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LACAUSA DEEM

v.

DOCKET NO. BOR-88-267

WEST VIRGINIA UNIVERSITY

DECISION

The grievant, Lacausa Deem, is employed by West Virginia University (University) as a Food Service Worker IV assigned to West Virginia University Hospitals, Inc. (Corporation).¹

Ms. Deem filed a level one grievance on October 13, 1988 in which she alleged that management's decision to remove the designation "lead" from her title and to unilaterally changed the terms and conditions of her employment in violation of various rules, regulations and written agreements as well as constituting discrimination. The grievance was denied at levels one and two, although the level two decision suggested that the grievant should retain the

¹The grievant is a University employee "leased" to the Corporation.

designation "lead". The matter was submitted to level four for a decision based upon the record supplemented by proposed findings of fact and conclusions of law submitted by both parties.

The facts of the matter are not in dispute. In 1984 the grievant's title of Food Service Worker IV was amended to include the term "lead". For a period of time and intermittently thereafter she worked as relief supervisor for which she received differential pay.² Some time during or before July 1988 the grievant was stripped of the "lead" position and her duties were downgraded.

The grievant argues that the Corporation has unilaterally and without cause changed the terms and conditions of her employment as well as her employment status by removing the term "lead" from her title and changing her duties which formerly consisted of handling time cards, schedules, storeroom work, assisting in ordering, quality assurance duties and the evaluation of tray passers. The grievant states that her duties now include scraping trays, catching dirty dishes and tray line duty, essentially the work of a Food Service Worker II. The grievant bases the charge of discrimination on the Corporation's appointment of another employee for "lead" training.

²The grievant clarifies that she was never classified as a supervisor but filled in as a group leader. The term "lead" appeared on the grievant's work schedules and time cards (T. pp. 14-15).

David James, Director of the Department of Nutrition and Dietetics, representing the Corporation at level two, opined that all of the work completed by the grievant was within the realm of what he expected of a Food Service Worker IV but that her inability to perform effectively as a supervisor had resulted in a discontinuation of her being scheduled as supervisory relief (T. p. 36). Mr. James explained that the grievant's duties have changed since the hospital moved into the new building because of the difference in the way the department is managed. In line with these changes Mr. James testified that state positions were being reviewed for reclassification and expressed his anticipation that they soon may be downgraded due to the difference in duties. Mr. James noted that the position description for Food Service Worker IV did not include supervisory relief work as a routine part of the job and asserts that the grievant's former role of "lead" employee no longer exists due to the revised work methods used in the new facility. To substantiate this assertion, and to address the grievant's charge of discrimination, Mr. James stated that the employee who had been scheduled for training as a relief supervisor was never given that training due to a lack of need.

The evidence establishes that while working under the "lead" position title the grievant was at times responsible for supervisory or semi-supervisory duties which required a greater level of skill or ability than that required of

other food service workers. Although the enhanced job title had not been processed by the University's Division of Classification it was in fact either a promotion for the grievant or an upgrade of the position held by the grievant. This finding is amply supported by documents which state the grievant's title to be "lead" and by the fact that she was assigned as a relief supervisor for which she was granted differential pay.

The Corporation's action has resulted in the loss of the title "lead" and potential differential pay. To properly implement such a demotion or downgrade the Corporation must follow applicable West Virginia University and Board of Regents procedures. A reclassification may be accomplished by requesting that the Classification and Compensation Unit of the Department of Human Resources review the position. Until such time that the position is reclassified by West Virginia University the grievant must be reinstated to the title "lead" and given the opportunity to serve as relief supervisor.³

In addition to the foregoing narration it is appropriate to make the following specific findings of fact and conclusions of law.

³Although the promotion/upgrade was never processed through the University's classification department, once given, it cannot be taken away without following proper University and Board of Regents procedures.

Findings of Fact

1. The grievant is employed by West Virginia University as a Food Service Worker IV assigned to West Virginia University Hospitals, Inc.

2. In 1984 the grievant's title of Food Service Worker IV was amended to include the term "lead". As "lead" the grievant occasionally was assigned to work as relief supervisor for which she received differential pay. This promotion or upgrade was implemented informally and was not processed through the University's classification procedure.

3. Sometime during 1988, during or before July, the Corporation stripped the grievant of the position designation "lead" and disallowed any further assignment as relief supervisor. This change in duties and title was also not processed by the University's Division of Classification and Compensation.

4. Another employee was appointed to receive "lead" training; however, this training did not occur due to a lack of need.

5. Different methods and procedures of food production utilized in the new hospital have resulted in varying personnel needs.

Conclusions of Law

1. University personnel employed by the Corporation are University personnel in all respects. W.Va. Code §18-11C-4(d).

2. When significant changes occur in the principal duties and responsibilities of a position, it is the responsibility of the supervisor to recommend through established procedures that the position be reviewed. W.Va. Board of Regents Policy Bulletin No. 62, §9.1.

3. The Corporation failed to properly process the grievant's demotion or position downgrade through the University's classification procedure.

4. The grievant failed to show that she was deprived of any specific opportunity to work as a relief supervisor.

Accordingly, the grievance is **GRANTED** to the extent the designation "lead" shall be reinstated to her job title and that she will be scheduled as relief supervisor when needed. The grievance is **DENIED** regarding backpay.

Either party may appeal this decision to the Circuit Court of Monongalia County or to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code §18-29-7) Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

DATED: December 21, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER