KATRINA NABORS and HAZEL BREWER

v.

Docket No. 96-DOH-100

WEST VIRGINIA DEPARTMENT OF HEALTH

and HUMAN RESOURCES/WEST VIRGINIA DIVISION OF PERSONNEL

DECISION

The grievants, Katrina Nabors and Hazel Brewer, are employed by the West Virginia Department of Health and Human Resources as Health Service Assistants assigned to the Special Needs Unit at Pinecrest Hospital. They filed a grievance at Level I on August 5, 1993, challenging a determination by the West Virginia Division of Personnel (Personnel) that they were not performing the duties of the higher-paid Health Service Assistant classification. Their supervisor was without authority to grant relief, and the grievance was denied at Levels II and III. Appeal to Level IV was made March 28, 1996, and a hearing was held October 30, 1996. The parties submitted proposed findings of fact and conclusions of law by December 6, 1996.

FINDINGS OF FACT

There is essentially no dispute over the facts of the case. The record developed at Levels III and IV supports the following findings.

1. In 1991, Personnel's class series for Health Service positions included Health Service Worker, Trainee, Health Service Wroker and Health Service Technician. Then-classified as Health Service Workers, the grievants completed training in 1991, which was a requirement for the HealthService Technician post.

2. Believing that completion of the training and/or the nature of their duties entitled them to either promotion or reclassification to Health Service Technician, they initiated a complaint with Personnel, and ultimately filed grievances over the matter. In December, 1992, before the case reached Level IV, Personnel implemented an agencywide reclassification of HHR positions. The Health Service Technician classification was replaced with the Health Service Assistant classfication.

3. Using the grievants' written, detailed descriptions of their duties and other information provided by HHR, Personnel determined that the grievants'positions should remain in the Health Service Worker classification. On January 11, 1993, the grievants filed a complaint with Personnel over this determination; they sought reclassification to Health Service Assistant.

4. In Nabors/Brewer v. HHR, Docket No. 93-HHR-080 (May 26, 1993), the Administrative Law Judge rejected the grievants' original claim that Health Service Technician was the proper classification for their positions from 1991, until the effective date of the reclassification project.

5. On July 7, 1993, Personnel notified the grievants that it had conducted another review of their duties, and had again determined that the specifications for Health Service Worker constituted the “best fit” for their duties. As noted, their grievance over this determination was filed August 5, 1993.

6. During the pendency of the case at the lower levels, Pinecrest Hospital Administrator Ernest Eades submitted additional information, and ultimately convinced Personnel that Health Service Assistant was the proper classification for the grievants' positions. Their reclassification was effective in August 1994.

7. The grievants' Health Care Worker salaries at the time were higher than the minimumsalary for Health Care Assistant. They were not given a pay increase in accordance with Personnel regulations which provide that when an employee's position is placed in a new classification, the employing agency need not provide the employee a raise unless his or her salary is below the minimum salary established for the new classification.

ARGUMENT

The grievants ask that they be allowed to abandon their now moot claim to the Health Service Assistant classification, and take issue with the interpretation and/or application of Personnel's regulations regarding salary increases when an employee is place in a new classification. They assert that they were actually promoted, and that Personnel's regulations on promotions required that

they receive increases in pay.

HHR objects to the change in claims, and asserts that original grievance, filed nearly one month after Personnel's July 7, 1993 notification that the grievants would remain in the Health Service Worker classification, was untimely. The Respondents also dispute the grievants' interpretation of Personnel's regulations.

CONCLUSIONS OF LAW

After a careful review of the parties' positions, the applicable statutes and regulations, and the above findings of fact, the undersigned makes the following conclusions.

1. Personnel's July 7, 1993 notification that the grievants were properly classified as Health Service Workers was the event upon which the grievance was based, and it was not filed within ten days of that event as required by W. Va. Code §29-6A-4(a); the grievants did not assert or substantiate any equity-based exception to the requirement. 2. Under W.Va. Code §§29-6A-3(j) and 29-6A-5(b), the Administrative Law Judge, at Level IV, has the discretion to allow amendments to a grievance to encompass issues not originally raised. This discretionary authority cannot be exercised unless the Education and State Employees Grievance Board has proper jurisdiction over the original complaint.

3. The grievants' failure to timely file their complaint over the proper classification of their positions precludes consideration of their assertions regarding the interpretation and/or application of Personnel's regulations on promotion, reclassification and reallocation.

4. Notwithstanding the above conclusions, the Respondents' interpretation of the language of the regulations in issue is the more reasonable. Personnel defines a promotion as “[a] change in the status of an employee from a position in one class to a vacant position in another class of higher rank as measured by salary range and increased level of duties and/or responsibiliites.” A preponderance of the evidence presented clearly establishes that while the grievants did obtain a higher rank and were placed in a pay grade with a higher maximum salary, they did not move from one identified position to another, “vacant” position.

5. Personnel's regulations define reallocation as a [r]eassignment by the Director of Personnel of

a position from one classification to a different classification on the basis of a significant change in the kind or difficulty of duties and responsibilities assigned to the position or to correct a position misclassification." A preponderance of the evidence establishes that Personnel placed the grievants' positions in the Health Service Assistant classification because of significant changes in their duties which made the Health Service Worker classification specifications an inaccurate description. The grievants positions were reallocated from Health Service Worker to Health Service Assistant, and since their salaries were above the minimum salary for Health ServiceWorker, Personnel's regulations did not require that they be given a raise.

6. The grievants have otherwise failed to advance or substantiate any legal theory whereby they were entitled to a pay increase when their positions were placed in the Health Service Assistant classification.

Accordingly, the grievance is **DENIED**.

August 4, 1997

_____

Jerry A. Wright

Administrative Law Judge