RICHARD FLOWERS, et al.

v. Docket No. 94-BOT-237

BOARD OF DIRECTORS/

WEST VIRGINIA UNIVERSITY

DECISION

Grievants, Richard Flowers, Loyd McCartney, and Roger Johnson, employed by West Virginia University (WVU), filed a level one grievance on April 28, 1994, in which they alleged a violation of Policy Bulletin No. 62, and that discrimination, and favoritism occurred when they did not receive a salary increase following their reclassification, effective January 1, 1994. The grievance was denied at levels one and two; appeal was made to level four on June 8, 1994. An evidentiary hearing was conducted on September 7, and the matter became mature for decision at the conclusion of responsive briefing on October 17, 1994.

The facts of this matter are not in dispute.

1. Prior to January 1, 1994, Grievants Flowers and McCartney were classified as Mechanical Equipment Helpers. Grievant Johnson was classified as a Carpenter's Helper.

2. Pursuant to W.Va. Code §18B-9-4, the higher educationgoverning boards implemented an equitable system of job classification with an appropriate pay grade for each job title. The system, generally referred to as the Mercer classification, became effective January 1, 1994.

3. In November 1993 all three Grievants were notified that their proposed classification under the Mercer system would be General Trades Helper, pay grade nine.

4. As a result of appeal reviews, Grievants were reslotted. Grievant Johnson was reclassified as Carpenter, pay grade twelve, and Grievants Flowers and McCartney were reslotted as HVAC (Heating, Ventilation, Air Conditioning) Mechanics, pay grade twelve.

5. Grievants Johnson and McCartney received no additional compensation as a result of the reslotting because their salaries exceeded the equity step salary for the job title and pay grade to

which they were assigned.

6. Because Grievant Flowers' salary did not exceed the equity step salary amount for HVAC Mechanic, he was awarded a salary increase and retroactive pay from January 1, 1994.

Grievants argue that because they have moved from pay grade 9 to pay grade 12 they are entitled to a 5% per pay grade salary increase or the entry rate of their new pay grades, whichever is greater, as mandated by Policy Bulletin No. 62, Section 13 "Promotion" and/or Section 14 "Upgrade." Section 13.2 provides in pertinent part that "[u]pon promotionfrom 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. . . or the entry rate of the new pay grade, whichever is greater." Section 14.2 provides that "[w]hen an employee occupies a position at the time that a position upgrade is to be placed into effect, the method of calculating the employee's base salary increase is the same as that specified for a promotion." (See footnote 1)

WVU's position, stated at level four through the testimony of Senior Compensation Analyst Teresa Crawford, is that neither Section 13 nor Section 14 of Policy Bulletin No. 62 is applicable in this matter. Ms. Crawford explained that Grievants are not entitled to a salary increase under Section 13 because they were not promoted. She defined a promotion to occur when an employee transfers into a vacant position which has been posted. If the new position is slotted into a higher classification than the position which the employee previously held, the employee is promoted with an attendant salary increase. Ms. Crawford asserts that because there were no vacancies posted, Grievants were not promoted. (See footnote 2)

Ms. Crawford further determined that Grievants were not eligible for a salary increase under Section 14 of Policy Bulletin No. 62 because there were no changes in Grievants' duties. She explained that upgrading can only be implemented when new duties are assigned an employee who must then be provided a revised position description. Ms. Crawford noted that Grievants' position descriptions have not been amended since the reclassification. (See footnote 3)

Because this grievance involves a reslotting during the implementation of a new classification system, WVU argues that Section 19 of P.B. 62, "Salary Schedule and Implementation Strategy," is controlling in this instance. Section 19 provides in pertinent part:

19.1 The new compensation and classification program and accompanying pay structure will be implemented on January 1, 1994.

19.2 Any classified employee whose current base salary is below the equity step for his/her pay grade on January 1, 1994, will be increased to at least the equity step set out in this rule. . .

19.4 Any classified employee who is slotted into the appropriate pay grade for his/her job title and whose base salary is at least the equity step for that pay grade, shall be deemed to be equitably and uniformly compensated in relation to other classified employees within the pay grade for the purposes of Article 9, Chapter 18B of the state code.

Although Grievants are currently compensated in a higher pay grade than they were prior to January 1, 1994, the procedure by which this change was implemented was neither a promotion nor an upgrade as defined by Policy Bulletin No. 62. The fact that Grievants now hold positions assigned higher pay grades is not attributable to transfers to other positions with higher pay grades or to any changes in their duties. (See footnote 4) The revised position titles and pay grades are directly and solely the result of the new classification system which categorizes titles and pay grades differently than the classification system previously in place. Policy Bulletin No. 62 specifically addresses changes in salary due to the implementation of the new system and Grievants do not allege that their salaries are contrary to the procedure set forth in Section 19. Therefore, it cannot be determined that WVU has deprived Grievants of any salary increase to which they were entitled.

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

CONCLUSIONS OF LAW

1. Grievants' enhanced pay grades, effective January 1994 with the implementation of the Mercer reclassification, were the result of neither promotion nor upgrade as defined by Policy Bulletin No. 62; therefore, they are not entitled to salary increases provided to employees under Sections 13 and/or 14 of that policy.

2. The evidence of record supports a finding that Grievants' salaries are consistent with the salary schedule and implementation strategy for the new classification system provided by Section 19 of Policy Bulletin No. 62.

Accordingly, the grievance is **DENIED**.

DATED: January 31, 1995 Sue Keller, Senior Admn. Law Judge

Footnote: 1Because Grievants did not address the allegations of discrimination and favoritism at level two or level four, those issues are deemed abandoned.

Footnote: 2P.B. 62, Section 13.1 states that "[p]romotions result from an employee moving from his/her current position to a vacant or newly created position assigned to a different job title and higher pay grade and which requires a significantly greater degree of skill, effort and responsibility than that of the employee's current position."

Footnote: 3Section 14.1 states that "[u]pgrades result from the process of job evaluation where a determination is made that a significantly higher level of skill, effort, and responsibility exists in the employee's current position. . . ."

Footnote: 4Grievants do not allege that any change in their duties has taken place.