JOHN FINCH

v. Docket No. 94-BOT-202

WEST VIRGINIA BOARD OF TRUSTEES/
WEST VIRGINIA UNIVERSITY

DECISION

Grievant, John Finch, employed as an General Trades Helper at West Virginia University (WVU or Respondent), filed a grievance at level one on April 22, 1994, in which he alleged violations of unspecified West Virginia laws, Board of Trustees and WVU policies and practices when his salary was reduced. Samuel Phillips, Supervisor of Building Trades at the WVU Physical Plant, denied the grievance on April 28, 1994. Following an evidentiary hearing conducted on May 5, the matter was denied at level two; the Board of Trustees advised Grievant by letter dated May 25 that consideration would be waived at level three. Appeal was made to level four on May 19, 1994. On July 26 a hearing was held to supplement the lower-level record. Both parties waived their right to file post-hearing proposed findings of fact and conclusions of law; however, by memorandum dated October 11, 1994, Grievant advised that he wished to amend his requested relief as a result of a change in classification he received subsequent to the level four hearing.

The facts of this matter are undisputed.

1. Grievant was first employed by the WVU College of Agriculture and Forestry as a Carpenter Helper, pay grade 7, on December 1, 1992.

2. As a result of the Mercer reclassification, Grievant's title and pay grade were changed effective November 30, 1993, to Trades Worker, pay grade 12. (See footnote 1)

3. Grievant realized a salary increase of $1,236 per annum as a result of the implementation of the reclassification. His annual salary effective January 1, 1994, was $16,584.

4. Grievant applied for and was granted a transfer to the Physical Plant as a General Trades Helper (previously Electrician Helper), pay grade 9, effective March 1, 1994.

5. As a result of the transfer Grievant's salary was reduced 15% (5% per pay grade), or $2,487.

His annual salary as a General Trades Helper was $14,100.

Grievant testified at level four that he applied for the position of Electrician Helper under the belief that the move would be a lateral transfer. This understanding was apparently based upon a comparison of the position of General Trades Helper to his prior classification as a Carpenter Helper, both of which were classified in pay grade nine. Grievant testified that after consulting his coworkers at the WVU farm, he believed that he wouldlose the $1,236.00 increase he had received as a result of the Mercer reclassification but was surprised when his salary was reduced by $2,484.00. Grievant perceives the additional reduction to be a loss of a $1,500.00 legislative pay raise which he believed he would retain. Grievant stated he was aware the posting for General Trades Helper listed the salary as $13,848; however, with the $1,500. legislative increase, he assumed that his salary would be $15,384. Mr. Finch concedes that he did not confirm his calculations with anyone from the Department of Human Resources prior to accepting the position.

Originally Grievant requested "restoration of his salary to its proper level ($15,348), back pay and interest. The request for relief was amended in October when Grievant advised that he had transferred to his previous position of Trades Worker at the College of Agriculture and Forestry. Because this transfer had resulted in the restoration of his prior pay grade and salary he now requests only backpay for the seven months during which he was classified as a General Trades Helper, $728.00, plus interest at the prevailing rate.

Notwithstanding the foregoing, Grievant argues that the difference in salary was in violation of the W.Va. Code §18B-9-2 requirement that salary adjustments be made to correct inequities; Code §18-26-8a(12) which provides for a uniform system of compensation; (See footnote 2) Code §18B-9-5(e) which Grievant asserts disallowssalary reductions and may be broad enough to cover this situation; and Code §18-29-2-(m), discrimination.

WVU argues that the transfer, which was a demotion, was voluntary and was implemented in compliance with Board of Trustees Policy Bulletin No. 62 which requires a 5% salary adjustment for each pay grade the employee advances or declines. Respondent further asserts that the salary of the General Trades Helper was listed on the position posting and that Grievant was again advised of the salary by Tracy Wolfe, Human Resources Assistant I, when she offered him the position on February 4, 1994.

Board of Trustees Policy Bulletin No. 62, Section 15.1 defines demotion as "[m]ovement from a

position requiring a certain level of skill, effort and responsibility to a vacant or newly created position assigned to a different job title and lower pay grade requiring a significantly lesser degree of skill, effort and responsibility." Section 15.2 provides that "[u]pon demotion, the employee's base salary is decreased five percent (5%) per pay grade rounded to the nearest step in the new paygrade."

When Grievant transferred from a position classified in pay grade 12 to a position classified in pay grade 9 he incurred a reduction in salary of 15% or $2,487. Grievant erroneously determined that he was applying for a lateral transfer based upon a comparison of his pre-Mercer paygrade classification with that of the General Trades Helper. Grievant also, by his own admission, did not confirm his new salary with Human Resources, but rathermade inaccurate assumptions based on incorrect advice of coworkers and his own misperceptions. The amended salary was correctly calculated as directed by Board of Trustees policy.

The statutory provisions cited by Grievant are inapplicable to this situation in that the changes in salary experienced by Grievant were never affected by salary inequity or contrary to a uniform system of compensation. There is no allegation that Grievant was not properly compensated consistent with the classifications he held. Nor is there any evidence that he was deprived of a legislative pay raise. Grievant's claim that he has been treated in a discriminatory manner is somewhat curious inasmuch as W.Va. Code §18-29-2(m) defines discrimination as "any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees." Grievant offers no evidence to establish that the salary reduction was not applied to any other employee who had been demoted. On the contrary, by requesting that he retain the salary of the higher classified position Grievant appears to be seeking preferential, exceptional, or advantageous treatment defined by Code §18-29-2(o) as favoritism.

In addition to the foregoing findings of fact and discussion it is appropriate to make the following formal conclusions of law.

CONCLUSIONS OF LAW

1. A 15% reduction in Grievant's salary, effectuated when heincurred a demotion after requesting a transfer to a position classified three pay grades lower then that which he previously held, was implemented in compliance with Board of Trustees Policy Bulletin No. 62.

2. The reduction in Grievant's salary was based solely upon a 5% per pay grade calculation set

forth in Policy Bulletin No. 62 and was not effected by the retraction of a legislative pay raise.

3. Grievant has failed to prove by a preponderance of the evidence that WVU acted in violation of any statutory provisions mandating salary equity or a uniform system of compensation. Grievant has also failed to prove that the salary computations were a result of discrimination as defined by Code §18-29-2(m).

Accordingly, the grievance is DENIED.

November 30, 1994 Sue Keller, Senior Admn. Law Judge

Footnote: 1It was determined at the commencement of the level four hearing that this grievance would not address the issue of whether Grievant was properly classified under the Mercer plan. Grievant, and all other classified employees at WVU, were given the opportunity to pursue this issue if they so desired under a separate claim.

Footnote: 2W.Va. Code, Chapter 18, Article 26, was repealed by the Legislature in 1989; however, Chapter 18B, Article 9 now addresses the classified employee salary schedule and classification systemfor higher education employees.