**CLARENCE MCLAUGHLIN**

**v. Docket No. 95-BEP-337**

**BUREAU OF EMPLOYMENT PROGRAMS**

DECISION

Grievant, Clarence McLaughlin, employed as a Local Veterans Employment Representative with the Elkins Job Service, Division of Employment Services, of the Bureau of Employment Programs (BEP or Respondent), filed a level one grievance on March 20, 1995, in which he objected to a March 10, 1995, ruling that he be transferred to the Elkins Unemployment Compensation Office. Vickie Vance, Manager of the Elkins Job Service Office and Grievant's immediate supervisor, responded that she was unable to resolve the matter at level one. Quetta Muzzle, Director of BEP's Job Training Programs/Employment Service, sustained the transfer at level two, and Commissioner Andrew N. Richardson denied the grievance at level three. Appeal was made to level four on July 31, 1995. The matter became mature for decision following a level four hearing conductedon August 30, and the submission of proposed findings of fact and conclusions of law by Grievant on September 29, 1995. (See footnote 1)

The facts of this matter are not in dispute.

1. Grievant has been employed by BEP for approximately five years and presently serves as the Local Veterans Representative assigned to the Elkins Job Service office.

2. On December 24, 1994, Grievant married Pamela Zoller who has been employed at the Elkins Job Service Office as a Senior Interviewer for approximately two years.

3. Prior to her marriage, Mrs. McLaughlin had been a designated employee in charge of the office during the absence of Ms. Vance.

4. On January 31, 1995, Ms. Vance advised Jeff Smith, Assistant Director, Employment Security Field Operations, that "(p)er your instructions, Pamela Zoller McLaughlin will no longer be in charge of the Elkins JS in my absence, in order to prevent the possibility of violating agency nepotism policy. Effective today's date."

5. By memorandum dated March 10, 1995, Ms. Vance recommended to Mr. Smith that Grievant be transferred to the first available job opening in the Elkins Unemployment Compensation Office.

6. The basis of the recommended transfer was BEP Policy 6000.50 "Nepotism," which provides: It shall be the policy of the Bureau of Employment Programs (BEP) that no person may be appointed or transferred to a position in anycost center in which a relative is assigned. Appointment to any position in BEP will not be permitted wherein a relative employee is in a position to directly influence selection. Relative shall be defined as father, mother, son, daughter, brother, sister, husband or wife, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandmother, grandfather, granddaughter, grandson, stepmother, stepfather, stepchild, aunt, uncle, niece or nephew.

In the event a relationship should develop after employment, a transfer will be made of one of the individuals, as soon as feasible. The cost center manager will recommend through channels to the appropriate division head which employee should be transferred taking into account the employees' wishes and the effect on BEP business.

Grievant argues that the transfer, which has not yet been effectuated, is improper for two reason. First, BEP has exceeded its authority in adopting a nepotism policy contrary to, and more restrictive than, the nepotism policy adopted by the Division of Personnel (Personnel). West Virginia Division of Personnel Administrative Rule Section 19.02 provides as follows:

(a) No appointing authority shall influence or attempt to influence the employment or working conditions of his immediate family. It is the responsibility of the appointing authority to administer the employment of relatives of any agency employee in a consistent and impartial manner.

(b) No employee shall directly supervise a member of his immediate family. More specifically, no employee shall review or audit the work of a member of his immediate family, take part in discussions concerning employment, assignment, compensation, discipline or related matters involving a member of his immediate family. In the event that an individual, through marriage, adoption, etc. is placed in a prohibited business relationshipwith a member of his immediate family, the situation must be resolved within thirty calendar days. Resolution may be made by transfer, reassignment, resignation, etc. of one of the involved employees or by other accommodation which protects the interests of the public.

Grievant argues that because the BEP policy prohibits employees defined as relatives from working within the same cost center, whether one is in a supervisory position over the other or not, it is contrary to Personnel's policy which simply prohibits an employee from directly supervising a member of his immediate family or influencing the employment or working conditions of his immediate family members.

Grievant asserts that the BEP nepotism policy also violates Personnel's Policy on Policies, effective January 1, 1993. The Policy on Policies states in pertinent part that "Division of Personnel policies and procedures and/or supplements thereto shall be adhered to by all affiliated agencies". Grievant offered BEP Administrative Directive 6900.10 in which Commissioner Richardson addressed the Policy on Policies and advised all Cost Center Managers that the agency would comply with applicable Personnel policies. (See footnote 2)

Grievant's second argument that the transfer is improper is based upon a claim that BEP has not enforced the nepotism policy in a consistent and impartial manner. Grievant cites a comparative situation which occurred in 1992 when Ken Deel and Carolyn Smoot,both employed by BEP in Cost Center 5206, were married. As with the McLaughlins, neither party had any supervisory impact on the other. In that instance, the matter was resolved by BEP Personnel Administrator Thomas Rardin by attaching alpha suffixes to the Cost Center designations. This device resulted in the Cost Centers no longer being the same, while at the same time keeping the accounting system intact. It was determined that this procedure allowed BEP to stay within the boundaries of the nepotism policy, and was approved by Commissioner Richardson on June 25, 1992.

Respondent's position, as stated by counsel at hearing, is that BEP is free to implement its own policy in the absence of any statutory prohibition, and that the policy was applied as written in this instance. BEP asserts that there is a strong possibility that Grievant would be under the direct supervision of his spouse on many occasions, a situation which would be in violation of both BEP and Personnel policies.

Grievant has proven that the BEP nepotism policy has not been applied in a consistent or uniform manner. Ken Deel, a Veteran Services Coordinator, testified at level four to substantiate Grievant's claim that Mr. and Mrs. Deel were allowed to remain in the same cost center after their marriage, with only an amendment to their cost center designation. Respondent did not dispute the evidence regarding the Deel decision and no explanation was offered why the same arrangement could not be

made for the McLaughlins. In addition to the foregoing facts and narration it is appropriate to make the following conclusions of law.

## CONCLUSIONS OF LAW

1. In non-disciplinary matters the grievant must prove all of the allegations of his complaint by a preponderance of the evidence. Cutright v. Board of Trustees/West Virginia University -Parkersburg, Docket No. 95-BOT-090 (Nov. 3, 1995).

2. Grievant has proven by a preponderance of the evidence that Respondent failed to apply its nepotism policy in a consistent and uniform manner.

Accordingly, the grievance is **GRANTED** and Respondent Ordered to rescind the impending transfer.

DATED: December 27, 1995 _____

Sue Keller

Senior Administrative Law Judge

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*Footnote: 1Respondent did not file proposals.*

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*Footnote: 2The commissioner noted that some Personnel policies, such as that regarding dress codes, do not apply to BEP which does not have a dress code at this time.*