JAMES M. THOMPSON

v. Docket No. 94-HHR-051

WEST VIRGINIA DEPARTMENT OF HEALTH AND

HUMAN RESOURCES/WELCH EMERGENCY HOSPITAL and

WEST VIRGINIA DIVISION OF PERSONNEL

D E C I S I O N

Grievant is employed by Respondent West Virginia Department of Health and Human Resources (HHR) as an x-ray technician at Welch Emergency Hospital (WEH). He filed the following com plaint at level four in February 1994:

Paygrade unfair. The statement "Every attempt was made to fully consider your job relative to others in the Department and other state agencies." You are compareing [sic] us with ourselves. How many other X-Ray Techs do you know that are on the State payroll?

Grievant seeks, "Fair judgement. Compare our pay, we (X-Ray Techs) get, to other X-Ray techs State-wide." The parties agreed to a record decision.1

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1The West Virginia Division of Personnel (DOP) was joined as an indispensable party at level four by Order dated March 8, 1994. Thereafter, HHR filed a level four brief by facsimile on July 15 and by mail on July 18, 1994. On or about October 25, 1994, the matter was administratively reassigned to the Grievance Board's Wheeling office.

Some background information is necessary. As near as can be determined from the record, Grievant was initially employed as a Radiologic Technologist (RT) at WEH on May 6, 1991, and

signed a "salary agreement form" for the beginning wage of $17,628 per year. By mid-1992, Grievant's salary rose to $18,264 per year, where it remained through September 30, 1993.2 In any event, as part of the West Virginia Division of Personnel's (DOP) statewide reclassification project, HHR's positions including the RT position were examined for reclassi fication purposes. By letter dated December 6, 1993, Grievant was informed that his position had been reclassified to Radio logical Technologist at Pay Grade (PG) 9 with a salary range of $17,256 to $28,104. Grievant's salary was not altered at that time. Grievant unsuccessfully protested the reclassification matter via DOP's procedure. Thereafter, on August 2, 1993 Grievant filed a grievance asserting in part that the PG desig nation for RTs was unfair.

According to DOP's job specification for RT, the RT prima rily "performs work at the full performance level by preparing and operating radiographic equipment utilized to take general and specialized medical radiographs for the chest, skull, spine and upper and lower extremities." The minimum qualifications needed are a "license or temporary permit to practice

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2According to HHR's fact/law proposals herein, Grievant has been terminated from his job at WEH "for reasons unrelated to this present grievance" and has filed another grievance on the issue of his termination.

radiological technology, issued by the [West Virginia] Board of Examiners for Radiologic Technology" and a West Virginia drivers license "for some positions in this class."

Grievant appeared pro se at his October 4, 1993, level

three hearing. He testified that he was a "registered tech" with a national board and was therefore permitted to work anywhere in the nation and some foreign countries in contrast to a "licensed tech" who could only work within the State of West Virginia. Grievant explained that a licensed tech received only "OJT" or on-the-job-training, but that the registered tech's training began with and required at least two years of college. Grievant suggested that RTs are not permitted to perform certain functions unless they have been specifically trained for the job.3

Grievant initially stated that, as a registered tech, his salary was "inconsistent" with his nearly twenty years' experi ence and his "time in" his position. Grievant complained that he was the "least paid" RT in WEH's x-ray department, including one worker who "just got out of school." He stated that he was dissatisfied with getting paid at the minimum level and felt he spent enough time on the job to prove his "worthiness." However, at some point during the hearing, Grievant agreed that, along with his displeasure with his own salary level, his grievance was also concerned with the fact that only one class

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3Grievant stated he had performed ultra-sound and "CT" or computerized technology in his former job, but did not perform these functions at WEH.

specification existed for RT while a series of positions had been established for positions in other medical fields. Grievant pointed out that, while the present classification scheme and PG for RT failed to consider the status of RTs with advanced educational levels, the effect of a single class also

tended to discourage RTs from using personal funds to obtain the necessary education and training to perform advanced techniques such as ultra-sound and nuclear medicine since no salary benefit would result. Grievant noted that multi-stage classification series and PGs differentiated between or among levels of train ing and experience for nurses and laboratory technicians.

In response to Grievant's assertions and claims, HHR proffered a "Position Statement" written by Lowell Basford, DOP's Assistant Director of Classification and Compensation.4 In this statement, Mr. Basford wrote, in pertinent part, that

The Pilot Administrative Guidelines as well as the Administrative Regulations of . . . [DOP] specify the manner in which salaries are to be set on reclassifi cation. Neither the guidelines nor the regulations provide the means for adjusting the grievant's salary based upon the education level attained.

Mr. Basford concluded that "the assignment of pay to employees in the Reclassification Project was done uniformly and in full compliance with the Pilot Administrative Guidelines and the Administrative Regulations."5

4Mr. Basford did not appear in person at the hearing.

5Levels one and two of the grievance procedure were apparently waived; however, no decision was ever rendered after the level three hearing.

Unfortunately for Grievant, he has failed to prove a claim upon which any relief can be granted. For one thing, Grievant has not demonstrated that he is entitled to a salary adjustment

based solely on his seniority, qualifications or experience. See Tomlinson v. W.Va. Div'n of Transportation, Docket No. 94-DMV-209 (Oct. 20, 1994). While Grievant stated that his wages were "unfair" and may have been understandably discontent ed with his own salary level, he presented no evidence that the PG ranking for his position was inconsistent with applicable DOP regulations. Moreover, his salary was already within the salary range for his position at the time of his reclassification. As was noted in Tomlinson at 3, "In general, the salaries for the many classified positions within [DOP's] plan are based upon the nature of the duties of the positions and not the [seniority,] qualifications, skills or abilities of the incumbents."

Further, although it appears that Grievant has framed the grievance issues to include the interests of other RTs as well as his own, no other RT joined this grievance. Nonetheless, Grievant presented no testimonial or documentary evidence which would compel a finding that HHR or DOP acted contrary to DOP's rules and regulations for the reclassification project relative to the RT classification. Grievant merely asserted that other types of jobs and positions in the medical field have more than one classification. However, Grievant did not contend that he was misclassified or that a new job classification should be created for his own position. Therefore, it has not been demon strated in this case that the lack of a series for the RT title should necessarily be a topic for HHR's and DOP's reconsidera tion.

In addition to the foregoing narration and discussion, the following findings of fact and conclusions of law are appropri ate.

Findings of Fact

1. At all times relevant to this grievance, Grievant had been employed by WEH and classified as a RT.

2. RTs may obtain registration from a national board via some college training as well as licensure from the State via on-the-job training. RTs are not permitted to perform certain functions unless they have been specifically trained for the job.

3. In conjunction with a statewide reclassification project, the RT classification was examined sometime in 1992 or 1993 by HHR and DOP.

4. After due consideration of the relative difficulty and complexity of the overall work assigned to a RT, HHR and DOP concluded that a single RT class would be sufficient along with a designated PG and salary range. Grievant was duly notified of the reclassification of his position.

5. Grievant's salary was not modified because it was already within the range established at the time of the reclas sification.

Conclusions of Law

1. The West Virginia Division of Personnel is the State Agency charged with establishing and maintaining a position classification plan pursuant to W.Va. Code 29-6-10, et seq.

2. Interpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous. W.Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W.Va. 1993).

3. In the event a worker otherwise qualifies for a specific position, Personnel's guidelines and regulations do not provide the means for salary adjustments based simply upon the educational level or seniority the incumbent has attained.

4. "Grievant failed to establish that Personnel abused its discretionary authority in establishing the salary for [his] position as a result of its State Reclassification Project." Tomlinson v. W.Va. Div'n of Transportation, Docket No. 94-DMV-209 (Oct. 20, 1994).

5. Grievant has failed to establish that Personnel violated, misapplied or misinterpreted any laws, rules or regulations, acted arbitrarily or was clearly erroneous in creating only one classification for the RT job class.

Accordingly, the 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 Employ ees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appeal ing party must advise this office of the appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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NEDRA KOVAL

Administrative Law Judge

Date: November 23, 1994