MARCIA TOMLINSON, .

Grievant, .

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V. . DOCKET NUMBER 94-DMV-209

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WEST VIRGINIA DEPARTMENT OF .

TRANSPORTATION / DIVISION OF .

MOTOR VEHICLES and DIVISION .

OF PERSONNEL, .

Respondents. .

D E C I S I O N

Marcia Tomlinson (hereinafter Grievant) filed this grievance on November 18, 1993, pursuant to the provisions of the Grievance Procedure for State Employees, W. Va. Code §§29-6A-1 et seq. She contends that her base salary is not properly reflective of her years of service and performance as an employee of the State of West Virginia. Grievant's complaint was denied at the lower levels and an appeal was perfected on May 23, 1994. A level four evidentiary hearing was conducted on July 12, 1994, and the case became mature for decision on or about July 27, 1994, after receipt of post-hearing briefs.

The following findings of fact have been properly deduced from the evidentiary record developed in this case which includes the testimony taken at levels three and four.

Findings of Fact

1. Grievant is currently employed by the West Virginia Division of Motor Vehicles as a Data Entry Operator II at a salary of $1095.00 per month.

2. Grievant received notice from the West Virginia Division of Personnel (hereinafter Personnel) on or about November 15, 1993 that her classified position's pay grade had been changed from pay grade five (salary range of $10,896 - $18,756) to pay grade four (salary range of $12,276 - $20,016) as a result of the findings of Personnel during its extensive, state-wide reclassification project. Grievant's actual salary did not change as it was currently at or above the entry level salary established for the position.

3. Grievant has been employed by the State for approximately fourteen years.

4. Grievant has generally received satisfactory or better performance evaluations from her immediate supervisor.

Discussion

Grievant simply contends that her salary is unfairly low in relation to her years of service and consistent job performance. The Respondents contend that Grievant's salary is consistent with the applicable administrative regulations of Personnel and was not incorrectly influenced by the implementation of Personnel'sreclassification project and the corresponding pilot guidelines adopted thereby. Further, Personnel asserts that seniority is not a valid factor to be considered in setting the salaries of positions within the classified plan.

All proper inferences from the limited record support the finding that the pay grade for Grievant's position is consistent with the applicable administrative regulations of Personnel and Grievant has not introduced any evidence to the contrary. The fact that Grievant believes her salary is "unfair" is not justification for finding that Personnel has abused its discretion in establishing said salary or that it has acted arbitrarily or capriciously. See, Howell v. W. Va. Dept. of HHR, Docket No. 93-HHR-101 (Sep. 21, 1993); Colesante v. W. Va. B.E.P., Docket No. 93-BEP-004 (Apr. 27, 1993). Unfortunately for Grievant and many other State employees, Personnel's pay plan for its position classification plan is not tenure or seniority based. (See footnote 1) In general, the salaries for the many classified positions within Personnel's plan are based upon the nature of the duties of the positions and not the qualifications, skills or abilities of the incumbents. Further, under Personnel's Statewide Reclassification Project Pilot Administrative Guidelines, Section C.1.b. required that those employees

who already received a salary within the establishedrange for their position at the time of the reclassification project would retain that same salary. There is no evidence that Personnel failed to follow the regulations which it promulgated as they relate to Grievant's position. Within the classified service, employees may receive compensation for their years of service by virtue of an annual increment and they may also receive an increase based upon performance through merit raises. Otherwise, these factors do not directly relate to salaries.

The foregoing discussion of the case is hereby supplemented by the following appropriately made conclusions of law.

Conclusions of Law

1. Grievant bears the burden of proving her claims by a preponderance of the evidence. See, Howell.

2. Grievant has failed to establish that Personnel abused its discretionary authority in establishing the salary for her position as a result of its State Reclassification Project.

3. Grievant has failed to prove any violation, misapplication or misinterpretation of any statute, policy, rule, regulation or written agreement with regard to the establishment of her position's base salary.

Therefore, this grievance is hereby **DENIED**.

Any party or the West Virginia Division of Personnel 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.

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ALBERT C. DUNN, JR.

Administrative Law Judge

October 20, 1994

Footnote: 1W. Va. Code §29-6-10 requires that Personnel prepare, maintain and revise a position classification plan for all positions in the classified service. Further, subsection (2) requires Personnel to create and implement a pay plan to accompany the classified plan. There is no requirement within this statutory framework that Personnel's plans must be based upon seniority.