MANOOCHEHR SAIDI, .

Grievant, .

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v. .Docket Number: 95-DOH-106

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WEST VIRGINIA DEPARTMENT OF .

TRANSPORTATION, DIVISION OF HIGHWAYS .

and WEST VIRGINIA DEPARTMENT OF .

ADMINISTRATION, DIVISION OF PERSONNEL, .

Respondents. .

D E C I S I O N

Manoochehr Saidi (hereinafter Grievant) filed this grievance on March 21, 1994, pursuant to the provisions of West Virginia Code §§29-6A-1, et seq., against his employer, the West Virginia Division of Highways. His claim was denied at the lower levels of the grievance procedure by decisions dated March 28, 1994, April 4, 1994 and March 1, 1995, respectively. He appealed to level four on March 13, 1995, and an evidentiary hearing was held on May 2, 1995, at the Grievance Board's office in Charleston, West Virginia, to allow the parties to supplement the record previously developed. The Division of Personnel (hereinafter Personnel) was joined as anindispensable party by Order dated March 15, 1995. The case became mature for decision at the conclusion of the May 2nd hearing.

Grievant alleges that he is a victim of salary inequity in that other employees within the same

classification and/or pay grade receive a higher annual salary, even though they have provided fewer years of service to the employer. In support of his position, Grievant presented testimonial evidence, documentary evidence, and numerous charts and diagrams intended to establish statistically that he is not being paid a salary commensurate with his years of service when compared to other Division of Highways employees. Grievant seeks a twenty percent increase in his annual salary.

Respondents argue that the legal issue in this case is controlled by the recent holdings in Largent v. West Virginia Division of Health, 452 S.E.2d 42 (W. Va. 1994). They deny that Grievant has established a violation of the doctrine of equal pay for equal work. Upon a thorough review of the evidence of record, the Undersigned must agree with Respondents that Grievant has failed to establish a violation of W. Va. Code §29-6-10 [1992] or an abuse of discretion on behalf of his employer.

W. Va. Code §29-6-10 states, in pertinent part,

> The Board [Personnel Board] shall have the authority to promulgate, amend or repeal rules, in accordance with chapter twenty-nine-a [§29A-1-1 et seq] of this code to implement the provisions of this article:
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> (2) For a pay plan for all employees in the classified service, after consultation with the appointing authorities and the state fiscal officers, and after a public hearing held by the board. . . . Each employee shall be paid at one of the rates set forth inthe pay plan for the class of position in which he is employed. The principle for equal pay for equal work in the several agencies of state government shall be followed in the pay plan as established hereto.

Within state government, various classified positions exist in more than one agency. Personnel has interpreted Code §29-6-10 to require that all employees who hold the same class title must be paid somewhere within the establshed range for the pay grade set for that position. This Grievance Board has accepted this theory as consistent with the Legislature's equal pay for equal work mandate referred to above. See, Redden, et al. v. W. Va. State Tax Dept., Docket No. 89-T-339 (Feb. 22, 1991). More importantly however, our Supreme Court in Largent has also recognized that this interpretation and application of this principle is appropriate.

In Largent, the Court recognized that pursuant to the provisions of W. Va. Code §29-6-10 [1992], which authorizes Personnel to create both a classification and a pay plan, different pay rates within the same classification are allowed. It recognized the following with regard to salaries:

> In short, employees who are doing the same work must be placed within the same classification, but within that classification there may be differences if those differences are based upon market forces, education, experience, recommendations, qualifications, meritorious service, length of service, availability of funds, or other specifically identifiable criteria that are reasonable and that advance the interests of the employer.

Id., at 49. The Court held that the principle of equal pay for equal work is not violated when employees within the same classification are paid different amounts.

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, neither Personnel's pay plan nor its administrative regulations, 143 C.S.R. 1, provide for salaries based solely and directly on seniority or length of service.

As recognized in Largent, an employee's starting salary may be higher than the salary paid other current employees within the same classification, provided that the employer complies with Personnel's applicable regulations allowing for appointment above the entry level salary based upon the incumbent's possession of experience above the minimum requirements for the position. See, 143 C.S.R 1.5.04(b). Further, at any given time, a classified state employee's salary is the product of that employee's salary history which can include such adjustments as salary advancements (merit raises), salary increases upon promotion, demotion, lateral class change or reclassification, and the statutory annual increment pursuant to Code §5-5-2 [1984]. While Grievant's concerns are understandable, he has neither established a violationof the principle of equal pay for equal work nor a misapplication, misinterpretation or violation of Personnel's applicable regulations dealing with the assignment of salaries to classified employees. In conclusion, Grievant has not established that his salary is inequitable when compared to other similarly situated employees or that his employer has erred in establishing his own salary.

The following findings of fact have been properly deduced from the evidentiary record developed in the case.

Findings of Fact

1. Grievant is employed by the Division of Highways as a Highway Engineer III.

2. Grievant was hired on December 10, 1984, into the position of Civil Engineer II (NICET II), at a starting hourly rate of $7.96.

3. At all pertinent times hereto, Grievant's annual salary has been $37,956.00.

4. The Division of Highways employs other employees within the same classification as Grievant, who have less years of service within that classification, and pays them a higher annual salary.

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 his claim by a preponderance of the evidence. See, W. Va. Code §29-6A-6.

2. Grievant has failed to establish a violation of W. Va. Code §29-6-10, or a violation, misapplication or misinterpretation of 143 C.S.R 1. Largent v. West Virginia Division of Health, 452 S.E.2d 42 (W. Va. 1994). See, Salmons v. W. Va. Dept. of Transportation, Docket No. 95-DOH-004 (Apr.20, 1995); Vickers, et al. v. W. Va. Dept. of Tax and Revenue, Docket No. 94-T&R-092/142 (Nov. 14, 1994); Tomlinson v. W. Va. Dept. of Transportation, Docket No. 94-DMV-209 (Oct. 20, 1994).

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

Any party 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

June 13, 1995

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.