



REPLY TO:
401 Davis Avenue
Suite 315
Elkins, WV 26241
Telephone: 636-1123

Members
James Paul Geary
Chairman
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
GASTON CAPERTON
Governor

Offices
240 Capitol Street
Suite 515
Charleston, WV 25301
Telephone 348-3361

JOHN BECKNER, et al.

v.

DOCKET NOS. BOR-88-124/125

WEST VIRGINIA UNIVERSITY

DECISION

The grievants are all employed as senior craftsmen assigned to the Main and Medical Center Physical Plants at West Virginia University (University).¹ Grievants Beckner and others filed a level four appeal on June 27, 1988 in which they alleged favoritism and discrimination when they were denied a salary increase to correct an inequity caused by the settlement of another grievance. This grievance had previously been denied at levels one and two and was waived by the Board of Regents at level three.

¹Craftsman is a generic term encompassing the trades employed throughout the University including but not limited to: plumber; carpenter; electrician; sheet metal worker; welder; maintenance mechanic; and plasterer/mason.

Grievants Everly and others filed a level four appeal on June 27, 1988 in which they also alleged favoritism and discrimination resulting from the denial of a salary adjustment. Previously, Herman Mertins, Vice President for Administration and Finance serving as the President's designee at level two, determined that a hearing was unnecessary and denied the grievance at level two; the Board of Regents waived consideration at level three.² At a prehearing conference held on August 22, 1988 it was determined that the facts and issues in these two matters were identical; therefore, the grievances were consolidated for hearing at level four. After numerous continuances a hearing was conducted March 28, 1989 with proposed findings of fact and conclusions of law submitted by July 3.

The facts are not in dispute. Effective July 1, 1979 Board of Regents policy regarding promotion/upgrade provided for a salary increase of five percent of the employee's current salary or the entry rate of new classification, whichever was higher. This policy was revised in August 1985 to grant a five percent increase per paygrade if the revised classification involves a change of more than one paygrade or the entry rate of the new classification, whichever is higher (Board of Regents Policy Bulletin No. 62).

²The record does not include the level one response to deny the grievance.

In July 1986 the position held by William Casteel was upgraded from Mechanical Equipment Worker (paygrade 9) to Senior Mechanical Equipment Worker (paygrade 11). Mr. Casteel was awarded a ten percent salary increase as provided by Policy Bulletin No. 62 resulting in his earning a higher salary than other employees who had longer tenure as senior craftsmen.³ A grievance was filed in July which ultimately resulted in a settlement for employee Ralph Beatty increasing his salary to that received by Mr. Casteel. This settlement was approved by Thomas Cole, then Chancellor of the Board of Regents, on the basis that Mr. Beatty's was "...an isolated unintended result associated with the timing of the implementation of the change in policy." (Level II Sr. Crafts. Exhibit 25). The settlement was characterized as an exception which could not be used as a precedent for other cases.

It is the position of the grievants that the responsibilities of all senior craftsmen require the same level of skill, effort and responsibility and that they all should receive equal pay for equal work. They argue that prior to the 1985 change in policy their salary histories were similar and that W.Va. Code §§18-26B-5(e) and 18-26B-2(h) provide for salary adjustments to rectify inequities in

³Other employees also received a ten percent salary increase as a result of promotion or upgrade; however, Mr. Casteel serves as the standard on which the grievance is based.

compensation. The grievants also argue that awarding the salary adjustment to Mr. Beatty but not to them results in discrimination and favoritism. They request that their salaries be increased to equal that of Mr. Casteel with backpay from the date the grievances were initiated plus interest at the prevailing rate.⁴

The University argues that there has been no specific violation, misapplication or misinterpretation of any statutes, policies, rules, regulations, agreements or practices and, contrary to the grievants' argument, it would be inequitable if all employees earned the same salary. It asserts that the rate-range system of classification/compensation which it employs requires that individuals earn different salaries based upon their different work histories and that equalization of salaries would advance some grievants rates to which they are not entitled under the salary schedule set forth in W.Va. Code §18-26B-3. In reference to the Beatty settlement, the University denies that it has shown any favoritism or discrimination but

⁴The grievants argue that the Board of Regents is governed by the Equal Pay Act which requires equal pay for equal work performed by males and females. While the citation of this Act was to support the grievants' basic contention of equal pay its relevancy to this matter is negligible.

The grievants also allege that the denial of similarly-situated employees a salary adjustment violated their Constitutional right to equal protection of law. This allegation was never explained and is so vague that it will not be considered in this decision.

rather that the matter was resolved on unique factual and legal issues and should not be used as the basis for settling any other grievance. To grant the requested remedy, the University asserts, would be to impose an unendurable financial impact and would inhibit the granting of merit and incremental salary increases.

The evience establishes that several factors including paygrade classification, legislative salary increases and annual increments determine the salary received by Board of Regents employees.⁵ Therefore, to grant the grievants' requested relief, a salary adjustment to equal that of Mr. Casteel, would be contrary to the principles of the compensation system and could be inequitable to them as they may actually be entitled to a higher salary than he receives.⁶ While an employee who has worked as a senior craftsman fifteen years and another employee who has worked as a senior craftsman two years perform the same duties, to compensate them at the same salary would offer no reward to the employee who has earned more seniority and/or has benefited from legislative pay increases.

⁵Incremental adjustments are thirty-six dollars per year of service to a maximum of twenty years or \$720.00. Legislative increases may be a percentage of the employees' salary or an across-the-board amount.

⁶It should be noted that the entry rate is a fixed salary at which employees are hired and to that extent they are paid equally. Differences in salary occur later due to promotions/upgrades and other factors.

Despite this direction of argument, the grievants have not alleged that the compensation system is inherently flawed but have correctly identified the source of the salary dispute as the change in Board of Regents Policy Bulletin No. 62, implemented in August 1985. Most of the grievants were promoted or their positions upgraded to the senior craftsman level prior to August 1985 and they were awarded a five percent salary increase at that time. Employees promoted or upgraded after August 1985, including Mr. Casteel, received a ten percent salary increase which resulted in their earning more than employees with greater seniority.⁷ While the change in policy has benefited those employees promoted since 1985 its implementation has had a detrimental effect on the salary of those long-term employees who were already at the top of their position classification. The flaw in Policy Bulletin No. 62, as revised, was the failure to address these employees who no longer had an opportunity for promotion/upgrade.⁸ The resulting salary inequity is in violation of W.Va. Code §18-26-8(a)(12) which

⁷Not only is the percentage of increase for promotion/upgrade greater but the entry rate for those recently employed is undoubtedly higher than for those employees who have worked for West Virginia University nearly twenty years which only serves to further enlarge the salary of the more recent employees.

⁸The only promotion available to these employees is into the administrative level and those positions are few in number and the chances of an employee receiving such a promotion are slight.

requires the Board of Regents to administer a uniform system of personnel classification and compensation for all employees other than faculty and policy level administrators. To correct this matter the salaries of those grievants who were promoted prior to August 1985 should be revised to reflect the ten percent increase awarded by Policy Bulletin 62.

Grievant "X" will be used to illustrate the computation of the relief to be awarded. This employee's salary history shows that he was promoted to a senior craftsman position in January 1983 and has since been awarded legislative pay increases in 1984 (5%) and 1988 (\$600.00 across the board). At the time of his promotion his salary was \$12,000.00 per year. As a result of the promotion he received a five percent salary increase to \$12,600.00. The legislative increases raised his salary to \$13,230.00 and currently \$13,830.00.

To correct the inequity created by the revised policy the grievant's January 1983 salary should be multiplied by ten percent (\$13,200.00) and the legislative increases added to that amount (\$13,860.00 and currently \$14,460.00). This evaluation will necessarily be performed for each grievant to track his unique classification/compensation history.

The recalculated salary shall be awarded retroactively to the date the grievances were filed at level one.⁹

Findings of Fact

1. The grievants are employed as senior craftsmen assigned to the Physical Plants at West Virginia University.

2. Many of the grievants were promoted to senior status prior to August 1985.

3. Prior to 1985 Board of Regents policy regarding promotion or upgrade was to award a five percent pay increase or the entry rate of the new position, whichever was higher.

4. Revised Policy Bulletin No. 62, effective August 1985, raised the amount of the salary increase due to promotion/upgrades to five percent per paygrade, if the

⁹It is clear that at least one grievant was not promoted to senior status until after August 1985 and will not be entitled to any additional compensation. Grievants who were previously employed, left the University and have returned at the entry rate shall be treated consistent with University compensation policies and this decision which may result in no change in their salaries if they returned at the senior entry level.

W.Va. Code §§18-29-1 et seq. does not provide for an award of interest and none shall be made.

Due to the holding on this issue it is unnecessary to address the allegations of favoritism and discrimination.

promotion/upgrade involved more than one paygrade, or the entry rate, whichever was higher.

5. Effective June 1, 1986 the position held by William Casteel was upgraded to senior status with a change in paygrade from nine to eleven resulting in Mr. Casteel receiving a ten percent salary increase.

6. Ralph Beatty subsequently filed a grievance which led to an adjustment of his salary to correct an inequity caused by an unintended result associated with the timing of the implementation of the change in policy (referring to Policy Bulletin No. 62).

7. The University and the Board of Regents has declined to adjust the present grievants' salaries even though many have suffered the same inequity as Mr. Beatty resulting from the change in policy.

8. The result of revised Policy Bulletin No. 62 has been that senior level craftsmen with less tenure are earning higher salaries than employees who have more seniority with the University and more years experience as senior craftsmen.

Conclusions of Law

1. To the extent that the revised Board of Regents Policy Bulletin No. 62 resulted in salary inequities within

the senior craftsman classification it is in violation of W.Va. Code §18-26-8(a)(12) which requires a uniform system of compensation for all employees other than faculty and policy level administrators.

2. The grievants have established by a preponderance of the evidence that most of them have been compensated inequitably due to the 1985 revision of Policy Bulletin No. 62.

Accordingly, the grievance is **GRANTED** and the University is **ORDERED** to review and revise the grievants' salaries consistent with this decision.

Either party may appeal this decision to the Circuit Court of Monongalia County or to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code §18-29-7) Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

DATED: October 31, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER