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**SAMUEL TUCKER, et al.**

**v.**

**DOCKET NO. 88-099/105**

**WEST VIRGINIA UNIVERSITY**

**DECISION**

Grievants, Samuel Tucker, Robert Wilburn, Warren Headley and Larry Roy, are all employed as Senior Mechanical Equipment Workers at West Virginia University (University). Grievants Tucker and Wilburn filed a level one grievance on February 1, 1988 in which they alleged that revised Policy Bulletin No. 62 resulted in certain craftsmen being paid more than others. The grievance was denied at levels one and two and was appealed to level four on June 8, 1988.

Larry Roy filed a level one grievance on February 1 which contained an identical statement of the issue as set forth by Wilburn and Tucker. Mr. Roy's grievance was denied at level one; a hearing was not held at level two but a decision, containing the same findings and conclusions in the level two Tucker/Wilburn decision, was issued denying the grievance. A level four grievance was filed by Mr. Roy on June 10.

Warren Headley filed a level one grievance on March 21, 1989 in which he alleged that he was disadvantaged by

revised Policy Bulletin No. 62.<sup>1</sup> In response to a telephone call with a union representative, Al Ingle, Assistant Director of Business and Administration at the Physical Plant, notified the grievant by letter dated April 19 that a formal written grievance had never been received at level one. Grievant's representative advised President Neil Bucklew on April 24 that the grievant had not received a timely response at level one but that he was willing to waive a hearing at level two so that the matter could be consolidated with Wilburn, Tucker and Roy at level four. The administration agreed and the matter was waived to level four. Because the facts leading to these grievances and the issues to be decided were identical the matters were consolidated and a level four hearing was held on May 3 with proposed findings and conclusions submitted by all parties on July 3, 1989.

The facts in this matter are not in dispute.<sup>2</sup> Briefly, a revision of Board of Regents Policy Bulletin No. 62, effective July 1, 1985, provided a salary increase of five percent per paygrade if the change regarding promotion or

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<sup>1</sup>The delay in Mr. Headley's filing at level one can be attributed to the fact that a tentative settlement had been negotiated but was not implemented in March as per the agreement.

<sup>2</sup>The facts leading to this grievance are identical to those of Beckner et al. v. West Virginia University, Docket Nos. BOR-88-124/125 (October 31, 1989) and are more fully set forth in that decision.

position upgrade involved more than one paygrade, or the entry rate, whichever was greater. Prior to 1985 the increase had been only five percent of current salary or the entry rate of the new classification, whichever was higher. In 1986 David Casteel was promoted from Mechanical Equipment Worker to Senior Mechanical Equipment Worker (a difference of two paygrades) and received a ten percent salary increase, moving him from the lowest to the highest paid Mechanical Equipment Worker at West Virginia University. A negotiated settlement of a grievance subsequently filed by Mechanical Equipment Worker Ralph Beatty resulted in his receiving an increase in salary to equal that of Mr. Casteel's.

The grievants argue that they were disadvantaged by the revised Policy Bulletin No. 62 when Mr. Casteel was promoted and were further disadvantaged when Mr. Beatty's salary was equalized with that of Mr. Casteel. They assert that the result of the revised Policy has created a salary variance contrary to W.Va. Code §§18-26B-1 and 18-26-8(a)(12) which require a uniform system of personnel classification and compensation for all employees other than faculty and policy level administrators.<sup>3</sup>

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<sup>3</sup>W.Va. Code §§18-26B-1, et seq. provides a monthly salary schedule for classified employees; however, the representation of the University's counsel is that while the salary schedule has not yet been implemented because it has not been fully funded, all grievants' salaries are relatively uniform in distance from the legislative minimum.

The University's position, as in Beckner, is that there has been no specific violation, misapplication, or misinterpretation of any statutes, policies, rules, regulations, agreements, policies or practices and that while many facts contribute to the variance in salaries the paygrade system is applied uniformly and fairly.

As previously determined in Beckner, the revision of Policy Bulletin No. 62 has had an adverse impact on the grievants which must be corrected by granting them the difference between the increase they received as a result of promotion or upgrade and the higher increase granted by the revised Policy. The increase is to be calculated retroactively from the time of their promotions to Senior craftsmen and is to be effective the date of this decision.<sup>4</sup>

In addition to the foregoing it is appropriate to make the following findings of facts and conclusions of law.

#### **Findings of Fact**

1. The grievants are employed as Senior Mechanical Equipment Workers assigned to the Physical Plants at West Virginia University.

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<sup>4</sup>The grievants have not requested backpay.

For a more detailed explanation of how the salaries are to be revised see Beckner.

2. The grievants were promoted to senior status prior to August 1985.

3. Board of Regents policy prior to 1985 regarding promotion or upgrade was to award a five percent increase of the current salary or the entry rate of the new classification, whichever was higher.

4. Revised Policy Bulletin No. 62, effective August 1985, raised the amount of the salary increase due to promotion/upgrades which involved a change of more than one paygrade to a five percent increase per paygrade or to the entry rate, whichever was greater.

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 they 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. Beckner et al. v. West Virginia University, Docket Nos. BOR-88-124/125 (October 31, 1989).

2. The grievants have established by a preponderance of the evidence that they 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