JAMES E. NAFE, JR.,

Grievant,

v. **Docket No. 96-HHR-386**

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU OF PUBLIC HEALTH,

Respondent.

D E C I S I O N

This is a grievance by James E. Nafe, Jr., (Grievant), filed pursuant to W. Va. Code §§ 29-6A-1, et seq., alleging that Respondent West Virginia Department of Health and Human Resources (DHHR) is not properly compensating him in comparison with other employees in the Division of Primary Care. This grievance was initiated at Level I on May 15, 1996. The grievance was denied at Levels I and II, as Grievant's supervisors were unable to grant the relief requested. Grievant appealed to Level III on June 3, 1996, and a Level III hearing was conducted on July 8, 1996. Henry G. Taylor, Commissioner of the Bureau of Public Health, denied the grievance at Level III on August 30, 1996. Grievant appealed to Level IV on September 9, 1996, and a Level IV evidentiary hearing was conducted in this Board's office in Charleston, West Virginia, on November 19, 1996. Thismatter became mature for decision upon receipt of Grievant's timely post-hearing argument on December 9, 1996.

There is no significant dispute regarding the facts in this matter. Accordingly, the following Findings of Fact are made based upon the record created at Levels III and IV.

FINDINGS OF FACT

1. Grievant is employed by Respondent DHHR in its Office of Community and Rural Health Services. At the time this grievance was initiated, Grievant was serving as the Assistant Director of

the Division of Primary Care, and was classified as a Health and Human Resources Program Manager I in pay grade 16.

2. At the time this grievance was initiated, the pay range for pay grade 16 started at twenty-seven thousand, seven hundred sixty-eight dollars ($27,768), and rose to a maximum of forty-five thousand, one hundred and sixty-eight dollars ($45,168). See R Ex 1 at L IV. Grievant's annual salary was then thirty thousand, three hundred and twenty-four dollars ($30,324). See G Ex 1 at L III.

3. Grievant supervises two employees in his unit, classified as Health and Human Resource Specialists in pay grade 11, who were then receiving annual salaries of thirty-one thousand, six hundred and sixty-eight dollars ($31,668) and thirty thousand, four hundred and sixty-eight dollars ($30,468). G Ex 1 at L III. The pay range for pay grade 11 starts at nineteen thousand, seven hundred and sixty-four dollars ($19,764), and reaches a maximum of thirty-two thousand, one hundred and eighty four dollars ($32,184). See R Ex 1 at L IV.

4. Grievant's immediate supervisor, classified as a Health and Human Resources Program Manager II in pay grade 18, was then receiving an annual salary of forty-threethousand, nine hundred and eighty dollars ($43,980). G Ex 1 at L III. The salary range for pay grade 18 starts at thirty-one thousand, eight hundred dollars ($31,800), and reaches a maximum of fifty-one thousand, seven hundred and twenty dollars ($51,720).

5. On October 1, 1996, Grievant was promoted to Interim Director of the Division of Primary Care and received a six percent (6%) pay increase.

DISCUSSION

Grievant complains that he is not being properly compensated in that there is a substantial disparity between his salary and that of his immediate supervisor. In addition, Grievant submits that it is inequitable that he is paid less than two individuals who serve in a lower classification within his unit. Grievant is not contending that his position of Assistant Director of Primary Care is misclassified as a Health and Human Resources Program Manager I. Indeed, Grievant has not identified any particular statute, policy, rule or regulation which he contends that DHHR is violating in these circumstances.

In order to prevail in a grievance of this nature, Grievant must prove the allegations in his complaint by a preponderance of the evidence. Wargo v. W. Va. Dept. of Health & Human Resources, Docket Nos. 92-HHR-441/445/446 (Mar. 23, 1994); Payne v. W. Va. Dept. of Energy,

Docket No. ENGY-88-015 (Nov. 2, 1988). The concept of "equal pay for equal work" is embraced by W. Va. Code § 29-6-10. See AFSCME v. Civil Service Comm'n, 181 W. Va. 8, 380 S.E.2d 43 (1989). Previous decisions interpreting that provision have established that 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, 192 W. Va. 239, 452 S.E.2d 42 (1994); Salmons v. W. Va. Dept. of Transp., Docket No. 94-DOH-555 (Mar. 20, 1995);Hickman v. W. Va. Dept. of Transp., Docket No. 94-DOH-435 (Feb. 28, 1995); Tennant v. W. Va. Dept. of Health & Human Resources, Docket No. 92-HHR-453 (Apr. 13, 1993); Acord v. W. Va. Dept. of Health & Human Resources, Docket No. 91-H-177 (May 29, 1992). In this matter, the Assistant Director for Classification and Compensation of the West Virginia Division of Personnel, Lowell Basford, testified at Level IV that Grievant, and the other employees against whom Grievant compares his salary, are being properly compensated in accordance with the Division of Personnel's Administrative Rule governing compensation within the classified service. See 143 C.S.R. 1 § 5 (1995).

As was the case in Largent, and the prior decisions of this Grievance Board cited above, Grievant has not shown that there was any discriminatory motive when HHR set the salaries of Grievant's fellow employees at a level which exceeds Grievant's current salary, or that the salary disparities which Grievant has identified violate any statute, policy, rule, regulation, or written agreement under which Grievant works. See W. Va. Code § 29-6A- 2(i).

Consistent with the foregoing discussion, the following Conclusions of Law are appropriately made in this matter.

CONCLUSIONS OF LAW

1. A grievant alleging pay discrimination must prove the allegations in his complaint by a preponderance of the evidence. Salmons v. W. Va. Dept. of Transp., Docket No. 94- DOH-555 (Mar. 20, 1995); Wargo v. W. Va. Dept. of Health & Human Resources, Docket Nos. 92-HHR-441/445/446 (Mar. 23, 1994). 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, 192 W. Va. 239, 452 S.E.2d 42 (1994); Salmons v. W. Va. Dept. of Transp., Docket No. 94-DOH-555 (Mar. 20, 1995); Acord v. W. Va. Dept. of Health & Human Resources, Docket No. 91-H-177 (May 29, 1992).

3. Grievant has failed to establish by a preponderance of the evidence that his employer is compensating him contrary to the provisions of W. Va. Code § 29-6-10, or any other statute, policy, rule, regulation, or written agreement applicable to his employment situation.

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.

LEWIS G. BREWER

Administrative Law Judge

Dated: March 26, 1997