



REPLY TO:
401 Davis Avenue
Suite 315
Elkins, WV 26241
Telephone: 636-1123

Members
James Paul Geary
Chairman
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
GASTON CAPERTON
Governor

Offices
240 Capitol Street
Suite 515
Charleston, WV 25301
Telephone 348-3361

L. HENRY NEFFLEN

v.

DOCKET NO. DHS-88-068

DEPARTMENT OF HUMAN SERVICES

DECISION

Grievant, L. Henry Nefflen, is employed by the Department of Human Services (Department) as a Social Service Worker III assigned to the Area 10 office in Elkins. Mr. Nefflen filed a level four grievance appeal on December 15, 1988 in which he alleged discrimination and prejudice in his job assignment and compensation. The grievance had been denied at levels one through three; an evidentiary hearing was conducted at level four on February 1, 1989.

The facts of this matter are undisputed. The grievant was employed by the Department in 1984 as a Social Worker IV. Shortly thereafter, as a result of an agency-wide revision his classification was changed to Child Protective Service (CPS) Worker. In this capacity the grievant was assigned child abuse/neglect and foster-care cases.

Sometime in the late summer or early fall of 1985 the grievant was requested to assume all of the foster-care caseload which had previously been divided among the CPS workers. The basis for this request was to consolidate the cases and assign the responsibility of establishing better compliance with federal rules and regulations to one individual. The grievant accepted the reassignment with the knowledge that it would result in his reclassification to Social worker III, a demotion. He states that he was assured he would suffer no reduction of salary or other detrimental effects.

The grievant states that beginning in November 1985 he worked primarily with foster-care but he continued to do some CPS work until June 1987.¹ According to the grievant he was assigned no CPS cases from June 1987 until he began grievance proceedings in September 1988. Additionally, he states that he has not received a salary increase since that time and has the lowest salary of the four individuals who work in the crisis intervention unit, and that he has been denied continuing education training to renew his license as

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The grievant dates the beginning of the discrimination at June 1987 when he returned to work from a 254 day suspension imposed as a result of criminal charges being brought against him regarding the battering of his spouse. Although the charges were ultimately dropped the grievant believes the stigma left by them and the efforts be made to regain his position have resulted in the alleged discriminatory treatment.

the Department did not approve his attendance at an Adult Protective Service training seminar. The grievant believes that his present classification of Social Worker III is blocking salary increases and requests that he be reclassified to CPS Worker and be awarded a salary increase commensurate with his education, tenure, experience and quality/quantity of work performed.²

The Department denies any discrimination occurred as the reclassification was voluntary. It further asserts the grievant had been denied his only request to attend a seminar as it had involved a subject outside of his assignment and that his work performance had not warranted a recommendation for a merit increase.

Testimony offered at the level four hearing does not support the grievant's charge of discrimination. Martha Cage, Social Service Supervisor, testified that in July 1988 she made three recommendations for merit raises using Department of Human Services Commissioner Regina Lipscomb's guidelines. Ms. Cage stated that she considered but did not recommend the grievant for a merit increase based upon a weakness in the quality of his work, the volume of work

²The issue of an excessive caseload was pursued at level two and a reduction of that caseload was a part of the relief requested on the level four appeal form; however, the issue was not raised at the level four hearing and is considered abandoned.

completed and because he had been subject to formal discipline.³ Ms. Cage also testified that the grievant had been denied a request to attend a seminar in Adult Protective Services as he does not work in that area and had no need for such training.

The grievant offered the testimony of three co-workers regarding their salaries. Ms. Herron, CPS Worker with approximately three to four years experience, would not state her exact salary but generalized that it was \$14,000 plus per annum. Mr. McLaughlin, a CPS worker with nearly five years experience, stated his salary to be \$17,628 per year. Mr. Snyder, a Social Service Worker III with supervisory duties and 15 years experience stated his salary to be \$19,272. Mr. Snyder indicated he has not received a merit raise since 1985 or early 1986. Mr. McLaughlin and Ms. Herron both received their first merit raise in 1988. The grievant stated his salary to be approximately \$17,208 per year.

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

³This involved a letter of reprimand and loss of a day's pay for an alleged incident of unauthorized absence by the grievant on April 5, 1988.

differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees.

2. It is incumbent upon a grievant seeking relief pursuant to W.Va. Code §§29-6A-1, et seq. to prove all of the allegations constituting the grievance by a preponderance of the evidence. Reed v. Department of Corrections, Docket No. CORR-88-028 (Jan. 31, 1989).

3. The grievant has failed to prove discrimination as defined by statute.

Accordingly, the grievance is DENIED.

Findings of Fact

1. The grievant is employed by the Department of Human Services as a Social Worker III assigned to the Area 10 office in Elkins.

2. The grievant had been classified as a Child Protective Service Worker but accepted the change in caseload to consolidate foster-care work. This reclassification was effective November 1985.

3. The grievant was assigned no child protective cases from June 1987 until grievance proceedings were initiated; further, he has received no merit raises and a request to attend a training seminar was denied during that time.

4. Testimony of the grievant's co-workers establishes that merit raises were not awarded from 1985 until 1988 and not all employees received raises at that time. Also the grievant had requested approval to attend only one seminar and that seminar was outside the subject area of his caseload. Individual factors of the witnesses varied to such an extent the comparison of salaries cannot reasonably be made.

Conclusions of Law

1. W.Va. Code §29-6A-2(a) defines discrimination as differences in the treatment of employees unless such

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