THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

JULIE FIELDS,

Grievant,

v. **DOCKET NO. 06-HHR-062**

DEPARTMENT OF HEALTH AND
HUMAN RESOURCES/BUREAU FOR
CHILDREN & FAMILIES and DIVISION
OF PERSONNEL,

Respondents.

DECISION

Grievant, Julie Fields, filed a grievance against her employer on January 5, 2006, alleging:

I requested a packet to be submitted on April 8th of 2005 which qualified me to be eligible for the Strategic Compensation Plan. I am still awaiting [sic] for approval from the submission of the packet and have not been granted relief as of this date.

Relief Sought:

I am requesting a salary increase that equals the DHHR Senior Specialist Salary Average, along with back pay and interest from the date of my request.

The grievance was denied at all the lower levels. A Level IV hearing was held at the Grievance Board's Charleston Office on June 23, 2006. Grievant was represented by Andrew McQueen, Esq., Department of Health and Human Resources ("DHHR") was represented by B. Allen Campbell,

Senior Assistant Attorney General, and the Division of Personnel ("DOP") was represented by Karen O'Sullivan Thornton, Assistant Attorney General. This case became mature on July 28, 2006, upon the parties' submission of proposed findings of fact and conclusions of law.

Issues and Arguments

Grievant requested she be considered for increased compensation under the Pilot Strategic Compensation Policy prior to a memorandum issued to all Cabinet Secretaries from the Governor's Chief of Staff, Larry Puccio, essentially freezing all discretionary salary increases absent limited circumstances. Grievant argues if Respondents had processed her request timely, she would have been eligible for a salary increase.

Respondents assert Mr. Puccio's memorandum created a freeze on all discretionary raises, and because of that, neither DHHR or DOP could grant raises under the Pilot Policy. Respondents also assert that even if the freeze on raises were not in place, it is likely DOP would have rejected the recommendation based on the data provided because Grievant would not have met the relevant criteria.

Findings of Fact

1. Grievant is employed by DHHR's Bureau for Children and Families as a Health and Human Resources Specialist, Senior in its Division of Grants and Contracts.

2. On or about April 8, 2005, Grievant became aware of DOP's Pilot Strategic Compensation Policy.

3. This Pilot Policy was designed to allow State agencies to establish more variable and flexible compensation practices.

4. The Pilot Policy specifically stated:

[i]n situations in which one or more employees are paid at least 20% less than other employees in an agency-defined organizational unit and the same job class who have comparable training and experience, duties and responsibilities, performance level, and years of State/classified service, the appointing authority may recommend an in-range salary adjustment of up to 10% of current salary to each employee in the organizational unit whosesalary is at least 20% less than other employees in the unit. Internal equity increases shall be limited to once every five years for the same job class in the same organizational unit.

Respondent's Exhibit 1.

5. Grievant believed she qualified under this provision, and on or before April 8, 2005, she requested that Gail Totten, her supervisor submit a request for consideration.

6. Ms. Totten explained to Grievant that she would need to review the Pilot Policy.

7. Upon review, Ms. Totten thought Grievant might qualify for an increase in salary under the internal equity provision. Ms. Totten reviewed Grievant's salary and tenure and compared her with other employees under Ms. Totten's supervision. Ms. Totten began drafting a recommendation for an internal equity adjustment to present to Martha Walker, Secretary of DHHR.

8. Ms. Totten completed the draft memorandum on April 18, 2005. Ms. Totten addressed the document to her supervisor, Douglas Robinson, Assistant Commissioner, Bureau for Children and Families. She then put the memorandum on her desk with the intent to revisit the draft to revise and strengthen her recommendation.

9. Ms. Totten did not revise the recommendation, and inadvertently thought she had sent the memorandum to Mr. Robinson.

10. Grievant followed up on her request on April 22, 2005; May 12, 2005; June 13, 2005; and June 14, 2005.

11. Grievant was incorrectly told her recommendation was filed on April 18, 2005. 12. Ms. Totten did not realize until June, 2005, that she did not submit the request. Upon this realization, Ms. Totten spoke with Mr. Robinson about the request, and was informed he would support her recommendation.

13. Ms. Totten then prepared a new memorandum with additional information and submitted it on or about June 14, 2005, to Jean Sheppard, Director of Budgets and Accounting, per Mr. Robinson's request. (See footnote 1)

14. The procedure for processing salary adjustments is quite lengthy. Once a supervisor made a recommendation, the recommendation was presented to the Bureau for Children and Families Leadership Team. If they approved the recommendation, the Commissioner of the Bureau for Children and Families, Margaret Waybright, would take the recommendation to the DHHR Leadership Team Meeting. If approved by the Leadership Team, the recommendation was then sent to the West Virginia Division of Personnel for approval. Recommendations are not valid unless approved by the West Virginia Division of Personnel.

15. The Bureau for Children and Families Leadership Team approved the recommendation for Grievant's internal equity adjustment. Commissioner Waybright then took the recommendation to the DHHR Leadership Team. (See footnote 2)

16. On April 29, 2005, the Governor's Chief of Staff, Larry Puccio, issued a Memorandum to all Cabinet Secretaries essentially freezing all discretionary raises. 17. Because the Pilot Policy concerns discretionary raises, the memorandum prohibited DOP from granting recommendations for salary advancement. When the memorandum was issued, there was some confusion by DHHR as to whether it applied to the Pilot Policy.

18. Unsure as to the effect of the memorandum on the Pilot Policy, Commissioner Waybright approved the recommendation to grant Grievant the internal equity adjustment. Commissioner Waybright then attempted to bring the recommendation to the attention of the Leadership Team.

19. Michael McCabe, Director of DHHR's Office of Personnel Services, clarified that Mr. Puccio's memorandum of April 2005, did include salary adjustments under the Pilot Policy.

20. Because there was a freeze on salary advancements, Ms. Waybright did not present the recommendation. Grievant's recommendation was not the only recommendation she did not present to the Leadership Team. Since Grievant's recommendation was not presented, it was never approved by the appointing authority, and therefore, was never sent to DOP for approval.

21. Based on the data provided on Grievant's recommendation, Grievant does not appear to have the same level of tenure as another employee. Grievant does not share the same job duties as those employees to which she compares herself.

22. The only Bureau for Children and Families employees who have received any merit increases were employees who became part of the Crisis Intervention Team. Salary increases for these employees were given by the DOP and the Governor's Office. These raises are not in conflict with the memorandum issued by Mr. Puccio. 23. No DHHR employees were given raises under the Pilot Policy.

Discussion

Since this grievance is not about discipline, Grievant must prove all of her claims by a preponderance of the evidence, which means she must provide enough evidence for the undersigned Administrative Law Judge to decide that his claim is more likely valid than not. *See Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996); *Leichliter v. W. Va.*

Dep't of Health and Human Res., Docket No. 92-HHR-486 (May 17, 1993). If the evidence supports both sides equally, then Grievant has not met her burden. *Id.*

Essentially, the crux of Grievant's argument is that the paperwork should have been processed in a timely manner. Grievant asserts that if not for the untimely filing of Grievant's request and "continued deliberate misrepresentations" Grievant would have been awarded additional compensation under the Pilot Plan. *Grievant's Findings of Fact*.

"'A grievant's belief that [her] supervisor's management decisions are incorrect is not grievable unless these decisions violate some rule, regulation, or statute, or constitute a substantial detriment to, or interference with, the employee's effective job performance or health and safety.' *Rice v. Div. of Highways*, Docket No. 96-DOH-247 (Aug. 29, 1997)." *Viski v. Preston County Bd. of Educ.,* Docket No. 99-39-271 (Nov. 30, 1999).

The testimony presented at Level IV in no way indicated that anyone within DHHR intentionally made misrepresentations to Grievant. Also, no testimony was elicited that would indicate DHHR willfully or deliberately withheld Grievant's paperwork to prevent her from obtaining a raise. Ms. Totten attempted to draft a well-reasoned memorandum recommending Grievant for a salary increase. After reviewing her first draft, Ms. Totten thought it could be stronger and decided to revisit the document. Unfortunately, however, she inadvertently forgot and believed she had forwarded her original draft on to the appropriate people. When Grievant followed up on the recommendation, Ms. Totten provided her with the information she believed to be correct. It was an oversight that Grievant's paperwork did not reach the intended recipients. There was no malicious intent.

Grievant did follow up on the status of her recommendation, and after realizing the confusion, requested the documents from Ms. Totten in June 2005. This is when Ms. Totten realized her oversight. Immediately, Ms. Totten worked to rectify the situation.

However, by that time, Mr. Puccio's memorandum was in effect, essentially freezing all discretionary raises. It is important to look at the dates in this case. Grievant believed her recommendation was submitted on April 18, 2005. Mr. Puccio's memorandum is dated April 29, 2005. With the lengthy process required to obtain a salary advancement under the Pilot Policy, it is unlikely Grievant's recommendation would have been accepted by the appropriate people to ensure her an increase before the freeze.

Also, simply requesting a salary advancement does not guarantee that an employee will receive

the same. It is difficult to meet all the requirements set forth in the Pilot Policy. The review is thorough, ending with Mr. Basford, Assistant Director, Classification and Compensation Division, of DOP. Mr. Basford testified that based on the information disclosed in Grievant's recommendation, it is unlikely that had the paperwork cleared the appropriate channels, Grievant would have received a salary advancement. Mr. Basford testified at Level IV that while Grievant may have the same classification title as theemployees she compares herself to, he does not believe these employees share the same job duties.

Grievant's attorney asserts Mr. Basford's testimony is "vacuous of merit" because Grievant's educational background and experience put her on par with her co-workers. Mr. Basford manages the unit for classification and compensation, and has held that job since 1976. Clearly his testimony on the subject of whether Grievant meets the requirements for a salary increase under the Pilot Policy is not only meritorious, but is also helpful in understanding the variables looked at when determining whether a salary increase is warranted.

Grievant has not carried her burden of proof on the issue and her grievance must be denied. The following conclusions of law help support this decision.

Conclusions of Law

1. Since this grievance is not about discipline, Grievant must prove all of her claims by a preponderance of the evidence, which means she must provide enough evidence for the undersigned Administrative Law Judge to decide that his claim is more likely valid than not. *See Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996); *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). If the evidence supports both sides equally, then Grievant has not met her burden. *Id.*

2. "'A grievant's belief that h[er] supervisor's management decisions are incorrect is not grievable unless these decisions violate some rule, regulation, or statute, or constitute a substantial detriment to, or interference with, the employee's effective jobperformance or health and safety.' *Rice v. Div. of Highways*, Docket No. 96-DOH-247 (Aug. 29, 1997)." *Viski v. Preston County Bd. of Educ.,* Docket No. 99-39-271 (Nov. 30, 1999).

3. Grievant did not carry her burden of proving she was entitled to a raise under the Pilot Policy. Grievant also did not show any malice on the part of anyone at DHHR or DOP.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or 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 (1998). 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. However, the appealing party is required by *W. Va. Code* § 29A- 5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

DATE: October 18, 2006

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Wendy A. Campbell

Administrative Law Judge

Footnote: 1

Grievant also asserts this Pilot Policy was scheduled to end on June 30, 2005. However, Mr. Puccio's memorandum was in effect well before that date.

Footnote: 2

The undersigned does not have the specific on which this recommendation occurred.