JOHN T. SWICK

v. Docket No. 95-DOH-049

WEST VIRGINIA DIVISION OF HIGHWAYS/

WEST VIRGINIA DIVISION OF PERSONNEL

DECISION

Grievant, John T. Swick, employed by the West Virginia Division of Highways (DOH) as a Senior Engineering Technician (SET), complains that even though he is assigned to pay grade sixteen and has accrued thirty-one years' seniority, he earns less than Engineers In Training (EIT), pay grade fifteen, with seventeen years' experience. He asserts that this situation is contrary to information provided to him by the Division of Personnel (Personnel) which advised that the statewide reclassification project was to "bring equity and consistency to the job classification structure . . . " and requests that his salary be adjusted "to be equal to or greater than the highest paid Pay Grade 15 in the District."

Grievant's immediate supervisor lacked the authority to resolve the matter at level one but concurred that salary inequity exists. The Acting District Engineer could not grant the requested relief at level two but also acknowledged that"it is pretty discouraging to be at the 'lower mid rate' of your pay grade after 31 years of service" and encouraged the senior District Staff to consider future merit programs for long term career professionals such as Grievant. The grievance was denied at level three and the matter was advanced to level four on January 26, 1995. An evidentiary hearing was conducted on March 27, 1995, and the matter became mature for decision with the submission of proposed findings of fact and conclusions of law on or before April 25, 1995.

The facts of this matter are not in dispute.

1. Grievant was first employed by DOH in July 1961, and is presently classified as a Senior Engineering Technician assigned to District Five, Construction Section.

2. The National Institute for the Certification of Engineering Technicians (NICET) program has been utilized by DOH since 1979 to determine the skill level of engineering technicians. Level four certification is the highest level of expertise and is a requirement for promotion to SET.

3. Grievant passed the examination for NICET level four in December 1979. After supervising one or more projects valued in excess of $1,000,000, Grievant was promoted to Senior Engineering Technician in the Construction Section (SETCONS) in 1988.

4. During a statewide reclassification in November 1993, Grievant was assigned to the SETCONS classification, pay grade sixteen.

5. Pay grade sixteen has a salary range of $2,314 to $3,764 per month. Grievant's monthly salary is $2,662.

6. After experiencing difficulty in hiring and retaining graduate engineers, DOH has taken various steps to increase the salary for employees in these classifications.

Grievant does not allege that either he or the two EITs are misclassified or assigned to incorrect pay grades. Rather, he argues that the principles of equity and consistency in the classification plan support a conclusion that he is entitled to compensation equal to or higher than those identified employees in a lower pay grade, who have not successfully passed the EIT examination and perform less complex duties than a SET, and have less seniority.

DOH recognizes Grievant as a dedicated, hard-working employee, and explains that the difference in salary is based primarily on market factors and education. Additional factors such as starting salary, prior experience, job assignments, temporary transfers, etc., are also cited as having affected the salaries. DOH argues that Grievant has failed to prove an equal pay for equal work action, that it has abused its discretion, or otherwise acted improperly regarding his salary.

Lowell T. Basford, Assistant Director of Personnel, testified that during Personnel's review when implementing the new classification system, SETs were recognized for their relative importance in meeting the needs of the division. Henoted that the classification was not downgraded and the assigned paygrade continues to exceed those for EIT I and II. Mr. Basford reiterated DOH's difficulty in recruiting graduate engineering personnel and acknowledged that the enhanced salary schedule for those classifications was necessary to

be competitive with market factors. This enhancement was not necessary to recruit SETs.

The evidence of record establishes that as a SET, Grievant works under limited supervision performing paraprofessional engineering work. His duties include the training and supervision of EITs and/or Highway Engineer Trainees during their first years on the job. Having attained the classification of SET, Grievant is at the pinnacle of the technician classifications and has no opportunity for future promotion therein.

Two exhibits prepared in August 1994, for the level three hearing establish that District Five employed six SETs. Their years of service were no less than 22.2, and not more than 31.3, for an average of 27.8. The monthly salary range began at $2,504.00 and peaked at $2,716.00, the average being $2,662.00 Of the ten EITs employed in the District, two had earned 17.6 years of service while the remaining eight had worked for DOH between 2.8 and 8.1 years. Those EITs with 17 plus years of service earned $3,143.00 and $3,218.00, respectively.

There is no evidence, and Grievant does not allege, thatthe salary scales established by Personnel for EITs and SETs are improper. Nor does Grievant protest that DOH has adjusted the entry level salary for EITs to enhance recruiting. Finally, Grievant does not project a pure equal pay for equal work argument. Rather, Grievant's argument is that as a SET he performs duties of comparable worth to those of an EIT. Specifically, that comparable worth plus seniority should result in a salary similar to that received by the EITs. This argument is supported by various DOH officials who have reviewed the grievance; however, in the absence of a violation of any statute, rule, or regulation, the grievance cannot be granted.

The concept of comparable worth varies with the point of observation. Based upon testimony adduced at level four and a review of classification descriptions for SET and EIT, it is apparent that the duties and responsibilities of a SET are more advanced than those of an EIT. However, a SET has attained the optimal technical (NICET) classification and works at the top of that career ladder. (See footnote 1) An EIT, by comparison, must have earned a baccalaureate degree in engineering and must qualify by examination for certification as an EIT. (See footnote 2) While the duties of a SET remain constant, an EITis at the beginning of his career track which will require that he assume more complex duties and will allow for future promotion.

Thus, while a SET may well provide more valuable services than an EIT, the future value of the EIT, together with the advanced educational level required, render the two positions not comparable. See Aultz, et al. v. W.Va. Dept. of Transportation, Div. of Highways and W.Va. Div. of Personnel, Docket No. 90-DOH-522 (Feb. 28, 1991), in which SETs argued they were equal in status with Geologist IV, Chemist IV, and Highway Engineer II.

Seniority is not a factor considered when establishing compensation. Saidi v. W.Va. Dept. of Transportation, Div. of Highways, and W.Va. Dept. of Admin., Div. of Personnel, Docket No. 95-DOH-106 (June 13, 1995). To the extent that Grievant 's argument relies upon seniority as a basis for compensation, it is noted that the statewide reclassification plan included a new salary schedule which collapsed the nine "steps" into five "rates." Numerous grievances indicate that one result of the new salary schedule is to place some long-term employees closer to the entry salary than to the middle or upper end of the scale where they had previously been. Although it provides an employee with a higher potential maximum salary than before, it presently leaves them earning a salary comparable to new employees. See McClellan v. W.Va. Div. ofCorrections, Docket No. 94-CORR-1052 (Mar. 31, 1995). Grievant's salary is in the "lower mid" rate and could be adjusted by merit raises to reflect his seniority and value as an employee; however, that determination is discretionary with the employer.

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. In nondisciplinary matters it is incumbent upon a grievant to prove the allegations of the complaint by a preponderance of the evidence. Payne v. W.Va. Dept. of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988).

2. Grievant has failed to prove that his salary is contrary to any statute, rule or regulation, or has otherwise been determined incorrectly.

Accordingly, the grievance is DENIED.

DATED JUNE 30, 1995 SUE KELLER, SENIOR ADMN. LAW JUDGE

Footnote: 1 ***Mr. Basford testified at level four that Grievant does have the opportunity for promotion in other areas.***

Footnote: 2 ***Consistent with Grievant's complaint, EITs were not required to obtain this certification prior to 1993. Since that time one of the two EITs cited as earning more than Grievant has resigned. The record does not reflect whether the remaining long-term EIT hassince become certified.***