STEPHEN D. FRAME, ET AL.

v. Docket No. 94-HHR-140

WEST VIRGINIA DEPARTMENT OF HEALTH AND

HUMAN RESOURCES/WEST VIRGINIA DIVISION OF PERSONNEL

D E C I S I O N

Grievants Stephen D. Frame, Lonnie Burchett and Joan Hudnall, employed by the West Virginia Department of Health and Human Resources (HHR), claim the pay grade designation for Social Service Supervisor (Supervisor) should be one level higher, or only one pay grade below that of another position, Social Service Coordinator (Coordinator). According to Grievants, these positions had historically been separated by only one pay grade, but following the West Virginia Division of Personnel's (DOP or Personnel) reclassification project within HHR, they were separated by two pay grades without any apparent justification. The parties agreed to a record decision.1

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1The grievance was denied at levels one and two on January 11, and January 19, 1993, respectively. Thereafter, following the February 24, 1994 level three hearing, a decision adverse to Grievants was rendered on March 23, 1994, and appeal was made to level four on April 14, 1994. Fact/law proposals were submitted by HHR on July 8, 1994, and it is presumed that Grievants and DOP waived their right to tender a brief. On October 25, 1994 the case was administratively transferred to the undersigned.

The following findings have been gleaned from the very sketchy evidence presented in this case.2

Findings of Fact

1. At the time this grievance was initiated at level one, Grievants had been recently notified by letter of their reclas sification as Supervisors at pay grade twelve (12) with a salary range of $21,156 to $34,440.
2. Grievants are assigned to supervise a variety of social service programs and are responsible for the delivery of these various services in "Region IV," that is, Braxton, Webster, Nicholas and Clay Counties. Each directly supervises a staff of approximately ten workers.3 T.5-7.
3. Grievants are in turn supervised by a Coordinator, pay grade fourteen (14), within the four counties in question. T.6. Grievant Hudnall is "backup" for the Coordinator when that employee is absent. T.7.
4. Prior to DOP's reclassification project, Coordinator was only one pay grade higher than Supervisor. T.2.
5. Grievant Frame conceded that the Coordinator position was given more responsibility after the reclassification. T.2.

2Grievant Frame acted as lead grievant at the level three evidentiary hearing and merely presented a general statement about the grievants' position. Grievants Hudnall and Burchett basically concurred with Frame's statement. HHR did not present any evidence; however, the level three grievance evaluator questioned the grievants generally about their job duties. DOP did not appear at the hearing.

3At the time of the level three hearing on February 24, 1994, it appears that Grievant Frame no longer held the Supervisor's position but had taken another job with HHR.
6. HHR has considered a plan to eliminate the Coordinator

classification and recognize the Supervisor class as the most important position relative to the delivery of social services, both prior to and following the recent reclassification of those positions. T.2,8.

7. The "Nature of Work Section" of the Supervisor job specification states in part that the position "performs complex administrative, supervisory and advisory services in the devel opment and maintenance of specialized human resource programs" and is "[r]esponsible for planning, organizing and leading a comprehensive program of staff activities."

8. The "Nature of Work Section" of the Coordinator job specification states in part that the position "performs full-performance professional level social work in coordinating the delivery of social services to multi-county regions."

Discussion

The thrust of Grievants' argument in this case seems to be that the long-standing practice of having only one pay grade difference between Supervisor and Coordinator justifies the continuance of that salary structure. Grievants also believe that the differences between the Supervisor and Coordinator job specifications are not substantial enough to warrant a span of two pay grades between the two. Finally, Grievants indicate that their professional training is reason enough to justify an increase of one pay grade for Supervisors (to pay grade thirteen), this being the relief apparently sought by them.4 On the other hand, HHR urges that Grievants failed to introduce any evidence that HHR or DOP incorrectly implemented the reclassifi cation project and pilot compensation plan.

Grievants simply have not met their burden of proof, factu ally or otherwise. Despite the fact that Grievants believed no

great distinctions marked the difference between their jobs and that of the Coordinator, they failed to support this belief with any kind of rationale or persuasive evidence. However, HHR's argument that Colesante v. Bureau of Empl. Programs, Docket No. 93-DEP-004 (Apr. 27, 1993), is dispositive of the issue raised in this case is persuasive.

In Colesante, HHR argues, the Grievance Board first reject ed the argument that employees' salaries must be adjusted to reflect experience or that salaries must be determined by some step-by-step basis upon reclassification. According to HHR, all of the grievants' salaries in this case were below the minimum level for the Supervisor position at the time of reclassifica tion and each received a pay increase to coincide with the minimum salary for that position. This action, it argues, was in conformance with the mandates and guidelines relative to the

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4Attached to Grievants' level four filing materials was a copy of an unsigned, typewritten statement containing a number of criticisms about how the reclassification project was carried out within HHR and requesting such relief as a reevaluation of the entire process and the even distribution of reclassification monies. None of these matters or issues were raised or pursued during the level three hearing or at any time thereafter and are, therefore, considered abandoned.

reclassification project. In short, Grievants have failed to establish any violations of existing laws, regulations or policies relative to the reclassification and salary allocation of the Supervisor position.5

In addition to the foregoing findings and discussion, the

following formal conclusion of law are made.

Conclusions of Law

1. In a case such as this, the grievants must prove all allegations constituting the grievance 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 Hghwys, Docket No. 89-DOH-043 (March 29, 1989).

2. The West Virginia Division of Personnel is the State Agency charged with establishing and maintaining a position classification plan pursuant to W.Va. Code 29-6-10, et seq.

3. Interpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous. W.Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W.Va. 1993).

5Grievants did not deny that they realized some slight salary enhancement at reclassification. In addition, although there was no direct "evidence" given at level three on the subject, the record suggests that the Supervisor class had formerly been a series of positions but was reformulated to a single class as a result of the reclassification project. In any event, Grievants made no allegations that they were presently misclassified.

4. "When a worker otherwise qualifies for a specific classified position, Personnel's guidelines and regulations do not provide the means for salary adjustments based simply upon the educational level the incumbent has attained." Thompson v. W.Va. Dept. of Health and Human Rsrcs., Docket No. 94-HHR-051 (Nov. 23, 1994). See also, Colesante v. Bureau of Empl. Pro

grams, Docket No. 93-DEP-004 (Apr. 27, 1993).

5. "Grievant[s] failed to establish that Personnel abused its discretionary authority in establishing the salary for [their] position as a result of its State Reclassification Project." Tomlinson v. W.Va. Div'n of Transportation, Docket No. 94-DMV-209 (Oct. 20, 1994).

6. Grievants have failed to establish that Personnel violated, misapplied or misinterpreted any laws, rules or regulations, acted arbitrarily or was clearly erroneous in creating the salary level for the Supervisor job class.

Accordingly, this grievance must be 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: November 29, 1994