NANCY C. WOODFORD

v. Docket No. 94-HHR-085

WEST VIRGINIA DEPARTMENT OF HEALTH AND

HUMAN RESOURCES/WESTON STATE HOSPITAL

D E C I S I O N

Grievant has been employed by the Department of Health and Human Resources as a clerical worker since approximately April 16, 1992. In October 1993, she filed the following grievance statement and request for relief: (See footnote 1)

Doing the same job as another employee who entered the department 11-92 making approximately $1000 in excess of my salary. Also, I was asked to help train and assist the new employees. Receive same salary as other employee and any back pay from 11-92 to date of correction.

Based on all matters of record, the following factual determinations are made. (See footnote 2)

Findings of Fact

1. When Grievant was hired by HHR in Spring 1992 as a Typist III in the Word Processing Center (WP Center) at Weston State Hospital (WSH), she was regarded as a "new hire" for (covered) State civil service employment purposes.

2. Prior to accepting the WSH position in 1992, Grievant's last regular, full-time employment was with West Virginia University (WVU) where she worked as a medical transcriptionist from 1979 until her resignation in Spring 1987. Grievant was making nearly $16,000 per year at the time she resigned. (See footnote 3)

3. When Grievant left her employment at WVU, she had accumulated 100 sick leave days but had exhausted her personal leave days.

4. At the time Grievant was interviewed for her present job by a Center supervisor, Terry Small, she indicated to Ms. Small that she would like to receive the same salary she hadattained when she left WVU. Later, Ms. Small essentially offered and Grievant accepted wages at the base level pay grade, or entry level salary, for the Typist III classified position, that is, $11,796. However, Grievant was credited with the seniority and the 100 sick-leave days she had acquired at WVU.

5. According to Grievant's own testimony, all WP Center workers help train the new typists in

their department.

6. In October 1991, a former classified state employee was interviewed by an HHR supervisor, Bill McHenry, and selected to fill a vacancy in WSH's case management department. (See footnote 4) This employee's reemployment into the State classified system was treated as a reinstatement, and the salary level she attained was predicated upon some type of negotiation process and a recognition of former State service and level of prior experi ence. (See footnote 5)

7. As a result of WSH's downsizing efforts in Autumn 1992, the worker hired in 1991 for WSH's case management depart ment, whose salary at the time of the 1991 reinstatement was greater than Grievant's "new employee" salary in 1992, wastransferred to a vacant Typist II slot within Grievant's work unit.

8. In this grievance action, Grievant compares her salary to that of the reinstated employee who makes approximately $1000 more per year than Grievant.

Discussion

During Grievant's November 22, 1993, level three hearing, HHR agreed to permit Grievant to amend her request for relief. She requested that her original hiring at HHR/WSH be altered from "new employee" to "transfer" status and that she be given the salary she had attained at WVU. Basically, Grievant cannot prevail in this matter for she has failed to prove a violation of any laws, policies or regulations under which she works. While Grievant may be deserving of a salary increase, either to bring her salary up to the level she attained while at WVU or to equalize it with that of the employee whose salary she challeng es, HHR is not legally bound to effect such a pay increase.

Grievant offers absolutely no support that her salary must be equalized with the salary of the reinstated employee with whom she compares herself. Since the reinstated employee began work at WSH at a different department than the work unit where Grievant began work as a new employee, it is therefore presumed that the reinstated employee performed different duties than Grievant at that time. This alone could justify a difference in respective salaries of Grievant and the transferred worker atthe time the worker entered Grievant's WP Center work unit. (See footnote 6)

HHR correctly argues that classified employees of WVU are governed by the Rules of the University of West Virginia Board of Trustees, while classified employees of WSH are governed by the Administrative Rules of the West Virginia Division of Personnel (Personnel) pursuant to W.Va. Code §§29-6-1 et. seq. It is true that, upon accepting employment with WSH, Grievant was permitted

to carry over certain benefits from WVU including sick leave and seniority. However, no provisions are found within Personnel's rules and regulations which permit the transfer of a WVU classified employee, including that person's salary, to a State agency covered by Personnel.

In short, Grievant's employment at WVU and subsequent employment at WSH do not constitute a transfer because the entities do not operate under the same personnel system. See W.Va. Code §§18B-1-1, et. seq., and 29-6A-1, et. seq. The fact that WSH accommodated Grievant by treating her employment as a transfer for some purposes does not create a transfer situation for other purposes.

Conclusions of Law

1. In order to prevail in a case of this nature, Grievant must prove the allegations of her complaint by a preponderance of the evidence. Crow v. W.Va. Dept. of Corrections, Docket No. 89-CORR-116 (June 30, 1989); Bonnett v. W.Va. Dept. of Highways, Docket No. 89-DOH-043 (Mar. 29, 1989).

2. Grievant has failed to prove that her prior service at a State university and subsequent employment at a covered State agency constitutes a "transfer" as defined or considered by the Administrative Rules of the West Virginia Division of Personnel.

3. Grievant has failed to cite any law, regulation or policy which would create a right to any starting salary above that which she originally agreed to accept at the time she began employment at WSH.

4. Grievant failed to demonstrate she is legally entitled to receive a salary at WSH as a Typist III which equals the salary she earned while employed as a medical transcriptionist at WVU.

5. "The principal of 'equal pay for equal work,' as embraced in AFSCME IV, W.Va. Code §29-6-1, and Personnel regula tions, does not require that all individuals performing the same tasks be paid identical salaries. Largent v. W.Va. Dept. of Health, Docket No. H-88-012 (Sept. 15, 1989)." Accord v. W.Va. Dept. of Health and Human Resources/Welch Emergency Hospital, Docket No. 91-H-177 (May 29, 1992).

6. Grievant has failed to prove by a preponderance of the evidence that HHR or WSH has acted in an arbitrary, capricious,or discriminatory fashion, or that her employer violated any laws, regulations, or policies with regard to her salary. See Id.

Accordingly, the grievance is **DENIED**.

Any party or the West Virginia Division of Personnel 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 Employ ees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appeal ing party must advise this office of the appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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NEDRA KOVAL

Administrative Law Judge

Date: August 18, 1994

Footnote: 1 Grievant received adverse decisions at the lower grievance levels and advanced her appeal to level four on or about March 14, 1994, with a request for a record decision. The record contains the lower level responses; Grievant's level four filing materials including copies of nineteen unmarked documents (apparently, these were Grievant's exhibits at the level three hearing, see, n.2, infra) and a six-page level four appeal "statement" dated "3-11-94" and bearing Grievant's signature; the transcript of the November 22, 1993 level three hearing; and HHR's May 2, 1994 fact/law proposals.

Footnote: 2 It is noted that HHR did not include any exhibits with the level three transcript it forwarded to the undersigned although the level three decision listed and described nineteen exhibits submitted by Grievant. This list corresponds with the nineteen unmarked documents included in Grievant's filing materials (see, n.1, supra). It is suggested that, in the future, HHR produce an index for level three transcripts and list all witnesses and exhibits. At the very least, HHR should transmit an intact record, including the transcript and all exhibits, especially when a grievance has been submitted for decision on the record.

Footnote: 3 Although the record suggests that Grievant began work at WVU in 1969, she worked only seven years as a medical transcriptionist.

Footnote: 4 While the topic of this employee's reinstatement was discussed extensively at the level three hearing, some additional specifics were supplied by HHR via an addendum to HHR's level four brief. Grievant, who was served a copy of the brief, did not object in any fashion to the inclusion of this evidence at level four. In any event, most of the details about the reinstated employee were not dispositive of any matter at issue and were not reproduced herein or otherwise considered.

Footnote: 5 Grievant testified that the employee in question told her that she had not formally negotiated her salary, but that a relative had contacted officials and requested she be given the maximum salary possible. There was no evidence presented that this worker's reinstatement salary level was not within the prevailing West Virginia Division of Personnel or civil service salary guidelines.

Footnote: 6 It is noted that, since Grievant never made a claim that she had been improperly compensated at WSH until she learned of her co-worker's salary, there would have been no grievance at all had the other employee not been transferred into Grievant's work unit.