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**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**

**GASTON CAPERTON**  
Governor

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240 Capitol Street  
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Charleston, WV 25301  
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BION MANNING, et al.

v.

DOCKET NOS. 89-RS-282,  
289, 310, 317, and 338

W.VA. DIVISION OF REHABILITATION SERVICES and  
W.VA. DIVISION OF PERSONNEL

DECISION

Grievants, Bion Manning, Regina Brewster, Joseph Gwinn, William Nelson and Milton Simmons are all employed by the W.Va. Division of Rehabilitation Services (Division) as Senior Rehabilitation Counselors. The grievants filed individual level four appeals in June and July 1989 in which they alleged that a reduction in their salaries resulted in various violations of rules found in the "W.Va. State Employees Grievance Handbook" and their due process rights. The grievances had previously been considered individually and denied at levels one, two and three. At level four the matters were consolidated and the Division of Personnel (Personnel) was joined as a party-in-interest.<sup>1</sup> A level

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<sup>1</sup>The Division of Personnel has assumed the employment-related duties previously performed by the Civil Service System addressed herein.

four hearing was held on September 18, 1989 and the final submission of proposed findings of fact and conclusions of law was received on January 19, 1990.

Events leading to this grievance began in July 1988 when a revised classification and compensation plan was implemented for all vocational counselors. Briefly, this plan was devised as a result of ongoing difficulty by the Division to recruit and retain counselors. In pertinent part, the plan revised employee classification and compensation from four levels to three. Trainees (pay grade 10), Counselor I (pay grade 12), Counselor II (pay grade 16), and Counselor III (pay grade 19) were reclassified as Counselor Trainees (pay grade 13), Rehabilitation Counselors (pay grade 17), and Senior Counselors (pay grade 19). Whereas the employees' classification had previously been determined primarily by seniority the revised system was based on the duties and responsibilities of the position. Compensation for the revised classifications was a step-for-step increase to the newly-assigned pay grade.<sup>2</sup> Grievants, formerly Counselor I's or II's, were accordingly reclassified as Senior Counselors with a salary increase to pay grade 19 while retaining their same step assignment. Immediately

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<sup>2</sup>The Civil Service Commission schedule assigns each job title a pay grade from a scale of 1 to 35. Within each pay grade are 12 steps, which each have four levels providing a uniform system and amount of salary increases through merit raises, etc.

thereafter Randy Henderson, a Senior Counselor, filed a grievance alleging that the revised compensation plan lacked uniformity among individuals who had similar education, training experience and responsibilities.

Evidence adduced at Mr. Henderson's level four hearing established that Senior Counselors who had previously been classified at a lower pay grade but a higher pay step received considerably larger salary increases than counselors who had been classified at a higher pay grade and a lower pay step. This resulted in widely-disparate pay increases for employees who shared similar responsibilities and had earned approximately the same amount of seniority. Despite the fact that all employees were treated exactly the same in implementing the new salary schedule the results were so divergent that the revised compensation plan was held to be in violation of W.Va. Code §29-6-10(2), which provides that employees shall receive equal pay for equal work. The Division and the Civil Service Commission were Ordered to amend the classification plan to reflect that similarly-situated individuals be compensated uniformly. Henderson v. Division of Vocational Services and W.Va. Civil Service Commission, Docket No. VR-88-023 (Feb. 28, 1989). In response to the level four decision the salaries of the grievants were reduced effective April 1, 1989.

The grievants argue that the reduction in salary violated the written agreement under which they work, i.e., a letter which included a statement of their salary from the

Director of West Virginia Rehabilitation Services;<sup>3</sup> it violated their existing salary affecting the condition of their employment; and constituted a substantial interference with their job performance.<sup>4</sup> Additionally, they argue that a violation of their due process rights occurred when their salaries were reduced prior to a hearing with proper representation, that the reduction was contrary to legislative intent as applied to appointed positions, and that a reversal of this reduction of their salary could be based upon a "no-hurt clause" which would function to protect their established incomes.<sup>5</sup> The Department and Personnel respond that the salary readjustments were not implemented with any intent to discriminate, harass, or deny the grievants due process but was properly taken for the purpose of insuring that similarly-situated employees were compensated uniformly in compliance with W.Va. Code §29-6-10(2).

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<sup>3</sup>The grievants more frequently referred to a violation of their employment contract; however, the document is in fact a letter advising them of their revised classification/compensation effective July 1, 1988.

<sup>4</sup>The grievants recite financial, emotional and medical repercussions of the salary reductions.

<sup>5</sup>Mr. Simmons also alleged at level three that the action was a discriminatory application of unwritten policies and practices of the state agency; however, the grievant's testimony at that level does not appear to include any explanation or identification of the unwritten policies or practices and the allegation is therefore deemed abandoned.

At the level four hearing Lowell Basford, then Acting Director of Personnel, testified that as a result of the Henderson decision the Division and Civil Service reviewed the matter and determined that the cause of the large salary discrepancies within the classification of Senior Counselor could be attributed to the grievants having been improperly classified prior to July 1, 1988. To correct the inequities the Division re-evaluated the classification held by each of the grievants prior to July 1988, reclassified them to the level they should have been assigned at that time and then reclassified them again implementing the new plan which became effective in July.

To illustrate this procedure Mr. Basford recounted Grievant Nelson's case. Mr. Nelson, prior to July 1988, had been classified as a Rehabilitation Counselor I, pay grade 12, step 10A. As a result of the reclassification he had been elevated to Senior Rehabilitation Counselor, pay grade 19, step 10A. Mr. Nelson had been misclassified as a Counselor I prior to July 1988 and would have properly been classified as a Counselor III, pay grade 18, step 4A. Had he been properly classified prior to July 1988, implementation of the new plan would have correctly placed him on the salary scale as a Senior Rehabilitation Counselor, pay grade 19, step 4A. Accordingly, Civil Service reprocessed all the grievants' reclassifications based upon their correct classification immediately prior to July 1988. The final outcome of these revisions was that all five grievants were

classified at a lower pay step with an attendant lower salary. The following chart illustrates their salary histories throughout the relevant period of time.

<u>GRIEVANT</u>	<u>Prior to 7/88</u>	<u>After 7/88</u>	<u>After 4/89</u>
Brewster	\$17,219	21,516	\$20,571
Manning	17,219	21,516	20,571
Gwinn	20,130	25,207	22,498
Simmons	21,062	26,392	23,040
Nelson	22,498	30,940	24,615

The grievants' distress at the loss of income is understandable; however, the changes in salary classification were properly implemented and bring the Division in statutory compliance by providing equal pay for equal work. Their assumption of entitlement to the higher salary has no basis. Even though letters setting forth their compensation effective July 1988 were sent to each of these individuals, this information was based upon erroneous data and the grievants have no right to a salary in excess of that to which they are entitled by law.

Grievants' definition of a "no hurt clause" appears to be that other individuals employed as Senior Counselors may be compensated at the lower salary steps, but that they should retain the significantly higher compensation. This argument in effect asks that the grievants be treated in a manner preferable to that of similarly-situated employees. In some instances when a position is down graded the incumbent is permitted to retain the higher salary which he was paid prior to the change in position classification with the successive employee receiving the lesser salary of the lower

classification. However, downgrading did not occur in the present situation but rather the reduction in salary was due to a correction of an overpayment which could not justifiably be continued.<sup>6</sup>

Because the change in salary was due to a correction in classification and was not the result of a demotion or disciplinary action, the Division was not required to provide any due process other than notice to the grievants.<sup>7</sup>

### Findings of Fact

1. Prior to July 1, 1988 the grievants were employed by the West Virginia Division of Rehabilitation Services under the classification of Rehabilitation Counselor I or II.

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<sup>6</sup>The grievants have referred to newspaper articles relating to administrators affected by Governor Caperton's reorganization of the executive branch of state government. These employees were not to have their salaries lowered as the result of any organizational changes and the grievants contend they should receive the same treatment. Their argument is flawed for two reasons. First, grievants' salaries were reduced to correct a mistake while the positions held by executive administrators were being changed by statute. Second, W.Va. Code §6-7-2(a)(c) which disallowed any decrease in salary for any state officer appointed prior to January 1, 1989 does not specifically apply to classified employees such as the grievants.

<sup>7</sup>It should be emphasized that the grievants have retained salary increase ranging from \$2,000 to over \$3,250 above their pre-July 1988 income.

The grievants cite no authority for the proposition that salaries cannot be reduced without a hearing.

2. Due to ongoing difficulty in recruiting and retaining counselors, the Division and the West Virginia Civil Service Commission devised an upgraded classification/compensation plan for Rehabilitation Counselors which became effective July 1, 1988.

3. Prior to July 1988, the Division of Rehabilitation Services employed counselors classified as Trainees (pay grade 10), Counselor I (pay grade 12), Counselor II (pay grade 16) or Counselor III (pay grade 17). The revised classification plan upgraded salaries and reduced the four classes to three: Trainee (pay grade 13), Counselor (pay grade 17), and Senior Counselor (pay grade 17). The revised classifications were based upon the actual duties required by the position rather than the longevity of the employee.

4. Compensation under the revised classification system was determined by a step-for-step adjustment to the higher pay grade, i.e., a Counselor II previously compensated at pay grade 16, step 10 was reclassified as a Counselor with a salary increase to paygrade 17, step 10.

5. The grievants were all reclassified as Senior Rehabilitation Counselors, effective July 1, 1988, with a corresponding increase in salary.

6. Another Senior Rehabilitation Counselor filed a grievance when he discovered the revised classification/compensation plan resulted in a wide range of compensation for similarly-situated individuals. The level four decision issued for that matter held that the vast

differences in salary failed to provide similarly-situated employees equal pay for equal work, a violation of W.Va. Code §29-6-10(2). Henderson v. W.Va. Division of Vocational Services and W.Va. Civil Service Commission, Docket No. VR-88-023 (Feb. 28, 1989).

7. Upon review, the Civil Service Commission determined that the five grievants had been misclassified prior to the implementation of the new classification series resulting in their compensation at a lower pay grade but at a much higher step than those similarly-situated employees who were correctly classified as Counselor III's and were compensated at a higher pay grade but at a lower pay step.

8. The Commission determined what would have been the grievants' correct classification/compensation immediately prior to July 1, 1988, and then transferred their revised pay step to the appropriate pay grade under the new classification series.

9. This correction resulted in the grievants earning less than they had when the revised classification/compensation plan was first implemented; however, they still benefit from increased salaries ranging from approximately \$2,000 to \$3,250.

#### Conclusions of Law

1. The correction of a pay plan which had resulted in similarly-situated employees receiving a difference in

salaries of nearly \$10,000 did not, in the circumstances of this case, result in any violation of the employees' contracts, statutory rights, agency rules and regulations, or their due process rights.

2. The correction in compensation which resulted in the grievants receiving an increase comparable to other employees' is in compliance with the provision in W.Va. Code §29-6-10(2) that employees receive equal pay for equal work.

Accordingly, the grievance is **DENIED**.

Either party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Randolph County 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 Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

DATED March 29, 1990

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER