THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

PATSY BLAKE, et al.,
Grievants,

v. **Docket No. 2011-0370-CONS**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
WILLIAM R. SHARPE, JR. HOSPITAL/
DIVISION OF PERSONNEL,
Respondents.

DECISION

Grievants filed this action at level one on September 14, 2010, against their employer, William R. Sharpe, Jr. Hospital, alleging that the hospital was "now mostly forensic" and they requested to "be made whole, including correctional officer pay." Respondent's Chief Administrator waived this grievance to level two on September 21, 2010. A level two mediation session was conducted on February 17, 2011. Grievants perfected their appeal to level three on that same date. A level three hearing was conducted before the undersigned Administrative Law Judge on July 10, 2012, at the Grievance Board's Westover office location. Grievants appeared by Catherine Wilt and by their representative, Gordon Simmons, UE Local 170, West Virginia Public Workers Union. The Department of Health and Human Resources appeared by its counsel, Michael E. Bevers, Assistant Attorney General. The Division of Personnel appeared by its counsel, Karen O'Sullivan Thornton, Assistant Attorney General. This matter became mature for consideration upon receipt of the last of the parties' fact/law proposals on August 13, 2012.

Synopsis

William R. Sharpe, Jr. Hospital health care workers filed this grievance alleging that they should be paid as Correctional Officers because the hospital houses mostly forensic patients. Grievants abandoned their claim that they should be paid as Correctional Officers at level three, and instead claimed that they wanted a 5% pay increase because they work with difficult patients in a dangerous job. The record was unclear on the issue of classification; however, Grievants did not meet their burden of proof and establish Respondent was required to provide a 5% pay increase simply because they work at William R. Sharpe, Jr. Hospital.

The following findings of fact are based upon the record developed at level three.

Findings of Fact

1. Grievants are employed at the William R. Sharpe, Jr. Hospital as Health Service Assistants and Licensed Practical Nurses. Catherine Wilt appeared for all Grievants at the level three hearing. Her testimony was the only evidence presented by Grievants.

2. Grievant Wilt has worked at the William R. Sharpe, Jr. Hospital as a Health Service Worker for almost ten years.

3. When a forensic patient leaves the hospital to go to a medical appointment, two hospital employees must remain with the forensic patient at all times. Forensic patients can be aggressive at times, and have been known to attack hospital employees and civilly committed patients.

4. Grievant Wilt has provided health care services to forensic patients since she began working at William R. Sharpe, Jr. Hospital. Grievant Wilt was told before she was hired by the hospital that she would be providing care to forensic patients. She acknowledged that none of the Grievants were paid less than the pay grade assigned to their classification.

5. William R. Sharpe, Jr. Hospital population is young adults through geriatric adults who are psychiatric or behavioral health patients. The psychiatric patients come to the hospital through mental hygiene, involuntary commitment, and drug dependency problems. Forensic patients are individuals with criminal charges who are ordered into the custody of the hospital by circuit courts having jurisdiction over their respective criminal cases. The hospital has no latitude in whether it accepts forensic patients that are ordered committed.

6. Health Service Workers are the most hands on of the hospital's employees; they take vital signs, interact with the patients, and accompany the patients on trips away from the hospital. Health Service Assistant Charge Aides assist the nurses with daily worksheets, mentor the Health Service Workers, and make sure assignments get completed. Health Service Assistant Programmers prepare the therapeutic activity schedules and coordinate the therapeutic programs on the unit. Licensed Practical Nurses administer medications and provide other nursing services.

7. The job descriptions for Health Service Worker, Health Service Assistant Charge Aide, and Health Service Assistant Programmer provides that they all are responsible for restraining violent, potentially violent, and suicidal patients. Licensed

Practical Nurses are responsible for the treatment of patients with mental health conditions and psychiatric disorders.

8. William R. Sharpe, Jr. Hospital does not employ Correctional Officers. All Grievants are paid within their pay range and none are paid less than the pay grade assigned to their classification. All of William R. Sharpe, Jr. Hospital's employees were informed before they were hired to work at the hospital that they would be providing care to forensic patients.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *See also Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

The issue of classification was not adequately addressed by Grievants to make any ruling on that claim, in fact, it appears that that allegation was abandoned at level three.[1] The record did establish that Grievants are requesting that the undersigned order the

[1]The Grievance Board has long held that elements or allegations of the grievance which are raised, but not pursued or developed will be considered abandoned. *Church v. McDowell County Bd. of Educ.*, Docket No. 33-87-214 (Nov. 30, 1987).

Department of Health and Human Resources to increase their respective pay grades or give them a 5% pay increase because they work with difficult patients in a stressful and dangerous job. The undersigned agrees with both Respondents that he is without authority to order a discretionary pay raise or monetary damages. Grievants failed to meet their burden of proof and provide to the undersigned any rule, policy, or law that would require Respondent, Department of Health and Human Resources, to provide Grievants with a 5% pay increase simply because they work at the William R. Sharpe, Jr. Hospital.

The following conclusions of law support the decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *See also Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988).

2. Grievants have failed to prove a violation, misapplication or misinterpretation of any law, rule, regulation or policy under which they work in relation to their compensation.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public 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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (2008).

Date: October 22, 2012

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Ronald L. Reece
Administrative Law Judge