MARY L. SAGACE,

Grievant,

v. **Docket No. 96-CORR-469**

WEST VIRGINIA DIVISION OF

CORRECTIONS\DAVIS CENTER,

Respondents.

DECISION

Mary L. Sagace, Grievant, filed this grievance against Respondents, West Virginia Division of Corrections\Davis Center alleging:

> I feel as though I'm being discriminated against because I will not receive the $2,000 salary upgrade that includes Corrections Magistrates. I have been the Disciplinary Hearing Officer for the Davis Center for 10 years. Because we are a small institution, we will never have a job position titled "Corrections Magistrate."

As relief, Grievant seeks a:

> $2,000 raise[,] or be brought up to the mid[-]rate range for my job class. Also, a copy of the final legislative budget bill that explains who is to receive this upgrade. (See footnote 1) Grievant was denied relief at the lower levels of the grievance procedure. Grievant appealed to Level IV on November 7, 1996. A Level IV evidentiary hearing was held at the Grievance Board's office in Elkins, West Virginia, on February 5, 1997. The case became mature for decision on March 7, 1997, the end of the briefing period. (See footnote 2) The following findings of fact were derived from the record.

FINDINGS OF FACT

1. Grievant's civil service classification is Business Manager. She is the only employee who works in the business office at the Davis Center.

2. The Davis Center is a juvenile institution.

3. On February 24, 1986, Grievant was designated the Disciplinary Hearing Officer for Davis Center, effective March 31, 1986. Disciplinary Hearing Officer is one of Grievant's in-house titles.

4. Grievant did not receive a two thousand dollar "salary upgrade" effective July 1, 1996.

Respondent's employees holding the Business Manager classification did not receive the two thousand dollar salary upgrade. 5. Respondent's employees holding the Corrections Magistrate classification received the two thousand dollar salary upgrade.

6. The Corrections Magistrate class only exists at adult institutions. It does not exist at juvenile institutions. Corrections Magistrates supervise clerks or bailiffs, and juvenile institutions do not have bailiffs, because of a lack of need. At the adult institution, more hearings are held, and the hearings are formal.

7. The facts contained within a chart which was admitted as part of Level IV, Gr. Ex 1, p. 10, is attached and made a part of this Decision, and the Findings of Fact. It is labeled Appendix A.

DISCUSSION

Although Grievant did not allege that she was misclassified, her grievance was held in abeyance, after the Level III hearing, until the West Virginia Division of Personnel examined Grievant's duties and responsibilities. Grievant completed the first three pages of a West Virginia Civil Service System Position Description Form on September 1, 1996, outlining her duties and responsibilities. The form also required Grievant's immediate supervisor, David Hockman, Superintendent of the Davis Center, to complete and sign the last page.

On September 9, 1996, Mr. Lowell Basford, Assistant Director of Compensation and Classification for the West Virginia Division of Personnel, completed a review of Grievant's duties and responsibilities, and determined that she was properly classified as a Business Manager. Grievant agrees that she is properly classified as a Business Manager. During the Level IV hearing, she testified “that fifty percent of my time, and my primary duty, is as a Business Manager.” However, Grievant's problem with her assigned duties is that “the other fifty percent of [her] time is spent doing everything else at Davis Center, including running the institution in the absence of the Superintendent.”

The Level III hearing evaluator's decision concentrated solely on an issue Grievant did not pursue (misclassification), ignored Grievant's only stated claim (discrimination), and denied the grievance. Perhaps this was because a lot of the evidence Grievant produced addressed her job duties and responsibilities. At the beginning of the Level IV hearing, the undersigned administrative law judge asked Grievant whether she was also alleging that she was misclassified, and she responded in the

negative.

Therefore, Grievant's sole allegation is one of discrimination. W.Va. Code §29-6A-2(d) defines discrimination as:

> "Discrimination" means any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees.

A prima facie showing of discrimination, under W.Va. Code §29- 6A-2(d), consists of a grievant establishing:

> (a) that she is similarly situated, in a pertinent way,to one or more other employee(s);
>
> (b) that she has, to her detriment, been treated by her employer in a manner that the other employee(s) has/have not, in a significant particular; and
>
> (c) that such differences were unrelated to actual job responsibilities of the grievant and/or the other employee(s) and were not agreed to by the grievant in writing.

Hindman v. W.Va. Div. of Corr., Docket No. 94-CORR-262 (Feb. 27, 1997); Smith v. W.Va. Bureau of Employment Programs, Docket No. 94- BEP-099 (Dec. 18, 1996); Hendricks v. W.Va. Dept. of Tax and Revenue, Docket No. 96-T&R-215 (Sept. 24, 1996).

If a grievant successfully proves a prima facie case, a presumption of discrimination exists, then respondent may rebut it by articulating a legitimate reason for its action. (See footnote 3) However, a grievant may still prevail if she can demonstrate the reason proffered by a respondent was pretextual. Ritchie v. W.Va. Dept. of Health and Human Resources, Docket No. 96-HHR-181 (May 30, 1997); Singleton v. W.Va. Dept. of Health and Human Resources, Docket No. 95-HHR-490 (May 24, 1996).

Grievant attempted to prove that she was similarly situated to Corrections Magistrates. Grievant admitted that Corrections Magistrates work in adult institutions, have more hearings, have hearings which are formal in nature, and supervise a clerk or bailiff. Moreover, Grievant does not hold the Corrections Magistrate class title. Therefore, Corrections Magistrates aredifferent from juvenile Disciplinary Hearing Officers. Grievant is not similarly situated to employees of Respondent who are

classified as Corrections Magistrates.

Grievant also attempted to prove that she was similarly situated to other persons who perform the Disciplinary Hearing Officer assignment at other institutions. The four institutions within the Division of Corrections that Grievant compared with the Davis Center included two juvenile institutions, the Anthony Center (Anthony), and the Industrial Home for Youth at Salem (Salem), and two adult institutions, the Pruntytown Correctional Center (Pruntytown), and the Denmar Correctional Center (Denmar). At the Anthony Center the Disciplinary Hearing Officer duties are shared by a Correctional Officer IV and a Correctional Officer V. At Pruntytown, Denmar, and Salem, the Disciplinary Hearing Officer duties are performed by a Corrections Magistrate, a Chief Correctional Officer, and a Corrections Program Specialist, respectively. However, once again, Grievant is not similarly situated to the above individuals because her primary duties are different, and she is not in the same classification.

Grievant also feels that she has been discriminated against because she performs duties that other Business Managers do not perform. See, Level IV, Gr. Ex. 1, p. 10, which is also attached to this Decision as Appendix A. As Grievant testified, the Davis Center is one of the smaller institutions within the Division of Corrections. Therefore, the mere fact that at times some personnel, including Grievant, will be required to perform duties outside of the Business Manager classification does not mean Grievant has been discriminated against.

Even assuming that Grievant established a prima facie case of discrimination, the size (small) and type (juvenile) of institution that the Davis Center is, would be a legitimate reason which would prohibit a finding of discrimination in this case. Moreover, Grievant provided evidence concerning only duties she performs. She failed to provide the undersigned with evidence regarding all of the duties and assignments of each of the other Business Managers on Appendix A. Without this type of evidence a proper comparison of overall duties and responsibilities cannot be made.

Although the issue in this grievance is not misclassification, the Undersigned feels compelled to also include the following discussion of Grievant's case. Grievant admits that the Disciplinary Hearing Officer assignment “shall be an auxiliary one to be performed in conjunction with the staff persons' primary assignment.” Level IV, Gr. Ex. 1, p.4. Merely because the class specification for Business Manager fails to include the Disciplinary Hearing Officer assignment under Examples of Work does not mean that duty is improperly assigned to her. Even though a class specification does

not include all the actual tasks performed by a grievant, that does not make it invalid. W.Va. Admin. Rule, §4.04(d). Class specifications are descriptive only, and are not meant to be restrictive. Mention of one duty or requirement does not preclude others. W.Va. Admin. Rule, §4.04(a); Coates v. W.Va. Dept. of Health and Human Resources, Docket No. 94-HHR-041 (Aug. 29, 1994).

Moreover, Grievant is staff personnel at the Davis Center, her assignment as Disciplinary Hearing Officer is not her primary assignment, and comprises approximately thirty percent of her job duties. The predominant duties of the position in question are class-controlling. Broaddus v. W.Va. Div. of Human Services, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

In addition to the foregoing findings of fact and narration, it is appropriate to make the following formal conclusions of law.

CONCLUSIONS OF LAW

1. In nondisciplinary matters, a grievant must prove all of the allegations constituting her grievance by a preponderance of the evidence. Owens v. W.Va. Alcohol Beverage Control Comm'n, Docket No. 90-ABCC-003 (Apr. 30, 1990).

2. W.Va. Code §18-29-2(m) defines discrimination as:

> "Discrimination" means any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees.

3. A prima facie showing of discrimination, under W.Va. Code §29-6A-2(d), consists of a grievant establishing:

> (a) that she is similarly situated, in a pertinent way, to one or more other employee(s);
>
> (b) that she has, to her detriment, been treated by her employer in a manner that the other employee(s) has/have not, in a significant particular; and
>
> (c) that such differences were unrelated to actual job responsibilities of the grievant and/or the other employee(s) and were not agreed to by the grievant in writing.

Hindman v. W.Va. Div. of Corr., Docket No. 94-CORR-262 (Feb. 27, 1997); Smith v. W.Va. Bureau of Employment Programs, Docket No. 94- BEP-099 (Dec. 18, 1996); Hendricks v. W.Va. Dept. of

Tax and Revenue, Docket No. 96-T&R-215 (Sept. 24, 1996).

4. If a grievant successfully proves a prima facie case, a presumption of discrimination exists, then respondent may rebut it by articulating a legitimate reason for its action. However, a grievant may still prevail if she can demonstrate the reason proffered by a respondent was pretextual. Ritchie v. W.Va. Dept. of Health and Human Resources, Docket No. 96-HHR-181 (May 30, 1997); Singleton v. W.Va. Dept. of Health and Human Resources, Docket No. 95-HHR-490 (May 24, 1996).

5. Grievant failed to prove, by a preponderance of the evidence, a case of discrimination.

Accordingly, the grievance is **DENIED**.

Any party 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 preparedand transmitted to the appropriate court.

Dated: 6/26/97 _____

JEFFREY N. WEATHERHOLT

ADMINISTRATIVE LAW JUDGE

Footnote: 1

Grievant seeks a salary upgrade of two thousand dollars which was provided to individuals in the following classifications: Correctional Officers, Correctional Counselors, Correctional Case Managers, Correctional Unit Managers, Correctional Program Manager I, Correctional Program Supervisors, Correctional Program Specialists, and Corrections Magistrates. All other employees, including Grievant, were to receive a three hundred dollar salary increase. Level IV, Gr. Ex. 1, p. 16.

Respondent asserted that the “salary upgrade” was the result of a Legislative Act to attract and retain personnel for specific classifications, and that the legislature did not designate which classifications were to receive the two thousand dollar ($2,000) salary increase. In this case, it is irrelevant whether the specific classification designation was a Legislative Act or an act performed by Respondents. Since Grievant failed to prove her claim of discrimination, a determination of whose policy allegedlydiscriminated against her is irrelevant.

Footnote: 2

Respondent did not file a post-hearing submission in this case.

Footnote: 3

While the burden of production may shift, the overall burden of proof never does. See, Texas Dept. of Comm. Aff. v. Burdine, 450 U.S. 248 (1981).