BENNY HELLEMS, MAURICE W. WALTER,

LARRY R. WALTERS, JENNINGS R. POLAND,

STANLEY E. EPLING and WILLIAM COX

v. DOCKET NOS. 94-DMV-156/157/

160/162/163/184

DEPARTMENT OF TRANSPORTATION/

DIVISION OF MOTOR VEHICLES and

DIVISION OF PERSONNEL

D E C I S I O N

Grievants (See footnote 1), Benny Hellems, Maurice Walter, Stanley Epling, Larry Walters, Jennings Poland, and William Cox, are all Hearing Examiners ("HE's") with the Division of Motor Vehicles ("DMV"). Grievants complain because they are being paid at an entry level salary. They argue this is unfair given their years of experience and level of performance. These grievances were denied at all lower levels. Level IV hearings were held on January 26, 1995, and February 28, 1995. This case became mature for decision on April 13, 1995, following the submission of proposed findings of fact and conclusions of law.

Issues

Grievants contend that Division of Personnel ("DOP") and DMV, during the Statewide Reclassification Project, placed them at theentry level of Pay Grade 13 without giving consideration to their experience, seniority, training, and past evaluations. They resent the implication that they are "entry" level employees and request to be placed at the mid-range level of Pay Grade 13. Grievants also argue they were discriminated against and treated unfairly for the above-stated reasons. They also questioned how much flexibility the State has in setting employee compensation within a classification. Grievants cited no violation of any statute, rule, or regulation. DMV and DOP contend

they followed all rules, regulations, and statutes in placing Grievants at the entry level of Pay Grade 13. (See footnote 2) Respondents note that all Grievants received an increase in compensation, some as much as $2,000, to bring them up to the entry level salary for the pay grade. DOP also notes seniority was not a factor considered in setting the salaries of positions within the classification plan.

The facts of the case are not in dispute.

Findings of Fact

1. Grievants are all HE's for DMV. Their years of experience vary from a low of three years to a high of sixteen years.
2. Grievants' performance evaluations are all at the satisfactory, or above, level.
3. During reclassification, all Grievants' salaries were increased to reach the entry level salary for Pay Grade 13. The amount of this increase varied from Grievant to Grievant.
4. Grievants Hellems, Walter, Epling, and Poland received merit increases after filing this grievance (See footnote 3).
5. Prior to the recent merit increase cited in Finding of Fact 4, all HE's at DMV received the same salary regardless of experience. This included recent hires with less than a year of experience.

Discussion

Grievants' major contention is DMV and DOP treated them unfairly when they did not consider their seniority and experience in setting their salary level. Grievants are clearly angry about being placed at the entry level of the pay grade with newly hired employees.

While the undersigned understands the Grievants' frustration and the resulting decrease in job satisfaction and morale, the evidence of record falls short of establishing any violation of law, rule, or regulation. In fact the placement of Grievants at the entry level is consistent with the regulations promulgated by DOP. Specifically, W. Va. Div. of Personnel Admin. Rule, Series I (amended) §5.04(f)(2a)(1) (1993) states:

When a class is reassigned by the Board to a salary range having a higher minimum, the salaries of those incumbents below the new minimum are assigned to the new minimum.

All HE's, including the Grievants, were below the minimum of the salary range, thus all HE's

salaries were increased to the minimum salary of Pay Grade 13. For some HE's this increase was substantial; for others it was minimal. There are no provisions in the State Reclassification Project for any increase, other than the one identified in the above-stated rule.

Grievants, other than arguing fundamental fairness, have failed to cite any statutory or regulatory provision or rule of law which has been violated.

While the undersigned is sympathetic to Grievants' concerns, being placed at the same salary as a less experienced peer does not constitute an abuse of discretion, or an arbitrary, capricious or unlawful act, but instead follows the guidelines set out in the Reclassification Project.

The remainder of this discussion will be presented as formal conclusions of law.

Conclusions of Law

1. In order to prevail, Grievants must prove their case by a preponderance of the evidence. Hickman v. W. Va. Dept. of Trans./Div. of Highways, Docket No. 94-DOH-435 (Feb. 28, 1995).

2. "Division of Personnel's pay plan is not seniority or tenure based and the salaries for the various classified positions are based upon the general nature of the duties expected of the incumbents." Salmons v. W. Va. Dept. of Transportation/Div. of Highways and Div. of Personnel, Docket No. 95-DOH-004 (Apr. 20, 1995).

3. The placement of Grievants at the minimum pay level of the new pay range is consistent with DOP's regulations governing the Statewide Reclassification Project. See, Roach/Minton v. W. Va. Dept. of Trans./Div. of Highways, Docket No. 94-DOH-232 (Nov. 29, 1994).

4. According to the guidelines of the State Reclassification Project, the placement of all DMV's HE's at the minimum of Pay Grade 13 is not inconsistent with any law, rule, or regulation and is consistent with DOP's rules at §5.04, supra. See Roach/Minton v. W. Va. Dept. of Trans./Div. of Highways, Docket No. 94-DOH-232 (Nov. 29, 1994).

Accordingly, this grievance is **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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JANIS I. REYNOLDS

Administrative Law Judge

Dated: June 26, 1995

Footnote: 1These cases were consolidated at Level IV at the request of the Grievants and with the approval of the Respondents.

Footnote: 2Grievants also reargued two motions previously denied at hearing. First, Grievants argue DMV's attorney, Paul Jordan, should be disqualified because he advised the HE's, in his capacity as Senior Assistant Attorney General. Second, Grievants argued the Level III hearing was untimely. Both motions were argued before the undersigned, found to be without merit, and thus denied.

Footnote: 3Respondent DMV argued this fact made this grievance moot for these Grievants. No case law, rule, or regulation was cited or found to support this contention, thus this motion is denied.