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RANDY HENDERSON

v.

DOCKET NO. VR-88-023

W.VA. DIVISION OF VOCATIONAL SERVICES
and/or W.VA. CIVIL SERVICE COMMISSION

DECISION

Grievant, Randy Henderson, is employed by the Division of Vocational Rehabilitation Services (Division) as a Senior Rehabilitation Counselor. Mr. Henderson initiated grievance proceedings in July 1988 as a result of the implementation of a revised classification/compensation plan which he alleges to be discriminatory and results in favoritism and harassment.¹ The grievance was denied at levels one through

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The Civil Service Commission was not initially named as a respondent; however, as the Commission regulates the Division's classification/compensation plan it is an
(Footnote Continued)

three and a level four hearing was held on November 17, 1988. Additional information requested by the Hearing Examiner was submitted by the Civil Service Commission on November 28, 1988 and January 23, 1989.

At the level four hearing Lowell Basford, Acting Director of Personnel for the Civil Service Commission, provided the following historical background. The Division of Vocational Rehabilitation had for some time been experiencing difficulty in recruiting and retaining counselors. In an effort to alleviate this problem a plan to upgrade salaries was developed and submitted to the Civil Service Commission for approval. The pertinent part of this plan revised employee classification and compensation as follows: Counselors I, paygrade 12, became Vocational Counselor Trainees, paygrade 13; Counselors II, paygrade 16, became Rehabilitation Counselors, paygrade 17, and Counselors III, paygrade 18, were reclassified as Senior Counselors, paygrade 19. According to Mr. Basford the Counselor I, II and III classifications had been determined primarily by seniority whereas the Trainee-Counselor-Senior Counselor classifications were based upon the duties and

(Footnote Continued)
indispensable party for the resolution of this grievance. The Commission was represented at the level four hearing by Lowell D. Basford and is hereby joined as a party of interest in this matter.

responsibilities of the positions. Compensation was determined by the revised paygrade and the step at which the individual had previously held.² For example, if an employee classified as a Counselor I and compensated at paygrade 12, step 10 had been reclassified as a Senior Counselor he would be compensated at paygrade 19, step 10. The Civil Service Commission approved the Division's plan which became effective July 1, 1988.

Prior to July 1 the grievant had been classified as a Counselor III compensated at paygrade 18, step 1. The reclassification placed him as Senior Counselor, paygrade 19, step 1. The grievant agrees that he is properly classified as a Senior Counselor but argues that the revised compensation plan lacks uniformity among individuals who have similar education, training, experience and responsibilities and results in discrimination, favoritism, substantial detriment, harassment and interference with his job performance, health and safety.

In support of his claim the grievant presented a chart (Grievant's Exhibit 3) which he represents as outlining the duties, seniority, and qualifications of four similarly

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The Civil Service compensation schedule assigns each job title a paygrade from a scale of 1 to 35. Within each paygrade are 12 steps or levels which provide for salary increases through merit raises, etc.

situated employees including himself.³ The chart indicates that the salary range of the four employees prior to July 1 was \$19,663 to \$21,899 and is now \$20,571 to \$30,940. A review of the salary revisions shows the following:

<u>Employee</u>	<u>Prior to 7/1</u>	<u>After 7/1</u>	<u>Difference</u>
A	\$19,633	\$24,615	\$4,952
B	21,000 (approx.)	26,300	5,300
C	21,899	30,940	9,041
Grievant	19,663	20,571	908

The grievant requests that his salary be increased to an amount equal to the average of that earned by the three employees addressed above, \$27,285, plus a 5% merit increase for a total of \$28,352.⁴

The Division acknowledges that the revision in compensation may have resulted in inequities but contends that it followed Civil Service System procedures in implementing the reclassification plan. The Civil Service Commission denies any discrimination as all employees were treated similarly.

³ This chart gives very little specific information but indicates generally that the four individuals are similarly situated in all areas except salary. Neither the Division nor the Commission objected to its submission.

⁴ Apparently in an attempt to somewhat equalize salaries the grievant was awarded a merit raise effective September 16, 1988 which increased his salary to \$21,516 per annum.

Mr. Basford explained that employees who had originally been in a lower paygrade but at a higher step did receive a larger salary increase than the grievant who had been classified in a higher paygrade but at a lower step. He asserts that this situation could not have been foreseen and was not a result of willful intent to deprive the grievant of what he may believe he is due and that the Division properly followed Civil Service Commission Administrative Rule 6.04(f)(1)(a) in implementing a step-for-step adjustment.

While the step-for-step plan was applied equally to all counselors and did not itself constitute discrimination, when implemented in conjunction with the revised job classifications and paygrades it did result in disproportionate salary increases. The grievant has shown that the salary range of four similarly situated employees has increased from \$2,300 to \$10,000 as a result of the reclassification/compensation plan. The differences in their salaries are not related to their actual job responsibilities, but are the result of carrying over a part of the prior salary schedule into the revised pay plan. In some instances a step-for-step conversion may be fair and equitable; however, in this instance it clearly was not. The wide range of compensation for similarly situated employees is in violation of W.Va. Code §29-6-10(2) which directs that the principle of equal pay for equal work shall be followed.

Findings of Fact

1. Grievant is employed by the W.Va. Division of Vocational Rehabilitation Services as a Senior Rehabilitation Counselor.

2. Prior to July 1, 1988 the grievant had been classified as a Rehabilitation Counselor III and compensated at paygrade 18, step 1.

3. Due to difficulty in recruiting and retaining counselors the Division developed a revised classification/compensation plan which classified positions based upon duties and responsibilities. The positions were assigned higher paygrades; however, the reclassified employees remained in the same pay step which they had previously held. The plan was implemented effective July 1, 1988 with the approval of the Civil Service Commission.

4. The result of the revised pay plan was to increase the grievant's salary from paygrade 18, step 1 to paygrade 19, step 1. Other counselors who had been classified as Counselors I or II could have been raised a maximum of seven paygrades yet retained a higher step rating.

5. Retaining the step-for-step assignments within the revised paygrades has resulted in a wide range of compensation for Senior Counselors who possess similar qualifications, perform the same duties and have comparable experience.

6. The step-for-step salary adjustment was in compliance with Civil Service Regulation 6.04(f)(1)(a).

Conclusions of Law

1. There is no evidence that the revised pay plan was developed or implemented with the intent to be discriminatory, treat other employees more favorably or to harass the grievant.

2. The revised pay plan which upgraded position paygrades but retained the same pay steps within the grades resulting in salary differences of as much as \$10,000 for similarly situated employees is in violation of W.Va. Code §29-6-10(2) which provides that employees shall receive equal pay for equal work.

Accordingly the grievance is **GRANTED** to the extent that the Division and the Civil Service Commission are Ordered to amend, with all due haste, the classification steps of all employees to reflect that similarly-situated individuals are compensated uniformly.

Either party or the West Virginia Civil Service Commission may appeal this decision to the Circuit Court of Hampshire County 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 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 February 28, 1989

Sue Keller

SUE KELLER

HEARING EXAMINER