YVONNE FARLEY, et al.,

Grievants,

v.

DOCKET NO. 96-HHR-434

WEST VIRGINIA DEPARTMENT OF HEALTH

AND HUMAN RESOURCES and

DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievants, Yvonne Farley, Kathy McKinney, and Luana Webster, are employed by Respondent West Virginia Department of Health and Human Resources/Pinecrest Hospital ("HHR"), as Health Service Assistants. They filed this grievance against HHR and the Division of Personnel ("Personnel") on July 9, 1996, alleging:

> Unequal salar[ies] in Dept. Employees are being promoted into our Dept. with no experience, no training to higher salar[ies] than ours. Grievance request is to be made whole in every way including equalizing salar[ies] in the entire Dept.

Grievants waived processing the grievance at levels one and two and proceeded to level three, where a hearing was conducted on September 11, 1996. Grievance Evaluator Barbara Wheeler denied the grievance by decision on or about October 4, 1996. Grievants appealed to level four on October 7, 1996, and following several delays and continuances for good cause, this matter came on for hearing on March 17, 1998. This grievancebecame mature on April 17, 1998, the deadline for the parties' submission of proposed findings of fact and conclusions of law. (See footnote 1)

SUMMARY OF EVIDENCE

Grievants' Exhibits

Ex. 1 -

Personnel Action Form WV-11 for Evelyn M. Lilly, dated March 1996.

Ex. 2 -

West Virginia Division of Personnel Pilot Policy Pay Plan Implementation, effective May 1, 1994.

Ex. 3 -

Paycheck stub for Nellie J. Sluss, dated July 16, 1996.

Ex. 4 -

Paycheck stub for Katrina Nabors, dated May 31, 1996.

Ex. 5 -

Paycheck stubs for Yvonne Farley.

Ex. 6 -

Position Announcement for Health Service Technician at Pinecrest Hospital.

Ex. 7 -

December 16, 1992 letter to Yvonne Farley from Michael T. Smith, Director, notifying her of reclassification to Health Services Assistant, Pay Grade 5.

Ex. 8 -

April 9, 1990 memorandum from Raymona Kinneberg to All Employees re: Comprehensive Classification System Review.

Ex. 9 -

Proposed Functional Job Description Restorative Technician.

Ex. 10 -

Employee Handbook, Section 4: Money Matters.

Ex. 11 -

September 12, 1994 letter from Leah Tincher to Estie Mae Campbell re:

reclassification.

Ex. 12 -

Salary printout of Pinecrest Hospital, generated May 15, 1997.

HHR's Exhibits

Ex. 1 -

Personnel Action Reclassification/Reallocation Class Change form for Kathy Jane McKinney.

Ex. 2 -

Personnel Action Reclassification/Reallocation Class Change form for Luana Webster.

Ex. 3 -

Personnel Action Reclassification/Reallocation Class Change form for Yvonne Farley.

Ex. 4 -

West Virginia Division of Personnel Classification and Compensation Plan: Class Titles and Pay Grades

Personnel's Exhibits

Ex. 1 -

Division of Personnel Transaction Card for Kathy Jane McKinney.

Ex. 2 -

Division of Personnel Transaction Card for Evelyn Lilly.

Ex. 3 -

Division of Personnel Transaction Card for Yvonne Farley.

Ex. 4 -

Division of Personnel Transaction Card for Katrina Nabors.

Ex. 5 -

Division of Personnel Transaction Card for Luana Webster.

Testimony

Grievants testified in their own behalf and presented the testimony of Evelyn Lilly. HHR and Personnel presented the testimony of Ernest Eades.

ISSUE

The issue is whether Grievants have proven by a preponderance of the evidence that HHR and Personnel have violated the principle of "equal pay for equal work" embodied in W. Va. Code § 29-6-10. They have not.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts.

1. Grievant Yvonne Farley has been employed by HHR/Pinecrest Hospital for 17 years. She was reclassified to a Health Service Assistant as part of the statewide reclassification project on December 16, 1992, without an increase in salary. She is currently in Pay Grade 5 and her monthly salary rate is $1,204.00. DOP Ex. 3.

2. Grievant Luana Webster has been employed by HHR/Pinecrest Hospital for 24 years. She was reclassified to a Health Service Assistant as part of the statewide reclassification project on December 16, 1992, without an increase in salary. She is currently in Pay Grade 5 and her monthly salary rate is $1,245.00. DOP. Ex. 5.

3. Grievant Kathy McKinney has been employed by HHR/Pinecrest Hospital for 17 years. She was reclassified to a Health Service Assistant as part of the statewidereclassification project on December 16, 1992, without an increase in salary. She is currently in Pay Grade 5 and her monthly salary rate is $1,204.00. DOP Ex. 1.

4. Evelyn Lilly has been employed by HHR/Pinecrest Hospital for 15 years, and as a Health Service Assistant for 2 years. Ms. Lilly was promoted from Health Service Worker in Pay Grade 4 to Health Service Assistant in Pay Grade 5 on March 1, 1996, with the required 5 percent (5%) salary

increase. She is currently in Pay Grade 5 and her monthly salary rate is $1,224.00. DOP Ex. 2.

5. Katrina Nabors has been employed by HHR/Pinecrest Hospital for 22 years, and as a Health Service Assistant for 4 years. Ms. Nabors was reclassified from Health Service Workers in Pay Grade 4 to Health Service Assistant in Pay Grade 5 on August 16, 1994, with no increase in salary. She is in Pay Grade 5 and her monthly salary rate is $1,335.00. DOP Ex. 4.

6. All Health Service Assistants at Pinecrest Hospital have the same duties and responsibilities.

7. The Health Service Assistant classification has been placed in Pay Grade 5 by the Division of Personnel Classification and Compensation Plan. HHR Ex. 4.

8. Grievants, Ms. Lilly and Ms. Nabors, are all appropriately placed within Pay Grade 5 for their classification as Health Service Assistant.

9. HHR/Pinecrest Hospital does not have the discretion of granting merit increases on a regular basis, and the lack of merit increases causes salary compression resulting from promotion and newly hired employees.

DISCUSSION

This issue of “equal pay for equal work” has been decided by this Grievance Board on numerous occasions, and the West Virginia Supreme Court of Appeals in Largent v. W. Va. Div. of Health, 192 W. Va. 239, 452 S.E.2d 42 (1994), to mean that employees performing similar work need not receive identical pay, so long as they are paid in accordance with the pay scale for their proper employment classification. In this case, Grievants, Ms. Lilly and Ms. Nabors are all being paid in accordance with the pay scale for their classification of Health Service Assistants. Grievants have not shown that Respondents have acted in an arbitrary and capricious manner in setting the salaries of Health Service Assistants at Pinecrest Hospital.

CONCLUSIONS OF LAW

1. In order to prevail in a grievance of this nature, Grievants must prove the allegations in their complaint by a preponderance of the evidence. Wargo v. W. Va. Dept. of Health & Human Resources, Docket Nos. 92-HHR-441/445/446 (Mar. 23, 1994); Payne v. W. Va. Dept. of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988).

2. The concept of “equal pay for equal work” is embraced by W. Va. Code § 29- 6-10. See

AFSCME v. Civil Service Comm'n, 181 W. Va. 8, 380 S.E.2d 43 (1989).

3. Previous decisions interpreting that provision have established that employees performing similar work need not receive identical pay, so long as they are paid in accordance with the pay scale for their proper employment classification. Largent v. W. Va. Div. of Health, 192 W. Va. 239, 452 S.E.2d 42 (1994); Salmons v. W. Va. Dept. of Transp., Docket No. 94-DOH-555 (Mar. 20, 1995); Hickman v. W. Va. Dept. of Transp., Docket No. 94-DOH-435 (Feb. 28, 1995); Tennant v. W. Va. Dept. of Health & HumanResources, Docket No. 92-HHR-453 (Apr. 13, 1993); Acord v. W. Va. Dept. of Health & Human Resources, Docket No. 91-H-177 (May 29, 1992).

4. If grievants and new employees are all within the appropriate pay range for their classification, grievants are not entitled to any pay increase on a purely legal theory, e.g., "equal pay for equal work." Gardner v. Dept. of Tax and Revenue, Docket No. 91-T- 220 (Sept. 30, 1991).

5. Grievants and the employees with whom they compare themselves are all within the appropriate Pay Grade 5, for their classification, Health Service Assistant.

Accordingly, this 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 prepared and transmitted to the appropriate court.

_____

MARY JO SWARTZ

Administrative Law Judge

Dated: June 17, 1998

Footnote: 1

Grievants were represented by Kristin Eldridge, District 1199/SEIU. Health and Human Resources was represented by Assistant Attorney General Michelle Mensore, Esq. and Assistant Attorney General Meredith Harron, Esq. The Division of Personnel was represented by Lowell D. Basford, Assistant Director, Classification and Compensation Section.