TANAGRA W. O'CONNELL

v. Docket No. 95-HHR-257

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES/OFFICE OF SOCIAL SERVICES and WEST VIRGINIA DIVISION OF PERSONNEL

D E C I S I O N

On or about February 8, 1993, Tanagra W. O'Connell filed a grievance against her employer, Department of Health and Human Resources (HHR)/Office of Social Services (OSS), and stated as follows:

Reclassification action of 12-16-92 resulted in a demotion of my position and pay grade relative to the occupational groupings, while job duties and expecta tions remain the same. Relief sought includes an upgrade of the position to at least paygrade 14 of the current system and backpay as indicated from 12-16-92.

Following adverse lower-level decisions, the case was advanced to level four where hearing was held on September 28, 1995. At the hearing, the parties supplemented the evidentiary record adduced at level three. The case became mature for decision on October 13, 1995, the designated last day to file post-hearing fact/law proposals and/or rebuttals.1

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1Grievant filed a statement on October 10, 1995, and HHR apparently declined to file a rebuttal.

There is no dispute about the underlying facts which gave rise to this grievance. At all pertinent times, Grievant was classified as a Health and Human Resources Specialist, and her

functional title was Children, Youth and Family Service (CYF) Consultant. Before the reclassification project, the result of a joint effort of the West Virginia Division of Personnel (DOP) and HHR/OSS, Grievant's position was compensated at pay grade (PG) 18. Another position within OSS also placed at PG 18 prior to reclassification was the Social Service Coordinator. The Coordinator supervises Social Service Supervisors, Protective Services Workers and Protective Services Worker Trainees. Grievant, as a CYF Consultant, works with and provides a wide range of services to Coordinators and to the Coordinators' subordinates. GR EX 1 (4/25/94).

The reclassification project caused numerical alterations of some pay grades within HHR, primarily because duplicate, extraneous and inequitable position titles were eliminated, thus reducing the remaining number of classification titles and pay grades. However, no employee was subjected to a salary reduc tion as a result of the reclassification.

When the reclassification was implemented on or about December 16, 1992, Grievant's position was assigned to PG 11; however, her wages remained unaffected because her salary then was within the PG 11 salary range. The Protective Services Worker position, formerly PG 13, was also placed in PG 11. The Social Service Supervisor position, formerly PG 17, was placed in PG 12. Finally, the Social Service Coordinator, formerly on a par with Grievant at PG 18, was placed in PG 14, two pay grades higher than Grievant.

Grievant disagrees with her pay grade and compensation compared to the pay grades of the employees identified above. She reasons that her position and PG have been "demoted" rela tive to those other OSS positions. Grievant feels she should be

placed in a higher PG than certain employees for whom she provides services as a consultant, employees who were previously in a lower PG than hers.2 She also maintains she should have been placed in the same pay grade as employees and/or positions that were in the same pay grade as hers prior to the reclassifi cation. Grievant compiled a chart that shows the pay grades for the positions of Protective Services Worker Trainee, Protective Services Worker and Social Service Coordinator fell four or five levels after the reclassification, while her position fell seven levels. GR EX 4 (4/24/94).3 In other words, Grievant's pay grade fell lower than the pay grades of the three other posi tions in question. She believes this was not proper.

Grievant also produced a lengthy memorandum written by OSS' Director during the reclassification project. This high-ranking administrator strongly disagreed with some of DOP's

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2Grievant seemed especially upset that she and Protective Services Workers were now in the same pay grade. She characterized these employees as the "lowest level of people" in the hierarchy of workers for whom she provides services. T2.7.

3At level four, neither HHR nor DOP questioned the accuracy of the data used by Grievant in compiling the chart and comparing former and present positions and pay grades. reclassification recommendations and salary proposals, expressed concern about a potential adverse impact upon employees and suggested that productivity within OSS could be severely im paired. In particular, he recommended that the three-position Health and Human Resources Specialist series be given pay grades higher than 8, 10 and 12, DOP's recommendation, and that the

"top level" Health and Human Resources Specialist position be placed at PG 14, the same as the Social Service Coordinator. GR EX 5 (4/25/94).4

Grievant apparently places much reliance upon that adminis trator's letter as proof that the final determination to place her position at PG 11 was impermissible. Finally, Grievant maintained that her opportunities for career advancement in her position have been diminished. It is undisputed that the maximum salary for the "new" PG 11 was approximately $2000.00 less than that of the "old" PG 18; however, the entry rate was increased by several hundred dollars.

HHR felt it was important that Grievant made no allegations in her grievance statement or at the level four hearing that either HHR or DOP, made party to the grievance at level three, had violated any statute, regulation or policy in this matter.

4In February 1995, Grievant was promoted to a different position than she held at the time of the reclassification, a supervisory position, and she expressed satisfaction with her current status. She agreed that her claim is limited to the period immediately following the reclassification and until the February 1995 promotion. She seeks relief for only the relevant time-frame, specifically, back wages amounting to the difference between her salary at PG 11 and what it would have been at PG 14.

Additionally, HHR relied upon Farber v. W.Va. Dept. of Human Resources, Docket No. 95-HHR-052 (July 10, 1995), in support of its claim that Grievant failed to meet her burden of proof.

In Farber, two Health and Human Resources Specialists

claimed they were misclassified. In part, they pointed out that a position which purportedly performed the same surveying duties as they did was assigned to a pay grade three levels higher than theirs. In addition to finding no misclassification, the Administrative Law Judge held that the grievants had not "pre sented sufficient evidence" that the pay grade assigned to their position was "inappropriate or was the result of an abuse of discretion." Farber at 16.

An employee who alleges impropriety regarding a reclassifi cation project and challenges the resultant pay grade to which his or her position was assigned bears the burden of proving the claim by a preponderance of the evidence. This is a difficult undertaking. W.Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W.Va. 1995); Bennett v. Dept. of Health and Human Resourc es, Docket No. 93-HHR-518 (June 23, 1995); Johnston v. Dept. of Health and Human Resources, Docket No. 94-HHR-206 (June 15, 1995); Thibault v. Div. of Rehabilitation Services, Docket No. 94-RS-061 (May 31, 1995); Frame v. Dept. of Health and Human Resources, Docket No. 94-HHR-140 (Nov. 29, 1994).

The undersigned concludes that Grievant has not met her burden of proof in the present case. As HHR pointed out, Grievant presented no evidence that HHR or DOP violated, misap plied, or misinterpreted any statute, regulation or policy with respect to reclassifying employees/positions, downsizing the job classes, and assigning positions to pay grades within HHR/OSS. Additionally, Grievant's reliance on an administrator's recom mendations in one context must be viewed in light of a later pronouncement made by the same administrator.

In a memorandum drafted just prior to the implementation of the reclassification, he approved of Grievant's position, not at

PG 14, but at PG 12, relative to the two other positions in her own occupational grouping/series, Health and Human Resources Specialist, Senior, and Health and Human Resources Associate, whom he requested to be ranked higher and lower than her posi tion, at PG 14 and PG 10, respectively. HHR EX 2 (9/28/95). That his recommendation for higher PGs for all of these employ ees was not followed is not persuasive evidence of wrongdoing in this matter. It is not unusual that an administrator/manager of a work unit would champion his or her employees and attempt to gain the highest possible salaries for them. Finally, in the administrator's earlier memo, he recommended that the "top level" Health and Human Resources Specialist position be placed at PG 14, the same as the Social Service Coordinator. Grievant's position is subordinate to the Health and Human Resources Specialist, Senior, position, the "top level" position which he targeted for PG 14. In the end, Grievant's position was ranked only one PG lower than he recommended. Grievant simply made no showing that DOP inappropriately assigned a pay grade to her position or otherwise abused its discretion in this matter. Farber v. W.Va. Dept. of Human Resources, Docket No. 95-HHR-052 (July 10, 1995). Grievant's arguments pertaining to the prior classification and/or pay grade structure are not persuasive because it cannot be assumed that the old pay grade assignments were proper. At the level four hearing, DOP Assistant Director for Classification and Compensation Lowell D. Basford explained that HHR's old classi fication system had not been scrutinized or updated for thirty years. He described the reclassification process and explained the means by which the positions were placed in the current, and correct, pay grades. DOP's judgment that the positions in

question have been properly assigned in their present pay grades must be given deference because Grievant did not establish that DOP was clearly wrong in its assessment. See W.Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W.Va. 1995). In short, Grievant has offered no evidence or legal theory which would justify the relief she seeks. Accordingly, the grievance must be denied.

In addition to the foregoing, the following findings of fact and conclusions of law are made.

Findings of Fact

1. In December 1992, HHR/OSS workers, including Grievant, at that time holding a consultant position within OSS, were the subject of a reclassification in which some position titles were renamed and unnecessary titles were eliminated. As a result of this process, the overall number of job titles and pay grades declined. No employee suffered a loss of wages because of the reclassification.

2. Some of the OSS positions may have been placed in a pay grade more or less commensurate with the former pay grade, while some positions may have shifted to a pay grade with higher salary levels than before the reclassification.

3. Grievant's position was formerly placed at PG 18, but after the reclassification, her position was placed at PG 11. Because her salary at the time of the reclassification fell within the salary range for PG 11, her wages remained unchanged.

4. The maximum salary at PG 11 was $2000.00 less than PG 18 under the prior classification scheme; however, the entry level salary for PG 11 was a few hundred dollars higher than the old PG 18.

5. A high-ranking OSS administrator's recommendation that

Grievant's position be placed at PG 12, relative to a higher and lower classification for the two other positions in Grievant's occupational series was not followed. However, Grievant's position was upgraded from DOP's original suggestion that it be placed at PG 10.

6. Grievant objected to her position's placement at PG 11, largely based on her comparisons of her position to those she serves in her capacity as a consultant. Two positions in lower PGs and one in the same PG as hers before the reclas sification, positions that Grievant believes to be mostly subordinate or no more than equal in scope and importance to her own position, were reclassified and placed at PG 11, PG 12 and PG 14, respectively.

7. In February 1995, Grievant was promoted to a supervi sory position. She limits her claim to the time between Decem ber 16, 1992 and the time she received the promotion.

Conclusions of Law

1. Grievant, alleging impropriety regarding a reclassifi cation project and challenging the resultant pay grade to which her position was assigned, bears the burden of proving her claim by a preponderance of the evidence. Bennett v. Dept. of Health and Human Resources, Docket No. 93-HHR-518 (June 23, 1995); Johnston v. Dept. of Health and Human Resources, Docket No. 94-HHR-206 (June 15, 1995).

2. Although the pay grade for Grievant's position fell lower than those of some other positions as a result of an agency-wide reclassification, absent any evidence to the con trary, Personnel's explanation that the pay grade placements are correct must be accorded great weight. See W.Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W.Va. 1995).

3. Grievant failed to establish by a preponderance of the evidence that her position should have been assigned to a higher pay grade following a reclassification project in December 1992. Frame v. Dept. of Health and Human Resources, Docket No. 94-HHR-140 (Nov. 29, 1994).

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: October 13, 1995