SANDRA M. WARGO ET AL., .

.

Grievants, .

.

v. . Docket Nos. 92-HHR-

. 441/445/446

.

WEST VIRGINIA DEPARTMENT OF HEALTH .

AND HUMAN RESOURCES AND DEPARTMENT OF .

ADMINISTRATION/DIVISION OF PERSONNEL, .

.

Respondents. .

D E C I S I O N

This is a consolidated case (See footnote 1) involving grievances by Sandra M. Wargo, Sandra D. Dunkle, Allyson Morgan and Catherine Chapman (hereinafter "Grievants"), all of whom are employed as registered nurses by the West Virginia Department of Health and Human Resources (hereinafter "HHR" or "Respondent") at Huntington State Hospital (hereinafter "HSH") in Huntington, West Virginia. These grievances, which were all initiated at Level I during September 1992, allege that the Respondent unlawfully discriminates by paying inequitable salaries in violation of the principle of equal pay for equal work. After their grievances were denied at Levels I and II,a hearing was held at Level III on October 23, 1992. On October 30, 1992, Ruth Ann Panepinto, Commissioner of the Bureau of Human Resources, denied the grievance at Level III. Thereafter, Grievants timely appealed to Level IV where hearings in this matter were held on December 18, 1992, April 13, 1993, and April 30, 1993. Following submission of post-hearing arguments, this case became mature for decision on June 14, 1993. (See footnote 2)

BACKGROUND

The facts in this case are essentially undisputed. The Grievants have been employed for varying amounts of time at HSH. Their complaint is focused upon the fact that personnel who have been hired more recently to fill vacancies in the same classification are being paid a greater salary than Grievants, even though Grievants often have more experience and training than the newly-hired nurses. Grievants find it particularly demoralizing to orient new employees who are paid at a higher starting salary than Grievants are receiving after many years of loyal and dedicated service. (See footnote 3)

Respondent explains that this situation has arisen because it is authorized to establish starting salaries for newly-hirednurses, within established parameters according to the classification of the position being filled, based upon the "market price" necessary to attract qualified applicants. Thus, recently hired employees have necessarily been offered higher starting salaries in order to compete with the private sector for a finite number of qualified nurses. (See footnote 4) Respondent further indicates that it sympathizes with the Grievants' situation and has supported various initiatives to overcome these inequities. (See footnote 5) However, the rules and regulations of the Division of Personnel, as they currently exist, do not permit the Respondent to exercise much discretion in adjusting salaries of long-term employees.

DISCUSSION

It is abundantly clear that the legal issues presented by the instant grievance have been previously addressed by this Board in its decision in Largent v. West Virginia Department of Health. (See footnote 6) Inasmuch as this Board attempts to follow the well-recognized legal doctrine of stare decisis, (See footnote 7) the undersigned finds Largent controlling (See footnote 8) in regard to the merits of this grievance. (See footnote 9)

The remainder of this decision will be presented as formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievants are employed as registered nurses at Huntington State Hospital.

2. Other registered nurses who are classified at the same level as one or more of Grievants and who have been hired more recently than Grievants are being paid a greater salary while performing comparable work at HSH.

3. Respondent determined that higher salaries were necessary to attract the more recently hired

personnel to fill vacancies at HSH, based upon current market conditions.

CONCLUSIONS OF LAW

1. In order to prevail, Grievants must prove the allegations of their complaint by a preponderance of the evidence. Payne v. W. Va. Dept. of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988).

2. Respondent's explanation that, consistent with lawful regulations of the Division of Personnel, higher salaries are paid to newly-hired nursing personnel in order to obtain qualified applicants for vacant positions, provides a legitimate, non-discriminatory reason for its hiring and compensation practices, so as to defeat Grievants' claim that they are not receiving equal pay for equal work. Largent v. W. Va. Dept. of Health, Docket Nos. H-88-012/103/104/029/030 (Sept. 15, 1989).

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the circuit court of the county in which the grievance occurred 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 Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

_____

LEWIS G. BREWER

Administrative Law Judge

Dated: March 23, 1994

Footnote: 1These four cases were consolidated by an Order of this Board dated December 10, 1992. By another Order, dated April 13, 1993, the West Virginia Department of Administration, Division of Personnel, was joined as an essential party.

Footnote: 2As a result of employee turnover, this grievance was administratively transferred to the undersigned for decision on December 21, 1993.

Footnote: 3To the extent that Grievants introduced evidence at Level IV that they had performed duties in a higher classification by serving in the capacity of "Acting Head Nurse" or in some similar capacity, such claims may not be considered by the undersigned as these issues were not properly raised at Levels I through III. W. Va. Code §29-6A-3(j)

(1993); W. Va. Dept. of Health & Human Resources v. Hess, 432 S.E.2d 27 (W. Va. 1993).

Footnote: 4*Grievants are psychiatric nurses. The Division of Personnel has not established separate classifications for nurses whose training and experience allow them to practice in generally recognized areas of nursing specialization. Grievants are not contesting the Respondent's claim that paying higher salaries is required to attract new hires. Grievants argue that their pay should likewise be raised to the same level, since they have comparable, or sometimes superior, training and experience and they are performing substantially the same work as the newly-hired personnel.*

Footnote: 5*For example, between November 1992 and January 1993, fourteen nurses were approved for discretionary merit raises. In addition, five nurses received salary increases as a result of reclassification in December 1992. G Ex 2.*

Footnote: 6*Docket Nos. H-88-012/103/014/028/030 (Sept. 15, 1989), aff'd sub. nom. Largent v. W. Va. Div. of Health, Civil Action No. 89-C-1624, Cabell County Cir. Ct. (Nov. 4, 1992), appeal pending, W. Va. Sup. Ct. of Appeals.*

Footnote: 7*Literally, "to stand by things decided." This is the doctrine that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases, where the facts are substantially the same. Black's Law Dictionary 1577 (Revised 4th Ed. 1968).*

Footnote: 8*This Board has consistently adhered to the precedent established in Largent. See, e.g., Ruble v. W. Va. Dept. of Health & Human Resources, Docket No. 92-HHR-298 (June 10, 1993); Redden v. W. Va. State Tax Dept., Docket No. 89-T-339 (Feb. 22, 1991).*

Footnote: 9*Grievants' reliance on favorable decisions rendered in misclassification grievances, in particular, Watts v. Dept. of Health & Human Resources, Docket No. 89-DHS-396 (May 24, 1991), and a Level III decision in Terri Simpson v. Huntington State Hospital (Apr. 19, 1990) is misplaced in that Grievants have neither alleged nor proved that they are currently performing duties in a different personnel classification on a continuing basis. See also n. 3, supra.*