RANDALL SHREVE, et al,

Grievants,

v. **Docket No. 99-CORR-266**

DIVISION OF CORRECTIONS/

HUTTONSVILLE CORRECTIONAL CENTER,

Respondent.

D E C I S I O N

Randall Shreve, David Potts, and Robert Edmond, II, employees at the Huttonsville Correctional Center, each filed a grievance against Respondent, Division of Corrections ("Corrections"), in mid-May, 1999, when the State Personnel Board changed the pay grade to which their classifications were assigned, but Grievants did not receive an increase in pay as a result of this change. Each sought a five percent increase in pay, interest and lawyer fees.

The following Findings of Fact are made based upon the record developed at Level III. (See footnote 1)

Findings of Fact

1. Grievants Potts and Edmond are employed by Corrections as Corrections Case Managers. Grievant Shreve is employed by Corrections as a Corrections Unit Manager.

2. By action of the State Personnel Board, the pay grade for the Corrections Case Manager classification was changed from 11 to 12, and the pay grade for the Corrections Unit Manager classification was changed from 13 to 14, all effective May 1, 1999.

3. At the time the changes in pay grades became effective, each Grievant's salary was above the minimum for the new pay grade in which his classification was placed, and none of the Grievants received a salary increase as a result of this action.

Discussion

Grievants bear the burden of proving their allegations by a preponderance of the evidence. W. Va. Code § 29-6A-6. Mowery v. W. Va. Dep't of Natural Resources,Docket No. 96-DNR-218 (May 30, 1997). Grievants argued the rule which grants an employee a five percent salary increase per pay grade upon promotion to a higher pay grade should apply. It does not.

The Division of Personnel's Administrative Rules at § 5.4(f) provide:

> 1. When a class is reassigned by the [State Personnel] Board to a salary range having a higher minimum, the salaries of those incumbents below the minimum shall be adjusted to the new minimum.
>
> 2. Where the salary of the incumbent coincides with a pay rate in the new range, the salary shall remain unchanged.

These rules were followed with regard to Grievants. None of their salaries was below the minimum for the new pay grade. According to these rules, their salaries were not to be adjusted in any way. Only those employees who were earning less than the minimum salary for the new pay grade could receive a salary increase to the minimum salary level of the new pay grade.

Grievant Potts argued this action was a continuation of discrimination against him. He stated when his classification was reallocated from a Correctional Officer I to a Correctional Officer III, he was given a six percent pay increase rather than a ten percent increase. Then, he changed classifications to a Counselor I, in a lower pay grade, with no decrease in pay. When he was later promoted to Corrections Case Manager, two pay grades above a Counselor I, he received only a five percent increase in pay, rather than a ten percent increase.

Grievant Potts did not present enough detail regarding the specifics of these actions for the undersigned to evaluate whether his pay increases were appropriate. The Division of Personnel's Rules regarding when salaries change are dependent upon the type of transaction which has occurred, and the employee's salary at the time of the transaction. Grievant's salary may have been brought to the minimum salary for the pay grade when his position was reallocated to Correctional Officer III. Whether this was correct depends upon what Grievant's salary was before the transaction, and exactly how this change in classification occurred. When Grievant was demoted without a pay decrease, then later promoted, he was properly given only a five percent pay increase. Division of Personnel Administrative Rules, § 5.5; Dadisman v. Div. of Rehabilitation Services, Docket No. 97-

RS-290 (Mar. 26, 1998).

Further, discrimination claims must initially be supported by a demonstration that the grievant was treated in a different manner than another employee who is similarly situated. W. Va. Code § 29-6A-2(d); Steele, et al. v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989). Grievant Potts made no such comparison.

Grievants also pointed out that the pay grade for a Correctional Counselor was not changed. As a result, if an employee were promoted from a Correctional Counselor to a Corrections Case Manager prior to May 1, 1999, a two pay grade move, that employee would be given a 10% salary increase. If that same employee were promoted after May 1, 1999, it would be a three pay grade move, and he would receive a 15% salary increase. Grievants did not think this was fair. Grievant Edmond believed if an employee were promoted from Correctional Counselor to Corrections Case Manager, that employee would be earning more than he. Grievant Shrevethought the Division of Personnel should look at all classifications and pay grades to make the changes fair and equitable.

It is unclear how the above hypothetical scenario has any effect upon Grievant Shreve. Whether Grievants Potts or Edmond will ever be affected is speculative. It is entirely possible that no employee will be promoted in this manner while Grievants are in their current classifications. Further, based upon the information placed in the record regarding minimum salaries for the pay grades, an employee in a pay grade 9 would have to be making quite a bit more than the minimum for the pay grade in order to be entitled to receive more than the special hiring rate for a Corrections Case Manager upon promotion.

Moreover, Grievants did not demonstrate that the decision by the State Personnel Board to leave the Correctional Counselor classification in the same pay grade was arbitrary and capricious or clearly wrong. Just because the percentage of pay increase changes with the hypothetical move on May 1, does not mean this is unfair. It could just as easily mean that the percentage pay increase was inequitable before May 1, and the changes corrected the inequity. Grievants presented no evidence that the classification is not currently assigned to the proper pay grade.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. Grievants bear the burden of proving their allegations by a preponderance of the evidence.

W. Va. Code § 29-6A-6. Mowery v. W. Va. Dep't of Natural Resources, Docket No. 96-DNR-218 (May 30, 1997). 2. When a class is reassigned by the State Personnel Board to a higher pay grade, those employees whose salaries are below the minimum for the new pay grade shall have their salaries adjusted to the new minimum. If the employee's salary falls within the pay range of the new pay grade, the salary shall remain unchanged.

3. As Grievants' salaries fell within the range for their classifications' new pay grades, they were not eligible for a salary increase.

4. Grievants did not demonstrate that Corrections violated any rule, regulation, or policy when it did not increase their salaries when the pay grades for their classifications were changed.

5. Grievants did not demonstrate any error in the pay grade for their classifications, or that of any other classification challenged.

Accordingly, this grievance is **DENIED**.

Any party or the Division of Personnel may appeal this Decision to the circuit court of the county in which the grievance arose, or the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. W. Va. Code § 29-6A-7 (1998). 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. 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

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BRENDA L. GOULD

Administrative Law Judge

Date: August 24, 1999

Footnote: 1

Grievants Potts and Edmond filed their grievances on May 12, 1999, and Grievant Shreve filed on May 13, 1999. Grievants Potts' and Edmonds' supervisors responded at Level I on May 13, 1999, that they were disqualifying themselves as they were filing grievances over the same issue. Grievant Shreve's supervisor deniedthe grievance on May 17, 1999.

Grievants appealed to Level II, where their grievances were denied on May 14 (Potts and Edmond) and 24 (Shreve), 1999. Grievants appealed to Level III, and Level III hearings were held on May 20 (Edmond), June 1 (Potts), and June 8 (Shreve), 1999. Level III decisions denying the grievances were issued on May 28 (Edmond), June 2 (Potts), and June 11 (Shreve), 1999. Grievants then appealed to Level IV. Level IV hearings were set on the grievances for July 26, 1999, at which time the parties agreed to the consolidation of these grievances, and that they could be submitted for decision based upon the record developed at Level III of the grievance procedure, supplemented by written argument. Grievants appeared pro se, thereby incurring no legal fees, and Corrections was represented by Charles Houdyschell, Jr., Esquire. The Division of Personnel was advised of this grievance, but chose not to participate. This matter became mature for decision upon receipt of the transcript of Grievant Shreve's Level III hearing, on August 13, 1999.