DAVID A. CRAMER, et al.

v. Docket No. 94-BOT-148

WEST VIRGINIA BOARD OF TRUSTEES/

WEST VIRGINIA UNIVERSITY

DECISION

Grievants, David Cramer, Tom DeWitt, Gary Varner, Randy Long, Dale Hienze, and Chuck Fox, employed by the West Virginia Board of Trustees as Heating, Ventilation and Air Conditioning (HVAC) Technicians at West Virginia University (WVU or Respondent), filed a level one grievance on March 3, 1994, in which they complained of a pay inequity when [o]n March 1 an individual working as a custodian in Paygrade 4 under Mercer surpassed all paygrade 12's by being promoted to a paygrade 12 position. We believe this to have been caused by a reduction in classification without a reduction in salary coupled with a 5% increase per paygrade under Mercer. The difference being that existing paygrade 12's received no compensation when moving to the partial implication [sic] of the Mercer system. We feel we are deserving of being compensated regarding this issue.

The matter was not resolved by the immediate supervisor and appeal was made to level two. Following an evidentiary hearing,WVU administration denied the grievance. Grievants next filed the matter at level three where consideration was waived pursuant to W.Va. Code §18-29-4(c). The grievance was advanced to level four on April 18, 1994. An evidentiary hearing was conducted on July 12, 1994; both parties waived their right to submit post-hearing findings and conclusions.

The facts of this matter are undisputed. Grievants are similarly situated employees in that they are all classified as HVAC Technicians. (See footnote 1) **On or about March 1, 1994, Gary Mathews, then employed as a custodian, was promoted to HVAC Technician. Consistent with Board of Trustees Legislative Rules, Series 62, Section 13 "Promotion," Mr. Mathews received an increase in salary of five percent for each paygrade he was elevated.** (See footnote 2) **Because the position of custodian is slotted into paygrade four, and HVAC Technician is compensated at paygrade twelve, Mr. Mathews receiveda forty percent increase in salary for**

the eight paygrade promotion. At the time of the transfer his salary was set at $20,700.00 plus longevity increment, for a total of $20,988.00. Grievants' compensation ranges from $16,464.00 to $20,568.00 annually.

Grievants state that the salary disparity was partially effectuated by the implementation of a new classification system generally referred to as the "Mercer classification." Because the new system was not fully funded, many employees received no increase in salary upon reclassification to a higher paygrade. In Grievants' case, even though their position classification was upgraded from paygrade nine to paygrade twelve under the Mercer plan, because they were all earning above the entry salary, or the equity step, of their revised classification they received no salary enhancement. Grievants contend that during the transition from the old to the new classification systems those employees who held positions which dropped on the paygrade scale were rewarded with a much higher percentage of increase upon promotion than those employees who were upgraded as a result of the change but received no additional income. (See footnote 3)

Grievants assert that the difference between their salariesand that of Mr. Mathews is a violation of W.Va. Code §18B-9-4, which mandates salary equity, and results in discrimination, since an employee with no experience in a classification may through the transfer process assume a position with a salary exceeding those employees who have the same or more seniority. In support of their position Grievants rely upon two prior decisions issued by the Grievance Board: Beckner v. West Virginia University, Docket Nos. BOR-88-124/125 (Oct. 31, 1989), and Hoff v. Board of Trustees/West Virginia University, Docket No. 93-BOT-104 (June 30, 1994). The relief requested by Grievants is that their salaries be adjusted to that earned by Mr. Mathews during the 1993-94 term with additional adjustments for 1994-95.

WVU argues that the promotion and attendant salary adjustment awarded to Mr. Mathews was completed entirely within the BOT promotional policy. In reference to the Mercer issue, WVU responds that it has implemented the new system to the extent that funding permits and that it lacks the ability to make any further salary adjustments at this time. (See footnote 4) **Finally, no discrimination has taken place, Respondent argues, because the promotion policy is applied evenly to all employees. Grievants may have themselves benefitted from the provisions of the policy in the past and may certainly do so in the future should they apply for**

and receive appointment to a position at a higher pay grade.

Grievants' complaint that the BOT promotional policy generatessalary inequity in violation of W.Va. Code §18B-9-4 is without support. Grievants have shown that when an employee who has been working in a lower classified position transfers to a higher classified position he will benefit from a significant increase in salary. Grievants have not proven that a salary disparity exists within their classification. On the contrary, Mr. Mathews earns less than $150.00 a year more than Grievant Long, the next highest paid HVAC Technician. Rather than creating an inequity, it would appear that the evidence supports a finding that the salaries of these employees are comparable.

Grievants do not allege that they or Mr. Mathews are assigned to an incorrect pay grade or that any of their salaries fall outside of pay grade 12. Thus, the basis of this complaint seems to be that an employee who had not previously worked as an HVAC Technician earns more than those employees who have held that classification for a period of time. Although Grievants consider their seniority as HVAC Technicians controlling, the record is void of evidence that an employee's salary is in any manner based upon time in class. Interestingly, several of the Grievants testified at level four as to their own past promotions in which they have benefitted from the 5% per paygrade policy. Clearly, there was no objection when they received the percentage increase, and their complaint arose only when another employee received a larger increase as the result of his initiative in seeking a higher paying position.

Discrimination is defined as "any differences in the treatmentof employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees." W. Va. Code §18-29-2(m). Grievants have failed to prove discrimination since the evidence establishes that all of the employees in this matter have been treated similarly in that they have all received the same benefits of the promotion policy. The variable amounts received by individual employees based upon factors unique to their differing situations does not constitute discrimination.

It is appropriate to note that while Grievants understandably rely upon the Beckner decision due to the similarity of the situations, the factual and legal issues were quite different. Beckner involved a salary inequity which resulted from the 1979 change in policy which eliminated a flat 5% increase upon promotion to the current 5% per paygrade

computation. After the implementation of this policy an employee was promoted and received a salary increase which was substantially higher than those employees with longer tenure. The inequity was apparently recognized by WVU administration when a subsequent grievance was settled by increasing that employee's salary; however, no adjustments were made to grievants' salaries at that time.

In Beckner, the grievants relied upon W.Va. Code §§18-26B-5 and 18-26B-2, which required that salary adjustments be made to rectify inequities in compensation. The grievants prevailed in that matter which was later upheld by the Kanawha County Circuit Court. In the present matter there has been no change in thepolicy which resulted in the inequity which was observed in Beckner. Furthermore, the statutory provisions cited therein have since been repealed. Although Hoff originally involved the issue of salary inequity it is of no value to Grievants' argument since the review at level four was limited to the issues of default and relief.

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

FINDINGS OF FACT

1. Grievants are employed at West Virginia University and are currently classified as Mechanical Equipment Workers or Mechanical Equipment Helper.

2. In March 1994, Gary Mathews transferred from his assignment as custodian to that of a Trades Worker or a Mechanical Equipment Worker.

3. Notwithstanding documentation listing several position titles for Grievants and Mr. Mathews, they are all in fact HVAC Technicians.

4. Mr. Mathews' transfer was a promotion in that he advanced from paygrade four to paygrade twelve.

5. Consistent with BOT policy, Mr. Mathews was entitled to a pay increase of 5% per paygrade or the entry rate of the new position, whichever was larger.

6. Mr. Mathews realized a forty percent pay increase and now earns slightly more than the highest paid Grievant.

CONCLUSIONS OF LAW

1. Grievants have failed to prove by a preponderance of the evidence that the BOT promotion policy has created a salary inequity in violation of W.Va. Code §18B-9-4 which requires that the governing boards of higher education "establish by rule and implement an equitable system of job classification ... together with the designation of an appropriate pay grade for each job title."

2. Grievants have failed to prove that the BOT promotion policy has resulted in discrimination as defined by W.Va. Code §18-29-2(m).

Accordingly, the grievance is DENIED.

DATE: oCT. 31, 1994 Sue Keller, Senior Admn. Law Judge

Footnote: 1*Notices of Classified Employee Appointment dated July 1, 1993, and signed by the named Grievants state their position titles to be Mechanical Equipment Worker with the exception of Mr. Cramer whose title is stated as Mechanical Equipment Helper. The Orientation Statement for FTR Transfer/Promotion/Demotion Classified Employees completed for Mr. Mathews states his position title to be Trades Worker. These differences may be attributed to the implementation of the Mercer classification or to other factors. In any event, there appears to be no dispute that all relevant employees work with the HVAC systems.*

Footnote: 2*Specifically, Section 13.2 provides that "[u]pon promotion from a position in one pay grade to a different position in a higher pay grade, the employee will receive an increase of five percent (5%) per pay grade rounded to the next highest step in the new paygrade based upon the employee's base salary, or the entry rate of the new pay grade, whichever is greater." In this instance involving an eight step promotion, the percentage per paygrade calculation yielded a greater increase than the entry rate for paygrade twelve.*

Footnote: 3*Although the recent reclassification of employees working at the state institutions of higher learning was stated as a contributing factor to the salary issue, it was agreed by the parties at the level four hearing that the purpose of this grievance was not to address the reclassification since those issues are to be considered at another time. Therefore, only those complaints regarding a violation of Code §18B-9-4 and discrimination will be reviewed.*

Footnote: 4*Consistent with Footnote No. 3, this issue will not be considered herein.*