ROGER MASON, et al.,

Grievants,

v. **Docket No. 00-DOH-345**

WEST VIRGINIA DEPARTMENT
OF TRANSPORTATION/DIVISION
OF HIGHWAYS and DIVISION
OF PERSONNEL,

Respondents.

DECISION

Grievants (See footnote 1) , employed as Transportation Workers in the Berkeley County office for the Division of Highways ("DOH"), initiated this grievance on June 16, 2000, alleging that another DOH employee had received two merit raises in a short time period. At level four, Grievants revised their claim to allege that the same employee, Mark Baker, had received a reallocation with accompanying salary increase to which he was not entitled. Grievants were reclassified in 1993 and did not receive a similar salary increase. They request that Mr. Baker's reallocation be rescinded or, in the alternative, that they receive a salary increase retroactive to the date of their reclassification. At levels one and two, the grievance was partially granted, in that DOH agreed to post merit raises as they were given. A level three hearing was held on September 27, 2000, followed by a written denial of the grievance dated October 20, 2000. Grievants appealed to level four on November 3, 2000, and a level four hearing was held in the Grievance Board's office in Morgantown, West Virginia, on February 5, 2001. Grievants represented themselves; DOH wasrepresented by counsel, Jennifer E. Francis; and the Division of Personnel ("DOP") was represented by Lowell D. Basford, Assistant Director. This grievance became mature for consideration upon receipt of the parties' final fact/law proposals on March 12, 2001.

The following findings of fact are made from a preponderance of the evidence of record.

Findings of Fact

1. Grievants are employed as Transportation Workers in the Berkeley County DOH office.

2. In February of 2000, DOH reallocated all employees previously classified as Assistant County Maintenance Supervisors to the newly created position of Transportation Crew Supervisor.

3. Mark Baker, who had been employed as Assistant County Maintenance Supervisor in Berkeley County, was reallocated to Transportation Crew Supervisor II on February 16, 2000.

4. Because his new position was in a higher pay grade and was meant to encompass an increased level of duties and responsibilities, Mr. Baker received a 5% salary increase, in accordance with DOP's Administrative Rule regarding reallocation and promotion.

5. Since his reallocation, Mr. Baker has been supervising fewer foremen than he did prior to his reallocation.

6. Grievants were reclassified in 1993, as part of DOP's statewide reclassification project. They had previously been classified as equipment operators and craftsworkers, and they were reclassified as Transportation Worker IIs or IIIs. The purposeof the reclassification was to reduce the number of job titles, and Grievant's job duties did not change. They did not receive a salary increase upon reclassification.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Payne v. W. Va. Dep't of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). See W. Va. Code § 29-6A-6. A preponderance of the evidence is generally recognized as evidence of greater weight, or which is more convincing than the evidence which is offered in opposition to it. Miller v. W. Va. Dep't of Health & Human Resources, Docket No. 96-HHR-501 (Sept. 30, 1997); Petry v. Kanawha County Bd. of Educ., Docket No. 96-20-380 (Mar. 18, 1997). Where the evidence equally supports both sides, the employee has not met his burden of persuasion. Dixon v. W. Va. Div. of Corrections, Docket No. 98-CORR-243 (Aug. 24, 1998). See Leichliter v. W. Va. Dep't of Health & Human Resources, Docket No. 92-HHR-486 (May 17, 1993).

The gist of Grievants' claim is that Mr. Baker received a raise upon reallocation, which they believe he was not entitled to; in addition, they believe that they should have received a similar raise when they were reclassified in 1993. Grievants provided testimony from another DOH employee who was reallocated to a Transportation Crew Supervisor position at the same time as Mr. Baker, who stated that his job duties did not change with his new position. Several Grievants testified that Mr. Baker's duties have not increased since he was reallocated and that, in fact, they have decreased. Accordingly, they believe that he should not have received a raise “for doing less work.” Jeff Black, Human Resources Director for DOH, testified that, when the Transportation Crew Supervisor position was created and the Assistant Supervisor position was eliminated, the change was not necessarily properly implemented in all counties. Although he did not specifically address Mr. Baker's individual duties, he admitted that some employees who had been reallocated to the new position had not had their job duties increased, as had been contemplated. He attributed this problem to a lack of understanding in some county management, which DOH administration hopes to rectify. The evidence in this case is rather scant concerning Mr. Baker's specific duties, and the only testimony on this subject basically consisted of the perceptions of the other workers in Berkeley County, who obviously believe that Mr. Baker does little work and has been rewarded for doing so. Nevertheless, even if there were sufficient evidence to conclude that Mr. Baker was not properly reallocated, Grievants have not demonstrated how they have been personally injured by this error, aside from the obvious morale problems that it has created within the organization.

"Standing, defined simply, is a legal requirement that a party must have a personal stake in the outcome of the controversy." Wagner v. Hardy County Bd. of Educ., Docket No. 95-16-504 (Feb. 23, 1996); See Jarrell v. Raleigh County Bd. of Educ., Docket No. 95-41-479 (July 8, 1996). In order to have a personal stake in the outcome, Grievants must have been harmed or suffered damages. Farley v. W. Va. Parkway Auth., Docket No. 96-PEDTA-204 (Feb. 21, 1997). It is necessary for Grievants to "allege an injury in fact, either economic or otherwise, which is the result of the challenged action and shows that the interest [they seek] to protect by way of the institution of legal proceedings is arguably within the zone of interests protected by the statute, regulation or constitutionalguarantee which is the basis for the lawsuit." Shobe v. Latimer, 162 W. Va. 779, 253 S.E.2d 54 (1979). Without some allegation of personal injury, Grievants are without standing to pursue this grievance. Lyons v. Wood County Bd. of Educ., Docket No. 89-54-601 (Feb. 28, 1990).

Even if the employer has misapplied applicable regulations regarding the classification and/or a corresponding salary increase to another employee, where a grievant is not personally harmed, there is no cognizable grievance. See Cremeans v. Bd. of Trustees, Docket No. 96-BOT-099 (Dec. 30, 1996); Pomphrey v. Monroe County Bd. of Educ., Docket No. 94-31-183 (July 1, 1994); Mills v. W. Va. Dep't of Transp., Docket No. 92-DOH-053 (Apr. 24, 1992). Although poor morale among the workers resulting from such an error is a real and difficult problem, it simply does not give Grievants standing to contest Mr. Baker's reallocation, which did not otherwise personally harm them.

As to Grievants' claim that they should have received a raise when they were reclassified in 1993, Grievants have again failed to provide sufficient evidence to support this claim. DOP's Administrative Rule distinguishes between “reallocation” and “reclassification” as follows:

> 3.77. Reallocation: Reassignment by the Director of Personnel of a position from one classification to a different classification on the basis of a significant change in the kind or difficulty of duties and responsibilities assigned to the position.

> 3.78. Reclassification: The revision by the State Personnel Board of a class or class series which results in a redefinition of the nature of the work performed and reassignment of positions based on the new definition and may include a change in the title, pay grade, or minimum qualifications for the classes involved.

The Administrative Rule further states that a position is to be reallocated “wheneversubstantial changes occur in the duties and responsibilities assigned to a position.” DOP Administrative Rule, § 4.7 (1998). Whether a position is reclassified or reallocated, the employee's salary may not necessarily increase, if the new position is in the same salary range or pay grade. The employee's salary is only increased upon promotion, which is defined as “a change in the status of an employee from a position in one class to a vacant position in another class of higher rank as measured by salary range and increased level of duties and/or responsibilities.” Id. at § 3.75.

DOH evidence indicates that Grievants' positions were reclassified in 1993 in an effort to reduce the large number of classifications which existed. However, Grievant's job duties were not to have changed as a result of the reclassification, and their new positions were within the same pay grade. Although some Grievants indicated in their testimony that their job duties have increased since their reclassification, they have made no claim that they are improperly classified, and they have not alleged that their job duties fall within some other classification. Accordingly, Grievants have not

established that they are entitled to a salary increase as a result of their reclassification eight years ago. (See footnote 2)

Consistent with the foregoing, the following conclusions of law are made.

Conclusions of Law

1. In a non-disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Payne v. W. Va. Dep't of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). See W. Va. Code § 29-6A-6. 2. "Standing, defined simply, is a legal requirement that a party must have a personal stake in the outcome of the controversy." Wagner v. Hardy County Bd. of Educ., Docket No. 95-16-504 (Feb. 23, 1996); See Jarrell v. Raleigh County Bd. of Educ., Docket No. 95-41-479 (July 8, 1996).

3. Grievants failed to prove by a preponderance of the evidence that they have been personally injured by Mark Baker's reallocation to Transportation Crew Supervisor.

4. An employee's salary only increases upon reallocation or reclassification if it constitutes a promotion, which is “a change in the status of an employee from a position in one class to a vacant position in another class of higher rank as measured by salary range and increased level of duties and/or responsibilities.” Division of Personnel Administrative Rule § 3.75 (1998).

5. Grievants have failed to prove that they are entitled to a salary increase as a result of their 1993 reclassification.

Accordingly, this grievance is **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Kanawha County or 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 (1998). 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: March 28, 2001 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

The Grievants are Roger Mason, Steve Rouss, John Miller, Marvin Miller, Brett Minnick, Darrell Parsons, Brice Ray Sparkman, and Paul Miller.

Footnote: 2

However, this by no means should discourage Grievants from seeking audits of their positions, if they do believe that their duties belong in another job classification.