MARGARET L. GLASS, .

Grievant, .

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v. .Docket Number: 94-HHR-328

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WEST VIRGINIA DEPARTMENT OF HEALTH .

AND HUMAN RESOURCES and .

WEST VIRGINIA DIVISION OF PERSONNEL, .

Respondents. .

DECISION

Margaret Glass (hereinafter Grievant) filed this complaint pursuant to the provisions of West Virginia Code §29-6A-1, et seq., against her employer, the West Virginia Department of Health and Human Resources (hereinafter Health), and the West Virginia Division of Personnel (hereinafter Personnel), on December 21, 1993. Thereafter, the claim was denied at the lower three levels of the Grievance Procedure and appeal was made to level four on July 22, 1994. An evidentiary hearing was held in the Grievance Board's office in Charleston, West Virginia on October 17, 1994, and the case became mature for decision at the conclusion of said hearing.

The following findings of fact have been properly deduced from the evidentiary record developed in the case.

Findings of Fact

1. Grievant was hired by Health on July 2, 1990, as a temporary or probationary employee assigned to the classification of Case Aide I, pay grade 2, step 1E. At that time, Grievant's salary was $726.00 per month.

2. Personnel's pay plan in effect at the time of Grievant's hiring contained both pay grades and steps within those grades. For each pay grade there were twelve steps and under each of those steps there existed four substeps, "E" for entry level, "P" for permanent and "A" or "B" for additional increases.

3. At the time Grievant was hired, it was Personnel's practice to hire probationary employees at the entry level salary and then to raise them to the permanent level salary at the end of the employees' six month probationary period.

4. The State Legislature, by law, mandated an increase in the entry level salary for classified employees effective August 1, 1990, no classified state employee was to make below $10,008.00 per year ($834.00 per month). Further, by executive order of the Governor, classified employees were provided a $1,008.00 per year across-the-board raise. As a direct result, Personnel created and implemented an entirely new pay plan effective August 1, 1990.

5. Prior to August 1, 1990, the only permanent classified employees who made less than $834.00 per month were those employeesassigned to pay grades 1, 2 or 3, steps 1 or 2. The following is a listing of those monthly salaries:

PG	Step 1		2	
1	$669.00	E	$755.00	E
	$726.00	**P**	**$808.00**	**P**
	$781.00	**A**	$867.00	A
	$838.00	B	$867.00	B
2	$726.00	E		
	$779.00	**P**		
	$838.00	A		
	$867.00	B		

3	$755.00	E
	$808.00	**P**
	$867.00	A
	$901.00	B

6. On August 1, 1990, based upon the Governor's Order, Personnel increased every salary on its pay plan by $1008.00 or $84.00 per month with the exception of pay grade 1, step 1P. Pay grade 1, step 1P was raised $112.00 per month in order to comply with the Legislature's requirement that the minimum entry level salary be $10,008.00 per year. Personnel deleted the two E substeps in pay grades 1 and 2, thereby "compressing" the salaries for pay grade 1, step P.

7. Effective August 1, 1990, Grievant's monthly salary was increased from $726.00 to $863.00, $84.00 for the $1008.00 raise from the Governor and $53.00 resulting from the move from step 1E to Step 1P on the new pay plan. The salaries for pay grade 2, step 1 on the new pay plan are as follows:

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$863.00	P
$922.00	A
$951.00	B

8. Personnel changed its policy of moving classified employees from substep P to substep A after their six-month probationary period. By letter dated August 8, 1990, all department heads were told that probationary employees assigned to substep P would remain at substep P. This was a change in the pronounced policy made just seven days earlier on August 1, 1990.

9. As a result of Personnel's change of policy, numerous classified employees within Health filed grievances contending that they were not being paid properly because other temporary employees assigned to pay grades 1 and 2, substep P (as a result of the new pay plan's elimination of the E substep) were to be moved to step A at the end of their probationary period.

10. In an effort to settle these grievances, both Health and Personnel negotiated with not only the grievants but also any other classified employee who was thought to be adversely effected by the change in policy who had not filed a grievance. Personnel was agreeable to move the probationary employees at substep P to the A substep.

11. Finally, in December 1993, Grievant was asked to sign a settlement agreement entitling her to a back pay award of $12.50 (See footnote 1) along with a move from pay grade 3, step 2P, to pay grade 3, step 1A, retroactive to December 1, 1991. (See footnote 2)

12. Grievant filed the instant complaint on December 21, 1993. Grievant became a permanent employee on January 2, 1991.

Discussion

Grievant contends that she was not given the appropriate increase at the end of her probationary period. She asserts that she was told she would receive a $50.00 per month increase at the end of her probationary period but that she did not receive said increase. She also questions why Personnel was allowed to change the terms of the proposed settlement agreement referred to in finding of fact number 11. Respondents contend that Grievant received her salary increase for achieving permanent status in August 1990, prior to her probationary period having ended. Personnel denies that it has violated any provision of law applicable to the facts of this case. No affirmative defenses were raised by either Respondent.

Any discussion as to the proposed settlement agreement in this case is unwarranted. No violation of law can be established with regard to the issue of Personnel having made an error in its calculations and, thereby, offering to Grievant an agreement different than that offered previously. No case or controversy exists upon which the Undersigned may make a ruling in this regard.

Grievant's argument that she was not given a raise at the completion of her probationary period is unpersuasive given the facts. Grievant was moved from the A substep to the P substep within one month of having been hired. This is the same movement that she was entitled at the end of her probationary period tounder Personnel's applicable policy at the time she was hired. Grievant has not provided the Undersigned with any authority upon which to rely that would support a finding she was entitled to be assigned to the A substep after having been assigned to the P substep prior to January 2, 1991. Personnel complied with its change in policy by leaving Grievant at the P substep within the August 1990 pay plan.

As noted, Personnel added $84.00 to each of the salaries contained in its January 1990 pay plan in order to create its August 1990 pay plan consistent with the Governor's order. Grievant was moved from the January 1990 E substep ($726.00) to the August 1990 P substep ($863.00) as a result of

Personnel having deleted the E substep in the revised plan. In actuality, Grievant was given what she was promised, i.e., she was moved from $726.00, substep E to $779.00, substep P, then she was given the $1008.00 raise which moved her to $863.00 on the new plan.

What Personnel did was downplay the effect that the new $10,008.00 minimum had upon the entire pay plan by only directly changing Pay grade 1, step 1P, more than $84.00 per month. Every other salary in the plan became compressed in comparison as a direct result of this apparent money saving action. While it is true that Grievant's salary was not raised to the $10,008.00 ($834.00) minimum before the $84.00 raise was added, she was treated consistent with the applicable Personnel policy at the time. Because Grievant has not established that Personnel's changein policy was arbitrary or capricious, she may not prevail on the merits of her claim.

The foregoing discussion of the case is hereby supplemented by the following appropriately made conclusions of law.

Conclusions of Law

1. Grievant bears the burden of proofing her claims by a preponderance of the evidence. W. Va. Code §29-6A-6; West Virginia Education and State Employees Grievance Board, Procedural Rules, Section 4.17.

2. Grievant has failed to establish that Respondents have violated any statute, law, rule, regulation, policy or written agreement. W. Va. Code §29-6A-2

3. Grievant has failed to establish that Personnel abused its discretionary authority under W. Va. Code §29-6-10 in setting her salary pursuant to its revised pay plan of August 1990.

Therefore, 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 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.

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ALBERT C. DUNN, JR.

Administrative Law Judge

February 3, 1995

Footnote: 1In September 1993, Grievant was asked to sign a settlement agreement which would have awarded her $1295.00 in back wages. Afterwards, Grievant was notified that this amount was in error.

Footnote: 2Grievant's position was reallocated to the classification of Case Aide II at pay grade 3, step 2P, on December 1, 1991.