FRANKLIN D. COOPER,

Grievant,

v.

DOCKET NO. 96-DPS-458

WEST VIRGINIA DEPARTMENT

OF PUBLIC SAFETY,

Respondent.

D E C I S I O N

Grievant, Franklin D. Cooper, filed this grievance on September 11, 1996, alleging as follows:

> Unequal pay for qualified job description. Mechanic II. I want equal pay in the same amount paid to other Mechanic II positions. I have seniority on 3 of 5 others in that position.

Following adverse decisions at the lower levels, Grievant appealed to level four on October 22, 1996. Hearing was held in the Grievance Board's Charleston, West Virginia, office on January 17, 1997, and this case became mature for decision on January 31, 1997, following receipt of the parties' proposed findings of fact and conclusions of law.

The material facts of this case are not in dispute and are set forth in the following findings of fact.

Findings of Fact

1. Grievant was initially employed by Respondent on June 7, 1989, as a Janitor performing mechanic work at a salary of $1,014.15.

2. On December 7, 1989, Grievant was given a $50.00 six-month salary increase to a sum of $1,064.25.

3. On April 1, 1990, Grievant was reclassified to a Mechanic's Helper position at $1,118.00 per month, which reflected a legislative increase given to all state employees. 4. On April 1, 1994, as part of the statewide reclassification project, Grievant was reclassified as a Mechanic II.

5. Grievant's salary fell within the pay range for the Mechanic II position, so he did not receive a pay increase as a result of the reclassification. R. Ex. 1.

6. Other than legislative pay increases given to all state employees, Grievant has received no increase in salary and his current salary is $1,391.00 per month.

7. All other Mechanic IIs employed by Respondent are paid more than Grievant, including those hired after Grievant. They are paid in accordance with the pay scale for their classification.

8. Merit raises were eliminated within the Department of Public Safety in 1988, due to lack of funding and no merit raises have been issued since that time.

Discussion

Grievant complains that he is not being properly compensated in that there is a substantial disparity between his salary and other Mechanic IIs employed by Respondent. Grievant is not contending that he is misclassified as a Mechanic II. Grievant contends thatthe disparity in salary between he and the other Mechanic IIs must be the result of discrimination or favoritism.

In order to prevail in a grievance of this nature, Grievant must prove the allegations in his complaint by a preponderance of the evidence. Wargo v. W. Va. Dept. of Health & Human Resources, Docket Nos. 92-HHR-441/445/446 (Mar. 23, 1994); Payne v. W. Va. Dept. of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). The concept of “equal pay for equal work” is embraced by W. Va. Code § 29-6-10. See AFSCME v. Civil Service Comm'n, 181 W. Va. 8, 380 S.E.2d 43 (1989). Previous decisions interpreting that provision have established that employees performing similar work need not receive identical pay, so long as they are paid in accordance with the pay scale for their proper employment classification. Largent v. W. Va. Div. of Health, 192 W. Va. 239, 452 S.E.2d 42 (1994); Salmons v. W. Va. Dept. of Transp., Docket No. 94-DOH-555 (Mar. 20, 1995); Hickman v. W. Va. Dept. of Transp., Docket No. 94-DOH-435 (Feb. 28, 1995); Tennant v. W. Va. Dept. of Health & Human Resources, Docket No. 92-HHR-453 (Apr. 13, 1993); Acord v. W. Va. .Dept. of Health & Human Resources, Docket No. 91-H-177 (May 29, 1992).

As was the case in Largent, and the prior decisions of this Grievance board cited above, Grievant

has not shown that there was any discriminatory motive when Respondent set the salaries of Grievant's fellow employees at a level which exceeds Grievant's current salary. Indeed, Grievant's complaint that he has not received any merit increases since he was hired is easily explained since Grievant was hired in 1989 and Respondent ceased giving merit increases in 1988. The records produced indicate that at least one other co- worker of Grievant's did receive merit raises, but they were issued before 1988. While itis unfortunate that Grievant missed out on the opportunity to receive merit raises, there is no other avenue in which to increase Grievant's salary, except for promotion and legislative pay increases. While Grievant is understandably frustrated, he has not demonstrated Respondent has violated any statute, policy, rule, regulation or written agreement under which Grievant works. See W. Va. Code § 29-6A-2(i).

Consistent with the foregoing discussion, the following Conclusions of Law are appropriately made in this matter.

Conclusions of Law

1. A grievant alleging pay discrimination must prove the allegations in his complaint by a preponderance of the evidence. Salmons v. W. Va. Dept. of Transp., Docket No. 94-DOH-555 (Mar. 20, 1995).

2. Employees performing similar work need not receive identical pay, so long as they are paid in accordance with the pay scale for their proper employment classification. Largent v. W. Va. Div. of Health, 192 W. Va. 239, 452 S.E.2d 42 (1994); Salmons v. W. Va. Dept. of Transp., Docket No. 94-DOH-555 (Mar. 20, 1995); Acord v. W. Va. Dept. of Health & Human Resources, Docket No. 91-H-177 (May 29, 1992).

3. Grievant has failed to establish by a preponderance of the evidence that his employer is compensating him contrary to the provisions of W. Va. Code § 29-6-10, or any other statute, policy, rule, regulation, or written agreement applicable to his employment.

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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MARY JO SWARTZ

Administrative Law Judge

Dated: April 9, 1997