JACK DAVIDSON and

DAVE BOND

v. DOCKET NO. 93-DOH-307

WEST VIRGINIA DIVISION OF HIGHWAYS

DECISION

Grievants, Jack Davidson and Dave Bond, employed by the West Virginia Division of Highways (Division or Respondent), filed a level one grievance on or about February 18, 1993, at which time they claimed, "We, Jack Davidson and Dave Bond, are being treated unfair with our wages and duties as compared to the other [Equipment Operator] III's wages and duties." The grievance was denied at levels one, two, and three, after which appeal was made to level four on August 6, 1993. Both parties agreed that the matter could be submitted for decision based upon the lower-level record, supplemented by proposed findings of fact and conclusions of law which were filed by October 14, 1993.

The evidence of record supports the following findings of fact.

1. Grievants are employed by West Virginia Division of Highways, classified as Equipment Operators III. Their hourly salary is presently $8.54.

2. Grievants have received specialized training in the operation of certain equipment (gradall, backhoe, and loader), which the remaining five employees classified as Equipment Operator III cannot operate.

3. Three other Equipment Operators earn more than Grievants. Employment records indicate that these three employees have accrued more longevity with the Division and/or more time in grade than either of the Grievants.

4. Employment records of Grievants and the three higher paid Equipment Operators establish that since January 1990 both Grievants have received a merit raise. Two of the three higher paid employees have received a merit raise while the third individual has received only the two general salary increases received by all the employees.

5. Grievants' salaries fall within the West Virginia Division of Personnel's range of pay for Equipment Operator III.

6. Grievants do not contend that they are required to perform any duties outside the classification of Equipment Operator III.

7. Respondent submitted documentation which establishes that the training courses on certain equipment must be completed by each employee required to operate the equipment as part of their job assignment and that the failure to comply with this directive subjects the employee to demotion.

Grievants argue that the disparity between duties and salaries among the Equipment Operators constitutes favoritism, a violation of W.Va. Code §29-6A-2(h). They request a salary increase "equal to that of the higher paid Equipment Operator IIIs." Respondent asserts that Grievants are paid an appropriate rate within their classification, and that the differences in salaries may be attributed to reasonable factors and are not the result of favoritism.

Upon review of the parties' positions and the record in its entirety, the following conclusions are made.

Conclusions of Law

1. W.Va. Code §29-6A-2(h) permits a state employee to protest an employer's act of favoritism defined as the "unfair treatment of an employee as demonstrated by preferential, exceptional oradvantageous treatment of another or other employees."

2. Grievants have failed to prove that the higher salaries earned by three employees within the classification of Equipment Operator III were created through acts of favoritism by Respondent.

Accordingly, the grievance is Denied.

Any party may appeal this decision 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 §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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SUE KELLER, SENIOR

ADMINISTRATIVE LAW JUDGE

Dated: February 28, 1994