DEBBIE HEATER,

Grievant, .

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v. . Docket Number: 95-HHR-263

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WEST VIRGINIA DEPARTMENT OF HEALTH .

AND HUMAN RESOURCES at SHARPE .

HOSPITAL and WEST VIRGINIA .

DEPARTMENT OF ADMINISTRATION .

/ DIVISION OF PERSONNEL, .

Respondents. .

D E C I S I O N

Debbie Heater (hereinafter Grievant) filed the instant complaint on February 24, 1994, pursuant to West Virginia Code §§29-6A-1, et seq., claiming as follows:

> Weston Hospital has unjustly denied grievant her pay increase of 10% of her yearly wages, whereas other L.P.N.s with the same years of experience were granted this increase. On 2/14/94 the last increase was granted and grievant was not included.
>
> Relief sought: To be made whole in every way to include but not limited to granting grievant her pay increase and rewarding all backpay from December 31, 1993 to date.

The grievance was denied at the lower three levels of the grievance procedure and appeal was

made to level four on June 22, 1995. Anevidentiary hearing was held at the Grievance Board's Charleston, West Virginia office on August 2, 1995, and the case became mature for decision upon receipt of the complete record on August 4, 1995. The following findings of fact have been properly deduced from the evidentiary record developed in the case.

Findings of Fact

1. Grievant is employed as a Licensed Practical Nurse (LPN) by the Department of Health and Human Resources at Sharpe State Hospital. (See footnote 1)

2. Grievant's annual salary is $20,760.00.

3. On or about February 14, 1994, the administration at Sharpe Hospital issued raises to the majority of its LPN staff in an attempt to equalize the salaries of its long-term LPNs with those more recently hired. (See footnote 2)

4. The administration determined that the highest salary paid to any of its LPNs, $20,760.00, would become the "benchmark" to reach for purposes of awarding the raises at issue.

5. Pursuant to the Division of Personnel's Pilot Administrative Guidelines, section VI.E, the maximum percentage raise for which any incumbent is eligible for purposes of correcting salary inequities is ten percent.

6. Sharpe Hospital determined that only those LPNs with a minimum of five years of service and a yearly base salary less thanthe benchmark would receive a raise. The raise was based upon the percentage difference between the incumbent's current salary and the benchmark. Pursuant to direction from the Division of Personnel, the raises were required to be even percentages.

6. Because Grievant's salary was currently at the benchmark, she did not receive this "equity raise" at issue. The three other LPNs who also had the same salary were not granted a raise.

Position of the Parties

Grievant's legal argument is difficult to discern. She seems to argue that because she had five years of service as of the time the raises were issued, she was discriminated against because she was not given a raise. She also asserts that she was discriminated against and not treated fairly when compared to other LPNs who were granted raises. Respondents assert that Grievant has failed to meet her burden of proof in this case. Based upon a review of the evidence, it is determined that

Grievant cannot prevail on her claim.

Discussion

Factually, Grievant did not meet the minimum guidelines established by the administration at Sharpe Hospital for a raise because she was not below the "benchmark" salary. Therefore, she cannot establish that the guidelines were not applied uniformly. Further, she has failed to establish by a preponderance of the evidence that any statute, policy, rule, regulation or written agreement was violated in this instance.

Finally, "discrimination" is defined in W. Va. Code §29-6A-2(d) as "any differences in treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees." Grievant has also failed to prove that she was treated differently than any other similarly situated employees. The administration at Sharpe Hospital recognized that there existed an inequality in the annual salaries of its LPNs, based primarily on the fact that it has recently been required to pay its new hires more in order to recruit them. In an attempt to help equalize its LPNs' salaries, it awarded raises to those LPNs with five years of service or more to bring their salaries closer to the salaries of the more recent hires. Because Grievant was already at the top of the salary range, she was not issued an "equity raise." This does not amount to discrimination as she was treated the same as all other LPNs whose salary was already at the "benchmark." Therefore, her claim must fail.

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

Conclusions of Law

1. Grievant has failed to establish by a preponderance of the evidence that Respondents have violated, misapplied or misinterpreted any statute, policy, rule, regulation or written agreement under which she works. W. Va. Code §29-6A-2(i).

2. Grievant has failed to establish by a preponderance of the evidence that she has been discriminated against in regard tothe issuance of salary increases granted on or about February 14, 1995. W. Va. Code §29-6A-2(d).

Therefore, this grievance is hereby **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

September 25, 1995

Footnote: 1Sharpe State Hospital was formerly known as Weston State Hospital.

Footnote: 2These raises were approved by the Division of Personnel.