



JAMES PAUL GEARY
Chairman

ORTON A. JONES
DAVID L. WHITE
Members

C. RONALD WRIGHT
Director

**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**

GASTON CAPERTON
Governor

OFFICES:

240 Capitol Street
Suite 515
Charleston, WV 25301
Telephone: 558-3361

**VALERIE L. LAWHUN, KAREN S. HATFIELD, ELIZABETH E. SHENAL,
E. SUSAN SIZEMORE and MARY L. TYBURSKI**

v.

Docket No. 92-BEP-442

**WEST VIRGINIA BUREAU OF EMPLOYMENT PROGRAMS/
WORKERS' COMPENSATION DIVISION, and
WEST VIRGINIA DEPARTMENT OF ADMINISTRATION/
DIVISION OF PERSONNEL**

D E C I S I O N

Grievants Valerie L. Lawhun, Karen S. Hatfield, Elizabeth E. Shenal, E. Susan Sizemore and Mary L. Tyburski, who carry out the same duties in the field offices of West Virginia Bureau of Employment Programs/Workers' Compensation Division (hereinafter "Workers' Comp") in Logan, Huntington, Fairmont, Martinsburg and Wheeling, respectively, claim that they are misclassified as Office Assistant IIIs (OAIII), alleging that they are entitled to the classification of Office Manager or, alternatively, Supervisor I. The grievance was denied at Levels I and II on the basis of lack of authority. Upon appeal to Level III it was heard September 24, 1992, and the Level III evaluator, Charles S. Forsythe, appointed by Workers' Comp and West Virginia Department of Administration/Division of Personnel (hereinafter "Personnel"), denied the grievance by decision of October 28, 1992. Grievants appealed to

Level IV, stating that the decision could be based on the record below. Grievants waived their briefing rights, as did Workers' Comp; Personnel filed a brief on December 17, 1992, and the record closed with receipt of the lower level record on January 8, 1993.

Mr. Forsythe's Level III decision was fully reasoned, as follows:

In order to prevail upon a misclassification claim, a grievant must prove, by a preponderance of evidence, that his duties, for the relevant period, more closely matched another, cited West Virginia Civil Service System (West Virginia Division of Personnel) classification specification than that under which his position was officially categorized. Hayes v. West Virginia Department of Natural Resources, Docket No. NR-88-038 (March 28, 1989). Personnel classification specifications are drafted in "pyramid fashion," with the most critical elements appearing first, and the second most significant next, and so forth. Accordingly, "Nature of Work" is the most important section of the typical Personnel classification specification besides the classification title. Linda Stuck, et al. v. Workers Compensation Fund and Division of Personnel, Docket No. 92-WCF-084 (Sept. 30, 1992). In order to prevail, Grievants must prove that their job duties "best fit" with the "Nature of Work" section, specifically, and the classification specification, generally, of Personnel's classification specification for Supervisor I or Office Manager.

Personnel's classification specifications for Office Assistant III, Supervisor I and Office Manager contain "Nature of Work" and "Distinguishing Characteristics" statements, as follows:

OFFICE ASSISTANT III

Nature of Work

Under general supervision, performs advanced level, responsible and complex clerical tasks of a complicated nature involving interpretation and application of policies and practices. Interprets office procedures, rules and regulations. May function as a lead worker for clerical position. Performs related work as required.

Distinguishing Characteristics

Performs tasks requiring interpretation and adaptation of office procedures, policies, and practices. A significant characteristic of this level is a job-inherent latitude of action to communicate agency policy to a wide variety of people, ranging from board members, federal auditors, officials, to the general public.

SUPERVISOR I

Nature of Work

Under general supervision, performs full-performance supervisory work overseeing the activities of clerical support staff, semi-or-fully-skilled trade workers, or inspectors. Completes annual performance appraisals, approves sick and annual leave, makes recommendations and is held responsible for the performance of the employees supervised. Work is reviewed by superiors through results produced or through meetings to evaluate output. Performs related work as required.

Distinguishing Characteristics

Supervisor I is usually a working supervisor who makes work assignments, reviews employees' work, and compiles reports on section activities in addition to performing tasks similar to their employees. In some instances, may be a working supervisor performing related work of a more advanced level than subordinates.

OFFICE MANAGER

Nature of Work

Under general supervision, performs a full range of office support work at a full-performance level. Manages the day-to-day operations of a branch office of a state agency for an administrator or a field supervisor. Resolves operating problems, oversees maintenance of the building and orders supplies. Typically, performs personnel and/or payroll functions. Performs related work as required.

Distinguishing Characteristics

This class is intended for out-stationed branch offices with a sole employee responsible for office management of a mid-sized to large office. A mid-sized office will consist of a minimum of eight full-time state employees and a full or part-time administrator-supervisor.

Having established an understanding of the three specifications in question, it is now necessary to compare Grievants' job duties with the three specifications in order to determine a "best fit." This concept of "best fit" does not require an exact match between the duties of the incumbent and a particular class specification, nor does the performance or nonperformance of one or more duties stated in a class specification either qualify or disqualify the incumbent of that classification. Rather, a "whole job" comparison is performed. See Section 5.04, West Virginia Division of Personnel Administrative Regulations.

....

After carefully reviewing the evidence and all matters of record, the undersigned cannot recommend that Grievants' complaint be sustained. The evidence does not support a finding that the Grievants would be more accurately classified as Supervisor I or Office Manager. The testimony and evidence indicates that Grievants do not perform the "full-performance supervisory work" or management of day-to-day operations as envisioned by the Supervisor I and Office Manager classification specifications, respectively. Grievants appear to perform responsible, lead-worker duties, as envisioned in the Office Assistant III classification specification. Basic supervisory and management duties such as initiating disciplinary actions, approving sick and annual leave requests, conducting performance evaluations, recommending salary increases, formally addressing grievances of subordinates and oversight of an organizational component are not present in Grievants' duties. Incumbents engage in responsible lead worker duties assigning, scheduling and reviewing the work of others. See Exhibit P-II.

Exhibit P-II, to which Mr. Forsythe referred, is a document that Lowell D. Basford, Personnel's Assistant Director with responsibility for Classification and Compensation matters, presented,

providing definitions for certain words that he testified were uniformly applied in assigning classifications during the broad-ranging classification review of Workers' Comp. That document includes the following:

Lead Work - This is a level of work at which an incumbent 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.

Supervisor - Formally delegated responsibility for planning, assigning, reviewing and approving the work of three or more full-time employees which also includes initiating disciplinary actions, approving sick and annual leave requests, conduct performance evaluations, recommend salary increases, and is a step in the grievance process.

Manager - Oversees a formally designated organizational component that requires extended planning of work activities, control of resources, and all the means used to accomplish work within the assigned area of responsibility. Coordinates the work of the unit with the agency and external interest group. Is held accountable for establishing and meeting the objective and goals of the unit.

The record without a doubt supports Mr. Forsythe's determination that Grievants are lead workers rather than supervisors and are therefore not entitled to the Supervisor I classification. That is, each directs the day-to-day work of the other one or two individuals in her office but does not have the authority of a supervisor; for example, while Grievants provide input on how those individuals should be evaluated, they do not have responsibility for those evaluations.

While Grievants' contention that they should be classified as Office Managers is a closer issue, it too cannot be sustained. Quite simply, Grievants do have office managerial responsibilities

but the record shows that their primary responsibilities are, in Mr. Basford's words, "providing assistance to claimants, attorneys, pharmacies, all the people who interact with Workers' Comp," Tr. 188, which match with the classification for OAI¹ rather than Office Manager.² Moreover, that the distinguishing characteristic of the Office Manager classification is responsibility for an office of "eight full-time state employees" supports that conclusion.

In conclusion, the undersigned, upon review of the entire record, has determined that Mr. Forsythe's analysis is correct and adopts it; Grievants failed in their burden of proof.

In addition to the findings of fact and conclusions of law contained in the foregoing discussion, the following are appropriate:

¹Grievants indicated during the hearing that they thought their burden was to establish which of the two classifications, Supervisor I and Office Manager, more closely matched their duties, apparently failing to recognize that their burden was to show that their duties better matched one or both of those classifications than their present classification of OAI. Indeed, neither Grievants nor any other party submitted into the record the specification for the OAI classification. Mr. Forsythe took official notice of it; the undersigned has also done so and has entered it into the record as ALJ Exhibit Number 1.


²Mr. Basford explained that such providers "come under the new generic class series of Office Assistant." While full information was not given regarding the office of each Grievant, the Logan office was apparently typical in having one OAI, Grievant Lawhun, and one OAI. Also at that office is a temporary employee.

Conclusion of Law

Grievants failed to establish by a preponderance of the evidence that their duties more closely match the specification for a Supervisor I or the specification for an Office Manager than the specification for their present classification of Office Assistant III.

The grievance is accordingly DENIED.

Any party may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §29-6A-7. 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. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.



SUNYA ANDERSON
ADMINISTRATIVE LAW JUDGE

February 4, 1993