KENNETH P. PATRICK

v. Docket No. 94-DOH-571

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION/
DIVISION OF HIGHWAYS and the WEST VIRGINIA
DIVISION OF PERSONNEL

DECISION

In 1990, because of recruitment difficulties in its Engineering in Training and Highway Engineer classifications, Respondent Division of Highways (DOH) requested that the West Virginia Division of Personnel (Personnel) place those positions in a higher paygrade and Personnel complied. The change caused unrest among Senior Engineering Technicians and Bridge Maintenance Inspectors who had previously enjoyed parity in salary with Engineers in Training and felt that they performed comparable work.

Two Senior Engineering Technicians, Garland Salmons and Orman Adkins, eventually grieved the matter. At Level IV, Administrative Law Judge Sunya Anderson advised them that the issues raised in their complaint had been adjudicated in Aultz, et. al v. W.Va. Dept. of Transportation, Docket No. 90-DOH-522 (Feb. 28, 1991), and that the grievants therein, Senior Engineering Technicians, had not prevailed. ALJ Anderson further advised that the factual background of the two cases appeared to be similar if not identicaland that their complaint would be dismissed unless they could cite and demonstrate some substantive difference.

Despite that a dismissal appeared imminent in the case, DOH agreed to propose a reallocation of its Senior Engineering Technician and Bridge Maintenance Inspector positions from paygrade 22 to paygrade 24 if the grievance was withdrawn. Mr. Salmons and Mr. Adkins assented and Personnel ultimately approved DOH's recommendation.

On November 1, 1993, Personnel implemented an agency-wide reclassification plan involving all DOH positions. As a result, the grievant herein, a Senior Engineering Technician, was placed in paygrade 16 which, at least arguably, has a slightly lower maximum salary than that of its predecessor, paygrade 24. He complains, apparently in the role of a third-party beneficiary, that this

action was a violation of the agreement reached with Mr. Salmons and Mr. Adkins.

After reviewing the agreement on which the claim is based, the undersigned finds that it contains no language whatsoever upon which it could reasonably be concluded that DOH ever consented to do more than seek a reallocation of its Senior Engineering Technician and Bridge Maintenance Inspector positions. Since DOH completely fulfilled this obligation and Personnel was never a party to the agreement, there can be no finding that either breached it.

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 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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JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: April 21, 1995