DR. NANCY TAYLOR,

Grievant,

v. **Docket No. 96-MCHD-383**

MONONGALIA COUNTY

HEALTH DEPARTMENT,

Respondent.

DECISION

Grievant is employed as a dentist for the Monongalia County Health Department, and states her level four grievance as follows:

> The intent of the State Division of Personnel Classification and Compensation Plan adopted on Dec. 16, 1992 is to ensure that employees are treated equitably according to their job classifications and level of experience. There is a vast discrepancy between my compensation level and that of other employees with similar experience. After 17 years, 11 months, I am 11.78% above entry level. I am attaching a listing of personnel, pay grades and salaries to show this discrepancy. I seek an end to this discrepancy by my being placed on my scale comparably to others with my experience level at the Mon. County Health Dept.

Grievant's immediate supervisor was unable to render a level one decision. The grievance was denied at level two on July 3, 1996, which decision was adopted at level three by the Monongalia County Board of Health. A level four hearing was held in this Board's office in Morgantown, West Virginia, on January 28, 1997. Since the parties declined to submit written post- hearing proposals, this matter became mature for decision on that date.

The material facts are not in dispute and are contained in the following findings.

Findings of Fact

1. Grievant has been employed as a dentist by the Monongalia County Health Department (“MCHD”) since 1978; during that time, she has been the only dentist employed bythem.

2. Pursuant to a state-wide reclassification project undertaken by the Division of Personnel, all

state employees in the classified service were reclassified as of December 16, 1992. As a result of this project, Grievant was classified as a Dentist I; she does not contest her classification title.

3. The Dentist I classification is within Pay Grade 21, which has a pay range of $38,976 to $63,372. Grievant's salary on January 1, 1992, was $41,184, which falls within the Pay Grade 21 range, so her salary was not changed when the reclassification project was implemented. L. II T., at 17.

4. Grievant has received merit salary increases each year of her employment with Respondent, which have averaged approximately 4% per year. Her salary as of December 31, 1995, was $41,564.28, and the salary range for Pay Grade 21 has remained the same as set forth in paragraph 3, above.

5. Other employees of Respondent are paid at higher levels within the pay range for their classifications, as compared to Grievant's position within the Dentist I pay grade.

Discussion

Grievant alleges that she has not been properly compensated, although she concedes that her salary falls within the applicable pay range for her classification. She argues that she has been the victim of discrimination by her employer, because other employees are compensated at higher levels within their classifications' pay ranges. Examples of such employees included supervisors, nurses, and various directors, whose pay is at the mid-point or higher within their salary ranges. In addition,Grievant has introduced numerous documents regarding the financial state of the dental clinic operated by Respondent, which she alleges demonstrate her high productivity and revenue production, entitling her to additional compensation. Respondent contends that, because Grievant is being paid within the pay scale for her classification, she has no basis for her claims.

In order to prevail in this grievance, Dr. Taylor must prove her allegations by a preponderance of the evidence. Chafin v. Boone County Health Dept., Docket No. 95-BCHD-362 (June 21, 1996). Grievant has alleged violations of statutory provisions prohibiting discrimination and mandating “equal pay for equal work.” Discrimination is defined as “any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees.” W. Va. Code § 29-6A-2(d). As Grievant is the only dentist at the MCHD, she cannot be deemed to be similarly situated to the other employees employed there, for purposes

of establishing discriminination. Although Grievant has provided salary information for three dentists employed by other county health departments, there is absolutely no evidence in the record regarding the duties and responsibilities of these individuals, and MCHD has no control over the compensation given to employees of other health departments. The salary disparities among these individuals may easily be related to differences in their job responsibilities. Accordingly, Grievant has not shown that she is similarly situated to any of the employees to which she compares herself, so there is insufficient evidence to establish discrimination. Underwood v. W. Va. Dept. of Transportation, Docket No. 95-DOH-509 (May 21, 1996).

The "equal pay for equal work" doctrine is embodied in W. Va. Code § 29-6-10, which states, in pertinent part:

> [The Division of Personnel is authorized to promulgate rules which provide for] . . . a position classification plan for all positions in the classified service . . . based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class. . . . Each employee shall be paid at one of the rates set forth in the pay plan for the class of position in which he is employed. The principle of equal pay for equal work in the several agencies of the state government shall be followed in the pay plan as established hereby.

This Code section has been interpreted by the West Virginia Supreme Court of Appeals to not mandate identical pay for identical work. The Court determined that it does not violate the "equal pay" doctrine for employees within a classification to be paid differing amounts, and that the intent of § 29-6-10 is to allow state agencies flexibility in setting individual employees' salaries within the confines of a classification's pay scale. Differences in pay within a particular classification may be properly based upon "market forces, education, experience, recommendations, qualifications, meritorious service, length of service, availability of funds, or other specifically identifiable criteria that are reasonable and . . . advance the interests of the employer." Largent v. W. Va. Div. of Health, 452 S.E.2d 42, at 49 (W. Va. 1994).

If such latitude is allowed in setting salaries within one classification, it naturally follows that there can be no violation of the statute proven by an employee, such as Grievant, who attempts to compare her compensation level with that of employees in a wide variety of classifications. Respondent employs numerous individuals in a number of different classifications, all of whom are at various locations in the bottom, top, or middle of the pay scale for their respective titles. There is absolutely

no evidence of record which indicates that these disparities are the result of any discriminatory, or otherwise improper, motive on the part of the MCHD. See Nafe v. W. Va. Dept. of Health and Human Resources, Docket No. 96-HHR-386 (Mar. 26, 1997).

The final aspect of Grievant's argument seems to focus upon what she perceives to be achange in her responsibilities, which she contends entitles her to additional “merit” salary increases. Between 1990 and 1996, the dental clinic at MCHD gradually became an entirely “fee for service” operation, after county funding was reduced and eventually eliminated. Grievant maintains that, because of her productivity and management skills, the dental clinic has become an independent, profitable enterprise. Respondent argues that Grievant's duties have remained substantially the same since her initial employment in 1978.

It has been recognized by this Grievance Board that the compensation system for classified employees is not based upon tenure or seniority, neither is salary determined by the “qualifications, skills or abilities of incumbents.” Rather, compensation for the various classifications is “based upon the general nature of the duties expected of the position.” Underwood, supra, at 7; Thomlinson v. W. Va. Dept. of Transp., Docket No. 94-DMV-209 (Oct. 20, 1994). Accordingly, Respondent had no obligation to alter Grievant's compensation based upon what she perceived as increasingly demanding duties. Respondent is correct in its assertion that Grievant's primary duties, i.e. doing dental work and managing the dental clinic, have remained unchanged. There is no dispute that Grievant is appropriately classified as a Dentist I, performs the job duties of that classification, and she is compensated within the applicable pay scale for her job title.

Moreover, Grievant's allegations that she is entitled to additional compensation through merit raises are also without basis. She concedes that she has, in fact, received yearly salary increases. The Division of Personnel's regulations specify that “salary advancements,” which are commonly referred to as “merit raises,” are to be awarded “based on . . . performance evaluations and other recorded measures of performance [such as] quantity of work, quality of work, and attendance.” 143 C.S.R. 1.5.08(a). However, such salary increases are, by definition, “discretionary advancement[s]. . . granted in recognition of the quality of job performance.” 143 C.S.R. 1.3.82 (emphasis added). If Grievant had introduced evidence that other similarly situated employees had received merit increases that she had not, she could allege discrimination. However, not only is there no statutory or regulatory mandate that required MCHD to give Grievant any merit increases, there is no provision

which specifies that such increases should be of any particular amount.

"An employer's decision on merit increases will generally not be disturbed unless shown to be unreasonable, arbitrary and capricious or contrary to law or properly established policies or directives." Terry v. W. Va. Div. of Highways, Docket No. 91-DOH-186 (Dec. 30, 1991). In the instant case, there is no dispute that Grievant has received raises, and she has shown no basis in law, policy, or otherwise, which would entitle her to additional merit increases because of the financial stability of the dental clinic in which she works.

Conclusions of Law

1. In non-disciplinary matters, a grievant must prove her allegations by a preponderance of the evidence. Chafin v. Boone County Health Dept., Docket No. 95-BCHD-362 (June 21, 1996).

2. Employees performing similar work need not receive identical pay, so long as they are paid in accordance with the pay scale for their proper employment classification. Largent v. W. Va. Div. of Health, 452 S.E.2d 42 (W. Va. 1994).

3. The "equal pay for equal work" doctrine of W. Va. Code § 29-6-10 does not require that all employees with similar experience levels be paid at similar levels within the applicable pay scales for their various classifications.

4. Salaries for classified employees are not based upon tenure, seniority, or the particular abilities of the employees, but are based upon the generally expected duties of the position. Underwood v. W. Va. Dept. of Transportation, Docket No. 95-DOH-509 (May 21, 1996); Thomlinson v. W. Va. Dept. of Transp., Docket No. 94-DMV-209 (Oct. 20, 1994).

5. Grievant did not prove that she was similarly situated to other employees, thus she could not establish discrimination in violation of W. Va. Code § 29-6A-2(d). Underwood, supra.

6. An employer's decision on merit increases will generally not be disturbed unless shown to be unreasonable, arbitrary and capricious or contrary to law or properly established policies or directives. Terry v. W. Va. Div. of Highways, Docket No. 91-DOH-186 (Dec. 30, 1991).

7. Grievant did not prove that she should have received larger merit increases from her employer.

Accordingly, this grievance is **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.

Date: May 28, 1997 _____

V. DENISE MANNING

Administrative Law Judge