAL HEALTH & HEALTH FACILITIES,
and WEST VIRGINIA DIVISION OF PERSONNEL,
Respondents.

DECISION

Grievants, Roxanne Chaney, Deborah L. Reed, and Melissa Coleman, filed grievances on January 11, 2012 asserting that they were inequitably classified in comparison with other employees of Respondent, Department of Health and Human Resources ("DHHR" or "Respondent DHHR"), who report directly to a Deputy Commissioner. As relief, Grievants sought to be "upgraded" to Executive Secretaries. On January 12, 2012, the Chief Administrator waived the grievances to level two because she was unable to grant the relief sought. On January 18, 2012, Acting Deputy Chief Administrative Law Judge William B. McGinley consolidated the three grievances under the docket number above, and joined the West Virginia Division of Personnel ("DOP" or "Respondent DOP") as an indispensable party.

After mediation was completed at level two, this grievance was appealed to level three on March 21, 2012. A level three evidentiary hearing was held before the undersigned Administrative Law Judge on October 4, 2012, in Charleston, West Virginia. Grievants appeared *pro se* and Respondent DHHR was represented by Assistant

Attorney General James "Jake" Wegman. Respondent DOP was represented by Assistant Attorney General Karen O'Sullivan Thornton. This matter became mature for decision at the conclusion of the hearing when all parties waived filing of post-hearing arguments.

Synopsis

Grievants are employed by Respondent DHHR in its Bureau for Behavioral Health and Health Facilities. Each Grievant performs a variety of important administrative and secretarial duties for their immediate supervisors, all of whom serve as Deputy Commissioners over various departments in the Bureau. When it came to Grievants' attention that other DHHR employees who provide similar secretarial support for Deputy Commissioners were classified as Executive Secretaries, they sought to have their positions more appropriately classified. DHHR management generally supported their efforts.

Grievants submitted updated Position Descriptions describing their duties and responsibilities in detail. These Position Descriptions were thoroughly reviewed by the Classification and Compensation staff of the West Virginia Division of Personnel which concluded that Grievants were appropriately classified as Administrative Secretaries. Grievants appealed this determination but their appeal was denied. These grievances, which were subsequently consolidated, ensued. Grievants were unable to demonstrate that DOP's classification determination for their positions was clearly wrong. Therefore, this grievance is DENIED.

The undersigned Administrative Law Judge makes the following Findings of Fact based upon the record developed at the level three hearing.

Findings of Fact

1. Grievants are employed by the West Virginia Department of Health and Human Resources in the Bureau for Behavioral Health and Health Facilities in Charleston, West Virginia.

2. Each Grievant currently performs secretarial and administrative duties and reports to an individual who is employed as a Deputy Commissioner.

3. Each Grievant is currently classified as an Administrative Secretary. Grievants are seeking to be reallocated from the Administrative Secretary classification to the Executive Secretary classification. The relevant portions of the classification specifications for these classifications will be set out below:

ADMINISTRATIVE SECRETARY

Nature of Work

Under general direction, performs advanced level work by assuming responsibility for adjunctive administrative duties under the guidance of an administrator. Applies in-depth knowledge of program areas, the mission of the division, and the administrator's jurisdiction, policies and views. Provides support services to administrator by supplying specific information, composing reports and correspondence, and taking initiative to recommend actions, or by taking action in modifying and/or improving unit procedures, policies, rules and regulations. Depending on size of organizational unit, may offer some clerical support to administrative superior, often in matters which must remain confidential. Typically performs administrative support for an agency/division administrator. Performs related work as required.

Distinguishing Characteristics

The paraprofessional work at this level is generally confidential and requires a working knowledge of program areas within the division or organizational unit to which assigned. Administrative support duties are

predominant; clerical/secretarial duties typically comprise less than 20% of work time.

Examples of Work

Attends meetings for supervisor to take notes and offer input vis-à-vis supervisor's views, or is briefed on meetings after the fact in order to assist the implementation of new procedures.

Studies and analyzes operational procedures; prepares reports of findings and recommendations for implementation of new procedures or the modification of existing procedures.

Collects and prepares operating reports such as time and attendance records, terminations, new hires, transfers, budget expenditures, and statistical inquiries.

Receives telephone calls, personal callers and incoming mail.

Makes arrangements for conferences, including date, time, location and space.

Plans, schedules, assigns, and reviews the work of other employees.

Oversees office services such as the completion of maintenance reports, ordering of supplies, filing.

Supplies administrator with specific detailed information for completion of reports, speeches, etc.

Types a variety of reports, often confidential in nature.

May conduct initial job interviews and recommend candidates for employment.

May monitor particular programs, draft reports on programs status, assist in applications for grants or outside monies, and draft correspondence for division heads concerning the programs areas.

May delegate work to other sections.

May write news releases and otherwise interact with the public on behalf of or in lieu of the administrator.

J Ex 1.

EXECUTIVE SECRETARY

Nature of Work

Under limited supervision, performs highly responsible advanced level administrative support work in providing assistance to a department secretary. Work involves independent responsibility for making limited policy interpretations in dealing with the public and acting with authority on office management and administrative functions in the absence of the supervisor. Responsibilities include high-level secretarial, clerical, office management and general administrative duties with primary emphasis on relieving the supervisor of administrative details. Work is performed in strict

confidence and in accordance with modern professional secretarial principles and techniques. Supervision may be exercised over subordinate office clerical personnel. Performs related work as required.

Examples of Work

Performs a variety of administrative tasks for the supervisor including organizing an appointment calendar, screening visitors and telephone calls, making travel arrangements, answering routine correspondence, accumulating information for reply to requests by correspondence and/or telephone.

Takes dictation of a confidential and technical nature from the supervisor or transcribes dictation from the transcribing machine.

Types correspondence, reports, forms, contracts, bulletins, manuals, narratives and other documents and related office material which may require a familiarity with specialized terminology such as medical and/or legal terms.

Independently composes and types correspondence for the supervisor's signature from general instruction or marginal notes.

Supervises the clerical operation of the office; directs the clerical staff on departmental or divisional policies and procedures.

Gathers and computes information for the supervisor on special assignments, regular reports, budgets or speeches.

Schedules conferences and meetings; contacts individuals to participate, assuring convenient time for all those involved or arranges time changes convenient to all participants, arranges meeting facilities, transportation for guest participants and/or speakers; takes minutes of meetings and transcribes minutes and assures appropriate distribution of copies.

Maintains and organizes the office file; ensures that proper security measures are followed concerning confidential files and materials; maintains supervisor's manuals, regulations, staffing patterns, etc.

Assists the supervisor in planning and analyzing specific office problems affecting operations; advises the supervisor of the current situation and problems resulting; and makes recommendation of possible solutions.

J Ex 2.

4. Grievants prepared and submitted updated position descriptions in May 2011. *See* J Exs 3, 4 & 5.

5. Grievant Roxanne Chaney provides administrative support and reports to Craig Richards, Deputy Commissioner for Finance and Technology in DHHR's Bureau for Behavioral Health and Health Facilities. *See* G Ex 2.

6. Grievant Melissa Coleman provides administrative support and reports to the Deputy Commissioner for Operations in DHHR's Bureau for Behavioral Health and Health Facilities. *See* G Ex 2.

7. Grievant Debbie Reed provides administrative support and reports to Kimberly Walsh, Deputy Commissioner for Programs in DHHR's Bureau for Behavioral Health and Health Facilities. *See* G Ex 2.

8. DHHR's Bureau for Children and Families includes three Deputy Commissioners who lead the Offices of Operations, Programs and Field Operations. The secretaries supporting these three Deputy Commissioner positions are all classified as Executive Secretaries. *See* G Ex 3. The position providing secretarial support to the Deputy Commissioner for Programs was posted in April 2011 as an Executive Secretary position. *See* G Ex 7.

9. In DHHR's Bureau for Medical Services, a single secretary supports three Deputy Commissioners who are responsible for Policy Coordination, Finance and Administration, and Process, Applications and Methodology. This position was posted as an Executive Secretary position in August 2009, and Kimberly O'Brien currently holds this position. *See* G Exs 4 & 6.

10. Since the time that Grievants began serving as Administrative Secretaries, at least one additional Secretary II position has been created in each of their divisions to assist with clerical and administrative support services.

11. Grievant Roxanne Chaney was recently assigned the additional duties of auditing the time cards for all Bureau employees, and for issuing and retrieving "air cards" which Bureau employees use to access the Internet from their laptop computers. In addition, she has been scheduling certain meetings for the DHHR Secretary.

12. Grievant Melissa Coleman currently reviews invoices related to court-ordered forensic/psychiatric evaluations to verify that the scope of the work ordered and performed has been properly documented before each invoice can be approved for payment. This additional duty was assigned after her most recent Position Description was submitted in May 2011.

13. Virginia Fitzwater currently serves as Director of Human Resources for DHHR's Bureau for Behavioral Health and Health Facilities. Ms. Fitzwater has served in that position for approximately seven years. Ms. Fitzwater previously served as a Senior Classification and Compensation Specialist for the West Virginia Division or Personnel. Ms. Fitzwater was not aware of any "significant" change in the duties and responsibilities of Grievants' positions.

14. The DOP Administrative Rule provides in Section 4.4(b) as follows:

> 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, and relationships to other classes as affording together a picture of the positions that the class intended to include.

15. Barbara Jarrell is employed by DOP as Assistant Director for Classification and Compensation. Ms. Jarrell has over twenty years' experience in reviewing and applying classification specifications in state government. Ms. Jarrell reviewed Grievants' Position Descriptions in November 2011, as well as the history of their positions and the pertinent classification specifications. Ms. Jarrell determined that each position was properly classified as an Administrative Secretary. *See* DOP Ex 1.

16. Grievants appealed Ms. Jarrell's determination to the Director of the Division of Personnel, Sara P. Walker. On December 21, 2011, Ms. Walker wrote to Victoria Jones, Commissioner for DHHR's Bureau for Behavioral Health and Health Facilities, upholding Ms. Jarrell's determination that the positions held by Grievants were properly classified as Administrative Secretaries. *See* G Ex 1.

17. After these grievances were filed, DOP's Classification and Compensation staff performed desk audits on each position occupied by Grievants and determined that Administrative Secretary was the proper classification for each position. Ms. Jarrell notified Harold Clifton, DHHR's Director of Human Resources, of the outcome of these desk audits in correspondence dated August 29, 2012. *See* G Ex 8.

18. DOP has similarly conducted desk audits for other employees in DHHR who report to Deputy Commissioners but whose positions are classified as Executive Secretaries. As of the hearing in this matter, DOP had not issued any determination concerning the classification of these positions.

Discussion

Because this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rule of the W. Va. Public Employees Grievance Bd., 156 C.S.R. 1 § 3 (2008); *Burkhart v. Ins. Comm'n*, Docket No. 2010-1303-DOR (Dec. 7, 2011); *Howell v. W. Va. Dep't of Health & Human Res*., Docket No. 89-DHS-72 (Nov. 29, 1990). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, Grievants have not met their burden. *Id*.

In a grievance alleging misclassification, Grievants must prove that their duties more closely match another cited personnel classification specification than the one under which they are currently assigned. *Kyte v. W. Va. Dep't of Health & Human Res*., Docket No. 94-HHR-030 (Sept. 21, 1994). *See generally*, *Hayes v. W. Va. Dep't of Natural Res*., 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). *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 & Human Res*., Docket No. 90-H-433 (Mar. 28, 1991). Finally, 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 & Human Res. v. Blankenship*, 189 W. Va. 342, 347, 431 S.E.2d 681, 686 (1993).

Grievants are contending that their positions should be reallocated from the Administrative Secretary classification to the Executive Secretary classification. Reallocation involves a reassignment of a position by the Director of Personnel from one class to a different class on the basis of a significant change in the kind or level of duties and responsibilities assigned to the position. W. Va. Division of Personnel Administrative Rule, 143 C.S.R. 1 § 3.72 (2012). The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." *Keys v. Dep't of Environmental Protection*, Docket No. 06-DEP-307 (Apr. 20, 2007); *Kuntz v. Dep't of Health & Human Res*., Docket No. 96-HHR-301 (Mar. 26, 1997). *See Siler v. Div. Of Juvenile Serv*., Docket No. 06-DJS-331 (May 29, 1997).

In reviewing the classification specifications for Administrative Secretary and Executive Secretary, the first sentence of the "Nature of Work" description for Executive Secretary states: "Under limited supervision, performs highly responsible advanced level administrative support work in providing assistance to a **department secretary**." J Ex 2 (emphasis added). In comparison, the first sentence of the "Nature of Work" description for Administrative Secretary states: "Under general direction, performs advanced level work by assuming responsibility for adjunctive administrative duties under the guidance of **an administrator**." J Ex 1 (emphasis added). Grievants do not work for a department secretary or even for a Commissioner. Each Grievant reports to a Deputy Commissioner.

If DOP intended to expand the Executive Secretary classification to include secretaries who work for administrators below the department secretary level, it would have used more generic language. By establishing the specific requirement that an Executive Secretary support a department secretary, it is apparent that DOP intended to narrow the field of secretarial employees eligible to hold this classification to a limited number.

Grievants presented evidence that other secretarial employees who report to Deputy Commissioners within the Department of Health and Human Resources are classified as Executive Secretaries. Grievants also presented credible evidence that those employees who report to Deputy Commissioners, and are currently classified as Executive Secretaries, perform substantially similar duties to the work which Grievants perform. Nonetheless, these comparator employees do not appear to meet the requirements for the Executive Secretary classification and, for whatever reason, may not be properly classified. Moreover, because Grievants are seeking reallocation to the Executive Secretary classification rather than reclassification as Executive Secretaries, this inconsistency in classifications, while troubling, is not relevant in a grievance proposing reallocation. *See Hall v. Div. of Highways*, Docket No. 2010-1637-DOT (Aug. 15, 2012); *Keys*, *supra*.

In order to be reallocated to the Executive Secretary classification, Grievants need to not only show that their positions meet the essential requirements of the Executive Secretary classification, but that the level of their assigned duties and responsibilities have been changed significantly since they entered their positions. *See Keys*, *supra*. Given that classification specifications are read from top to bottom in “pyramid fashion,”

with the more general and most critical requirements being listed first, Grievants did not establish that they provide administrative support to a department secretary, nor did they establish by a preponderance of the evidence that the classification of Executive Secretary is the "best fit" for their duties and responsibilities. *See Captain*, *supra*; *Simmons*, *supra*. More significantly, although Grievants have had various additional duties and responsibilities added to their positions during their tenure as Administrative Secretaries, these duties are not of the magnitude or quantity to meet the significant change standard for reallocation of a position as required by DOP's Administrative Rule. *See Keys*, *supra*.

DOP provided evidence and testimony through Barbara Jarrell, Assistant Director for Classification and Compensation, that Grievants' Position Descriptions prepared in May 2011 had been carefully reviewed, compared against the history of those positions and matched against the classification specifications for Executive Secretary and Administrative Secretary, resulting in a determination that each position was properly classified as an Administrative Secretary. In addition, this determination was reviewed in response to Grievants' appeal, and the Classification and Compensation staff thereafter performed desk audits for each position. Based upon these desk audits, Ms. Jarrell verified that Administrative Secretary was the proper classification for each position.

In order to prevail on their grievance, Grievants must meet the significant legal standard of demonstrating that DOP's determination, as the agency responsible for making classification determinations for state employees in the classified service, was "clearly erroneous." *See Blankenship*, *supra.* Grievants presented evidence that there is

an apparent inequity between their classification as Administrative Secretaries and the Executive Secretary classification assigned to several of their similarly situated peers in DHHR, who likewise provide administrative support to Deputy Commissioners. However, as previously noted, this evidence is irrelevant to the issue of whether the duties and responsibilities of the positions in which Grievants serve have experienced significant change of a magnitude to warrant reallocation of their positions to the classification they are seeking. *See Hall*, *supra*.

It is undisputed that Grievants perform a variety of significant and important duties within their agency, and their performance is integral to the operation of the offices where they are employed. DHHR obviously values their services and is willing to increase their pay should their positions be reallocated to the Executive Secretary classification.[1] However, the Administrative Rule applicable to all state agencies specifically defines reallocation to require the occurrence of a particular situation. Grievants failed to establish by a preponderance of the evidence that significant changes had taken place in their duties and responsibilities, or that DOP's determination that Executive Secretary was the proper class for their positions was clearly wrong.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. Because this grievance does not involve a disciplinary matter, Grievants bear the burden of proving their grievance by a preponderance of the evidence. Procedural Rule of the W. Va. Public Employees Grievance Bd., 156 C.S.R. 1 § 3 (2008);

[1] The Administrative Rule treats reallocation of a position to a higher class as equivalent to a promotion, thereby authorizing additional compensation. *See* 143 C.S.R. 1 § 5.4(f)3 & 5.5 (2012). *See generally Baldwin v. Lottery Comm'n*, Docket No. 2011-1486-CONS (Aug. 6, 2012).

Burkhart v. Ins. Comm'n, Docket No. 2010-1303-DOR (Dec. 7, 2011); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the Grievants have not met their burden. *Id*.

2. A reallocation involves a reassignment by the Director of Personnel of a position from one class to a different class on the basis of a significant change in the kind or level of duties and responsibilities assigned to the position. W. Va. Div. of Personnel Administrative Rule, 143 C.S.R. 1 § 3.72 (2012). The key in seeking a reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." *Keys v. Dep't of Environmental Protection*, Docket No. 06-DEP-307 (Apr. 20, 2007); *Kuntz v. Dep't of Health & Human Res.*, Docket No. 96-HHR-301 (Mar. 26, 1997). *See Siler v. Div. of Juvenile Serv.*, Docket No. 06-DJS-331 (May 29, 2007).

3. An increase in the number of duties and the number of employees supervised does not necessarily establish a need for reallocation. *Hall v. Div. of Highways*, Docket No. 2010-1637-DOT (Aug. 15, 2012); *Kuntz*, *supra*.

4. 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. *See generally*, *Dollison v. W. Va. Dep't of Employment Sec*., Docket No. 89-ES-101 (Nov. 3, 1989).

5. Employees have a substantial obstacle to overcome when contesting their classification, as the Grievance Board's review is supposed to be limited to determining whether or not the agency's action in classifying the position was arbitrary and capricious. *Burkhart v. Insurance Comm'n*, Docket No. 2010-1303-DOR (Dec. 7, 2011). *See W. Va. Dep't of Health & Human Res. v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681 (1993).

6. DOP's interpretations of the classification specifications for the positions of Administrative Secretary and Executive Secretary are not clearly erroneous and, therefore, should be accorded great weight. *See Blankenship*, *supra*.

7. Grievants have failed to meet their burden as they have not shown that their duties have changed significantly, that their duties and responsibilities are a better fit for the position sought, or that DOP's determination to classify them as Administrative Secretaries was clearly wrong.

Accordingly, this grievance is **DENIED.**

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. Va. Code § 6C-2-5. Neither the West Virginia Public 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 certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. *See also* 156 C.S.R. 1 § 6.20 (2008).

DATE: October 31, 2012

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LEWIS G. BREWER
Administrative Law Judge