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CAROLYN S. KYLE

v.

Docket No. VR-88-006

WEST VIRGINIA STATE BOARD OF REHABILITATION,  
DIVISION OF REHABILITATION SERVICES and  
WEST VIRGINIA CIVIL SERVICE COMMISSION

D E C I S I O N

Grievant, Carolyn Kyle, is employed by the Division of Rehabilitation Services (Division) as a Rehabilitation Counselor presently assigned to the agency's Huntington office. She filed a Level IV appeal from on August 12, 1988 alleging that a reclassification of employees within the agency had been implemented in an arbitrary and capricious manner and, as a result, she had been demoted without cause. A hearing was held November 9, 1988 whereupon the West Virginia Civil Service Commission (Commission) was joined as an indispensable party.<sup>1</sup> The grievant and Division submitted

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<sup>1</sup>Upon the conclusion of the presentation of evidence by grievant and Division, Mr. Lowell Basford, representative for the Commission, made a  
(footnote cont.)

proposed findings of fact and conclusions of law by February 21, 1989. The Commission submitted a memorandum of law on February 8, 1989.

The facts giving rise to the grievance are essentially undisputed. On June 24, 1988 at a meeting in the Division's Huntington office, grievant and other counselors were informed by Cornelius Williams, District Supervisor, that the positions Rehab Counselor Trainee, Rehab Counselor I, II and III had been reclassified by the Commission and, as a result, there would be only three counselor positions, namely, Rehab Counselor Trainee, Rehab Counselor and Senior Rehab Counselor. Employees in attendance were also informed that the action would provide a substantial pay raise for those counselors at the lower levels and that anyone employed at any level of the Rehab Counselor series would receive at least a five percent (5%) pay raise. Grievant was employed as a Rehab Counselor III assigned to the Prester Mental Health Center at Huntington at the time. By letter dated July 12, 1988, she was informed by Mr. Earl Wolfe, Director, that her new classification would be Rehab Counselor effective July 1, 1986 and her annual salary had been increased by five percent (5%).

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(footnote cont.)

motion to continue the proceedings so that counsel could be sought and evidence in support of the Commission's position be presented and the motion was granted. By letter dated January 9, 1989, Mr. Basford indicated no further proceedings were necessary.

At the time of the reclassification there were eleven (11) employees within the grievant's district who held the title Rehab Counselor III and seven (7) of those employees were given the new Senior Counselor title. The actual duties performed by employees in the job series did not change as a result of the reclassification. Although it appears all employees involved received a five percent (5%) merit raise at the time, those who were assigned the Rehab Counselor positions were also placed in a pay grade which had a lower maximum salary than their previous Rehab Counselor III positions.<sup>2</sup>

Grievant characterizes the actions of the Commission and Division as a "demotion under the guise of reclassification" and contends she should have been awarded a Senior Rehab Counselor position as the duties she was performing at the time of the reclassification clearly qualified her as such. She maintains the implementation of the plan was not objective or equitable and was therefore arbitrary.

The Commission maintains its actions were taken as a result of the Division's request for a more realistic job series structure and pursuant to its authority under W.Va. Code §29-6-10(1) to prepare, maintain and revise position classification plan for all positions in the classified service. It is the Commission's

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<sup>2</sup>Grievant's former pay grade had an entry level salary of \$18,156.00 and a maximum salary of \$33,183.60. Her new pay grade has an entry level salary of \$17,340.00 and a maximum salary of \$31,696.80.

position that no employee has a vested right in any job title and the new counselor job series more accurately reflects the actual duties and responsibilities of all employees. The Division contends that once the Commission finalized the reclassification plan, it determined the criteria for placement in the Senior Counselor position would be previous administrative duties held by the Rehab Counselor III's. The Division maintains the grievant did not have the administrative responsibilities that entitled seven (7) employees to the new job titles and, in any event, the grievance was not filed within the timelines contained in W.Va. Code §29-6A-4(e).

Initially, it must be noted that both the Division and the Commission objected to the grievant's characterization of their actions as a demotion and her use of the expedited grievance procedure contained in W.Va. Code §29-6A-4(e). The West Virginia Education and State Employees Grievance Board has recently held that a demotion for the purposes of those provisions is defined as a decrease in employment rank, title and/or pay for disciplinary reasons and in cases of reclassification without a disciplinary intent, a grievant must proceed through the lower levels of the grievance procedure. Williamson v. West Virginia Department of Human Services and West Virginia Civil Service Commission, Docket No. 89-DHS-33 (February 27, 1989). In the present case, grievant did not present any evidence of a disciplinary intent on the part of the Commission or the Division but a remand at this

time only would necessitate a further delay in a resolution of the grievance. See Board of Education v. Casey, 349 S.E.2d 436 (W.Va. 1986); Chapman v. Harrison County Board of Education, Docket No. 18-87-170-2 (March 1, 1989).

As to the assertion that the grievance was untimely,<sup>3</sup> the grievant's testimony reveals she and other counselors were informed of the reclassification and the names of the persons who would be awarded the Senior Counselor titles on June 24, 1988 but it was not made clear that the plan was final. According to the grievant, at least one change to be implemented as a result of the reclassification was announced at the meeting but later rescinded. Those Rehab Counselor III's who did not receive the Senior Counselor title were no longer going to have the authority to approve their own rehabilitation plans, but after some discussion that decision was retracted. Grievant subsequently received the letter of July 12, 1988 formally announcing the implementation of the reclassification plan which became effective July 1, 1988. The grievance was filed within ten (10) days of her receipt of that letter, with the chief administrator of the Division and the Commission's Director of Personnel. The record as a whole does not support the Division's characterization of the June 24, 1988 meeting as the final action on the reclassification.

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<sup>3</sup>Consideration of this claim is complicated by the fact that it was not raised during the Level IV hearing but in the Division's proposed findings of fact and conclusions of law. Testimony during the hearing was, therefore, not specifically related to the issue and grievant was not able to rebut the allegation.

Although neither the grievant nor Mr. Williams testified that written confirmation was required before the changes were initiated, that is the only reasonable inference to be drawn from the July 12, 1988 letter. The grievance was, therefore, timely filed in accordance with the provisions of W.Va. Code §29-6A-4(e).

The central issue raised by the grievance is whether the procedure used to select the seven (7) employees for the new Senior Counselor positions was a fair one reasonably based on their actual duties and the new job description for those positions. According to the testimony of Mr. Cornelius Williams, grievant's supervisor, he initially made a request to the Division's central office that all Rehab Counselor III's be awarded the new classification but was told his division had only been allocated seven (7) such positions.<sup>4</sup> Mr. Williams further testified that the central office designated four (4) offices within his division as branch offices and directed him to grant four (4) of the allocated seven (7) Senior Counselor titles to the "supervising" Rehab Counselor III's within those offices. According to Mr. Williams, the directive more or less made the selection of four

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<sup>4</sup>It appears the Commission had a great deal of input on how many Senior Rehab Counselor positions would be allocated for the entire agency but it is not clear whether the Commission had the final authority to establish the allocation of seven (7) in the grievant's district.

(4) Senior Counselors "automatic" and he then made the selection of the remaining three (3) on the basis of whether or not they had previous experience as a "team leader" or the head of a special project (T.\_\_). Mr. Williams further stated that, while he considered the grievant a good counselor, neither he nor the central administration considered her office at Presteria a branch office and her past service with the division did not entail the type of supervision of co-workers or special projects which would entitle her to the new classification.

For reasons previously discussed, grievant's contention that the actions of the Commission and the Division in effect demoted her without cause under the guise of reclassification is without merit. As noted by Mr. Lowell Basford, representative for the Commission, the changing nature of the responsibilities of a particular job series requires a periodic reclassification in that series of job descriptions and differences in salaries are to accurately reflect those responsibilities. The reclassification necessarily involves the assignment of new titles and even placement of employees in pay grades lower than those previously held but the overall result is a job series with position descriptions which reasonably inform both the employee and employer of what is required and expected of one holding a particular position. In the present case it is generally conceded that there was a need for a reclassification in the Rehab Counselor job series as employees holding the same titles and receiving different

salaries were performing the same tasks.<sup>5</sup> It is also conceded that there was no impropriety in the manner in which the Commission reviewed the duties performed by various employees and developed the new job series and corresponding job descriptions. Grievant's focus, rather, is upon the manner in which employees were awarded the new title and its greater earning potential which was the responsibility of the Division and her assertion that it was an arbitrary one has a great deal of merit.

The most obvious evidence that the process was tainted by considerations other than the realignment of titles, salaries with the actual duties of employees in the job series is the fact that Division administrators arbitrarily decided that only seven (7) persons within grievant's district would receive the Senior Counselor designation. If the true purpose of the plan was to effect an equitable placement of employees under realistic job titles, a decision to limit the number of Senior Counselors without regard for how many employees might actually be entitled to the designation, was in direct contravention of that purpose. The decision obviously diverted at least part of the focus of Mr. Williams' analysis from which employees should, by virtue

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<sup>5</sup> It was precisely this type of situation which the West Virginia Supreme Court of Appeals condemned in American Federation of State, County and Municipal Employees v. Civil Service Commission, 324 S.E.2d 363 (1984) (A.F.S.C.M.E.).

of their functions, get the new designation to which employees should not.

The Division's mandate to Mr. Williams that Rehab Counselor III's, who had been supervisors of branch offices, be awarded the new positions was similarly inconsistent with the intent of the plan. That directive inhibited and perhaps precluded a structured review of actual duties and responsibilities of all the III's which might have indicated some were performing the type of supervisory functions contemplated by the Senior Counselor job description but outside the designated branch offices. That description does generally emphasize responsibility for some supervision of other employees but as evidenced by the description's list of twenty (20) "Examples of Work Performed" of which only one (1) is related to "temporary supervision", the position encompasses a great deal more. Moreover, according to Mr. Williams, the Division's determination of which of its various offices were branch offices for the purposes of the reclassification plan was made for the first time shortly before July 1, 1988.<sup>6</sup> That decision effectively prevented an adequate assessment of any supervisory duties the grievant might have been performing

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<sup>6</sup> It is simply unclear how the Division reached this determination or how it reached the conclusion that grievant's office, where she supervised a secretary and provided a broad range of mental health rehabilitation services, was something less. Significant in this regard is the fact that, according to grievant's unrefuted testimony, she was designated a supervisor in the Division's directory of employee's addresses and phone numbers.

in her office at Presteria which may have coincided with those in the Senior Counselor description.

Finally, the incongruous nature of the implementation of the plan and perhaps even favoritism is evidenced by the designation of Mr. Joe Gwinn as a Senior Rehab Counselor. Mr. Gwinn was functioning as an Employer Services Representative in the Huntington District office at the time and according to Mr. Williams, his duties included a caseload management, the organization of employees in advisory groups and "lead staff" responsibilities. It was apparently the management of special employee-oriented projects and occasional supervisory duties which prompted Mr. Williams to assign him to one of the remaining three (3) Senior Counselor positions. Mr. Gwinn did not, however, have the authority to independently design and implement his own client rehabilitation plans. He was only given that authority on or shortly after July 1, 1988, the same time he assumed his new designation (T.\_\_). As previously discussed, the job description is broad in scope and emphasis should not have been placed on one particular aspect of the Senior Counselors functions to the exclusion of others but a comparison of that description with that of the Rehab Counselor position reveals that the lack of authority to approve plans in the latter is a substantial difference in the two. The description for the Senior Counselor specifically

provides:

Nature of Work: This is the career level job class in the Rehabilitation Counselor job series. The incumbent functions at the highest level of professional expertise, including the independent design and implementation of client rehabilitation plans. In conjunction with his primary client-serving role, he may serve as a co-worker consultant, team leader, temporary supervisor, working supervisor of a small office, and/or perform limited administrative duties.

It is clear that the authority is an integral and essential component of the position and apparently one which was afforded a great deal of weight in the Commission's development of the new job series. Mr. Williams' assertion that a decision to grant Mr. Gwinn the authority<sup>7</sup> had been considered for some time and the fact that he was awarded such when he was designated a Senior Counselor was just a coincidence, was not persuasive.

The inconsistencies in the Division's implementations of the plan makes the consideration of grievant's assertion that her duties qualified her for the Senior Counselor designation somewhat difficult but a comparison of those duties with the job description reveals she is correct. Grievant has had the authority to design and implement her own client rehabilitation plans for at least six (6) years and according to her un rebutted testimony, she

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<sup>7</sup>It is undisputed that a supervisor has reviewed and approved Mr. Gwinn's plans since 1982 and grievant has had the authority for at least six (6) years.

provides on an as-needed basis co-worker consultations in the field of rehabilitation services for the mentally ill (T.\_\_).<sup>8</sup>

She was also undeniably the working supervisor of a small office and, in that capacity, performed limited administrative duties.<sup>9</sup>

Of the twenty (20) "Examples of Work Performed", grievant performs at least twelve (12).<sup>10</sup> There was no serious contention that grievant did not possess the "required knowledge, skills and abilities" listed in the description and she clearly meets the minimum training and experience requirements contained therein. It is, therefore, reasonable to conclude that the grievant is entitled to the designation of Senior Rehab Counselor and its higher rate of pay and would have been awarded such had the implementation plan been free of arbitrary and capricious decisions.

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<sup>8</sup>Mr. Williams conceded that grievant, by virtue of her past service, was the most proficient counselor within his district in this field.

<sup>9</sup>Those duties would include the direction of her secretary's day-to-day activities, approval of vacation and sick leave requests, and periodic personnel evaluations.

<sup>10</sup>It should be noted that the list is not one of duties which a Senior Counselor is required to do and many of those are described so ambiguously that it could be reasonably concluded that grievant is performing several more.

In addition to the foregoing, the following findings of fact and conclusions of law are incorporated herein.

#### FINDINGS OF FACT

1. At the request of the Division and pursuant to its authority to do so in W.Va. Code §29-6-10(1), the Commission conducted an analysis of the duties and responsibilities of employees in the Rehab Counselor series and developed a reclassification of said series which resulted in the creation of three new positions, Rehab Counselor Trainee, Rehab Counselor and Senior Rehab Counselor.

2. Grievant, Carolyn Kyle, was employed by the West Virginia Board of Rehabilitation, Division of Rehabilitation Services as a Rehab Counselor III in July 1988 when the reclassification of the Rehab Counselor job series was developed by the West Virginia Civil Service Commission and the implementation of the plan by the Division resulted in her assignment to Rehab Counselor and placement in a lower pay grade.

#### CONCLUSIONS OF LAW

1. The reclassification of a job series by the West Virginia Civil Service Commission and its implementation by the appointing authority must be conducted in a manner which is not arbitrary

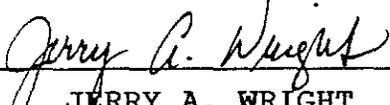
or capricious. Hazelock v. Civil Service Commission of West Virginia and the Department of Human Services, No. 17280 (W.Va. Supreme Court of Appeals (3/19/87)).

2. The implementation of the reclassification plan for the Rehab Counselor job series within the Division's District Five was not reasonably based on the actual duties of the employees involved and was therefore arbitrary and capricious.

3. Grievant's duties and responsibilities are commensurate with those of the Senior Rehab Counselor and the Division's actions prevented her assignment to that position.

Accordingly, the grievance is **GRANTED** and the West Virginia Board of Rehabilitation, Division of Rehabilitation Services and the West Virginia Civil Service Commission, to the extent that it has authority to allocate positions, are hereby **ORDERED** to instate the grievant, Carolyn Kyle, to the position of Senior Rehabilitation Counselor and the proper pay grade and to further compensate her for any loss of wages and benefits she may have incurred as a result of the improper reclassification.

Either party or the West Virginia Civil Service Commission may appeal this decision to the Circuit Court of Cabell 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.

  
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JERRY A. WRIGHT  
Chief Hearing Examiner

Dated: March 28, 1989