CONLEY DAVID DUNLAP,

Grievant,

v.

Docket No. 03-MCHD-233

MORGAN COUNTY HEALTH DEPARTMENT,

Respondent.

DECISION

Conley David Dunlap ("Grievant") initiated this proceeding on July 16, 2003, alleging he has been unfairly compensated in his position as a Sanitarian for the Morgan County Health Department ("MCHD"). Grievant seeks back pay for the amount he believes he has been underpaid. The record does not reflect what proceedings occurred at level one, and a level two conference was held on July 15, 2003. The grievance was denied at that level on July 16, 2003. A level three hearing was conducted on August 6, 2003, followed by a written decision, denying the grievance, dated August 11, 2003. Grievant appealed to level four on August 15, 2003. A hearing was held in Westover, West Virginia, on November 6, 2003. Grievant represented himself, and Respondent was represented by Bill Kearns, Administrator of MCHD. This matter became mature for consideration upon receipt of the parties' fact/law proposals on November 17, 2003.

The following findings of fact are made based upon a preponderance of the evidence of record.

Findings of Fact

1. Grievant was hired by the MCHD as a Sanitarian sometime in 2000, in a temporary 90-day position with no benefits. At that time, he worked approximately 24hours per week at a rate of $10

per hour. This position was intended to be temporary in order to reduce a backlog of restaurant inspections which needed to be conducted by MCHD.

2. Grievant had previously been employed as a Sanitarian with another county health department on a full-time basis with benefits.

3. Although Grievant's position was intended to be a 90-day temporary position, he continued working for MCHD long after that time period had expired.

4. Grievant was still employed by MCHD on a part-time basis in September of 2001, and at that time he requested benefits, specifically reinstatement of his previously accrued sick leave and retirement benefits.

5. In September of 2001, Grievant's position became a .5 (one half full-time equivalent), part-time position with benefits, with a salary of approximately $11,900 per year.

6. Registered Sanitarian is listed in the Division of Personnel's (DOP) classification and compensation system as Pay Grade 13, with a pay range of $23,784 to $43,992 annually.

7. Shortly after Grievant was granted benefits, his position became full-time, and he was awarded a five percent pay increase, due to additional duties.

8. Grievant's position has never carried health insurance, due to cost constraints suffered by MCHD. Many of its employees are not provided with state health insurance.

9. Other employees of MCHD, such as the administrator and registered nurses, are paid higher salaries than Grievant. 10. Only one other registered sanitarian has been employed by MCHD during the time frame of Grievant's employment, and that individual was paid approximately $25,000 to $26,000 annually.

11. Due to health problems, Grievant retired on October 1, 2003. (See footnote 1)

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Payne v. W. Va. Dep't of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). See W. Va. Code § 29- 6A-6.

Grievant contends that he has been unfairly compensated since the beginning of his employment as a temporary, 90-day employee, and that this unfairness continued until his retirement. He believes

that, because of his 13 years of experience as a Registered Sanitarian, he should have been paid more than "entry" salary.

The West Virginia Supreme Court of Appeals has held 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). "Additionally, 128 C.S.R. 62, §§ 19.4 states any classified employee 'whose base salary is at least at the equity step for that pay grade, shall be deemed to be equitably and uniformly compensated in relation to other classifiedemployees within the pay grade . . . .' As noted by the Court in Largent, *supra,* pay differences may be 'based on market forces, education, experience, recommendations, qualifications, meritorious service, length of service, availability of funds, or other special identifiable criteria that are reasonable and that advance the interest of the employer.' Id. at 246." Jenkins v. Dep't of Envtl. Protection/Office of Mining and Reclamation, Docket No. 03-DEP-154 (Sept. 12, 2003).

Based upon these principles, the undersigned simply cannot conclude that Grievant has not been fairly compensated. While Grievant's frustration is understandable, in that he is an experienced individual who has been paid an entry level salary, he has been compensated within the pay scale for his job classification. In a perfect world, Grievant's salary would have been much higher. However, MCHD has established that it has suffered serious budget constraints over the past few years, and it granted Grievant every benefit which was possible in view of those financial issues. Grievant was given leave and retirement benefits, and was even granted a salary increase when he took on additional duties. Employees in other classifications may have received higher salaries, but there is no legal requirement that employees in different classifications receive similar pay. As to Grievant's classification, MCHD's only other Registered Sanitarian was also paid within the salary range for Pay Grade 13. There is no evidence that MCHD has acted in a discriminatory manner, or has otherwise done anything improper, regarding Grievant's position and his salary.

The following conclusions of law support the decision reached.

Conclusions of Law

1. In a non-disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Payne v. W. Va. Dep't of Energy, Docket No. ENGY-88-015 (Nov. 2,

1988). See W. Va. Code § 29-6A-6.

2. Employers are only required to compensate employees 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).

3. Grievant was compensated by MCHD within the pay scale for his position of Registered Sanitarian.

Accordingly, this grievance is **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Kanawha County or 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 (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 Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: December 11, 2003 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

When this grievance was originally filed, Grievant made other allegations regarding management issues and events which had occurred during his employment. Because no financial relief was requested, these claims are hereby dismissed, due to Grievant's retirement and the inability of the undersigned to award any relief on those matters.