JOHN S. DRAKE

v. Docket No. 95-RJA-442

REGIONAL JAIL & CORRECTIONAL FACILITY AUTHORITY

D E C I S I O N

Grievant, employed for over a year by the Regional Jail and Correctional Facility Authority (RJA) as a Correctional Officer II (CO2), had formerly been employed by the West Virginia Division of Corrections (CORR). He initiated this grievance because RJA refused to provide him the same salary enhancement as does CORR for officers who have completed CORR's officer training "Apprenticeship Program." RJA denies all wrongdoing. It essentially maintains it followed the appropriate regulations when setting salaries for recently-hired CO2s, including Grievant's salary, and that it was not legally bound to offer a salary enhancement for the completion of an officer training program. Grievant merely supplemented the record adduced at the September 19, 1995, level three hearing at the October 12, 1995, level four hearing. The parties declined to submit post-hearing fact/law proposals.

The parties do not dispute the underlying facts giving rise to this grievance. Based on all matters of record, the follow ing findings of fact are made.

Findings of Fact

1. CORR administrators began planning for the closure of the old West Virginia Penitentiary (WVP), located in Marshall County, West Virginia, by at least Spring 1994, and most inmates were ultimately transferred to a new facility at Mount Olive, West Virginia, by June 1995.

2. Prior to the closure of WVP, a new regional jail was

built in Marshall County. However, this facility was different from most other regional jails staffed and operated by RJA, because it also housed a correctional facility which was staffed and operated by CORR. Thus, the entity, the Northern Regional Jail and Correctional Facility, contains the Northern Regional Correctional Facility (NRCF) and the Northern Regional Jail (NRJ) under one roof.

3. During planning sessions to close WVP, administrators advised CO staff, all in the classified service, that they could vie for positions at Mount Olive or NRCF, and those positions would be awarded on the basis of good standing and seniority. CO staff were also told they could apply to RJA for classified-exempt positions at NRJ.

4. While working for CORR at WVP on March 31, 1994, Grievant's salary as a correctional officer was $16,824.00 per year.

5. Due to a reclassification project within CORR, effec tive April 1, 1994, Grievant's position was reallocated to a CO2 and his salary was changed to $17,256.00 per year. In July 1994, State workers received an across the board increase of $1008.00, bringing Grievant's salary to $18,264.00 per year.

6. Grievant, who had previously completed CORR's Appren tice Program, applied for and received a CO2 position at RJA in Fall 1994. Grievant accepted a salary of $18,156.00, an amount which included credit for some of Grievant's prior years of service as a correctional officer with CORR. However, Grievant had to take an overall $108.00 cut in pay when he resigned his position with CORR and accepted the position with RJA.

7. At the combined correctional facility in Marshall County, there is some unavoidable contact between the correc

tional officers employed by CORR and RJA.

8. Sometime in mid-1995, CORR officials either decided or discovered that, during the April 1994 reclassification project, CORR had not properly paid Grievant and other CO2 officers who had completed the Apprentice Program training. Grievant's salary had been shorted by approximately $420.00 per year. According to a September 18, 1995, letter authored by CORR's Human Resources Administrator at NRCF, had Grievant remained a CORR employee, his salary would have been adjusted to $18,684.00 annually, inclusive of the training credit and the July 1994 increase of $1008.00.

9. CORR decided to award Grievant and other former employees back pay for the salary error.

10. Grievant learned of this salary error on CORR's part in September 1995, and thereafter sought RJA's "recognition" of the salary increase for officers who had already completed officer training, especially since RJA would not have to bear the cost of sending him to CORR's Academy for training.

Discussion

At issue in this grievance is whether Grievant is legally entitled to a salary increase, retroactive to the time he began his employment with RJA, because he had completed CORR's "Appren tice Program" for the training of correctional officers. In a word, the answer is no.

W.Va. Code §31-20-5(u) permits RJA to "promulgate rules . . . to implement and make effective the powers, duties and respon sibility invested in the authority . . . ." See Logan v. W.Va. Regional Jail and Corr. Authority, Docket No. 94-RJA-255 (Nov. 29, 1994). In a September 1994 "Policy and Procedure State ment," RJA outlined its "Classification and Compensation Plan."

Initially, it is stated, among other things, that "[i]n order to achieve consistency among similar work assignments, the Authori ty has adopted a classification and compensation plan promulgat ed by the West Virginia Division of Personnel." Relevant portions of "Procedure B: New Employees" are as follows:

1. The entry salary for any employee shall be at the minimum salary of the pay range established for the designated position unless special qualifications justify a higher salary within a salary range. When making appointments above the minimum salary for non-uniformed employees, the appointing authority may pay an increment of three percent (%3) above the minimum salary for each six months of pertinent experience or equivalent pertinent training above the minimum qualifications for the class.

2. For uniformed personnel, a maximum of nine hundred dollars ($900.00) per annum may be added to the minimum starting salary at the time of employment computed as follows: For each month in excess of the minimum required experience for the position up to a maximum of 36 months, an experience incumbent of twenty-five dollars ($25.00) per month may be added to the minimum starting salary.

Although the policy states that "special qualifications" may justify a new worker receiving a salary above that of the minimum salary for the class, it is readily seen that RJA considers "pertinent training" as a factor to be considered for only the non-uniformed classes. Moreover, there is a cap of $900.00 over entry level for uniformed personnel, but none at all for non-uniformed personnel.

The CO2 position is at pay grade 9, with a salary range of $17,256.00 to $28,104.00. When hired by RJA in Fall 1994, Grievant was credited with the maximum amount of allowable experience and granted the full $900.00 addition to the CO2's starting salary, for a salary of $18,156.00. There has been no apparent breach of regulations on RJA's part.

In fact, Grievant made no allegation that RJA violated any laws, policies or regulations in setting his salary. He stated that he liked the NRJ administrators and staff and his work in general. Grievant also acknowledged that CORR and RJA are separate entities, one with correctional officers in the classi fied service and the other with correctional officers who are not in the classified service. He simply argues that, out of fairness, his salary from RJA should reflect that of specially trained CORR officers, with whom he is working virtually side-by-side at the Marshall County correctional facility and per forming similar duties for the State of West Virginia.

Grievant knew when he resigned his job with CORR and accepted a similar position with RJA that he would work under the same roof with CORR officers and that their employment situations and working conditions would be different. He even accepted a salary cut of $108.00. Absent some showing on Grievant's part of a legal entitlement to a higher salary than that which was offered and accepted upon his employment with RJA, there is no relief that can be awarded. See Crow v. W.Va. Dept. of Corrections, Docket No. 89-CORR-116 (June 30, 1989); Bonnett v. W.Va. Dept. of Highways, Docket No. 89-DOH-043 (Mar. 29, 1989).

The following conclusions of law are appropriate.

Conclusions of Law

1. Grievant must prove all of the allegations consti
tuting the grievance by a preponderance of the evidence. Crow
v. W.Va. Dept. of Corrections, Docket No. 89-CORR-116 (June 30,
1989); Bonnett v. W.Va. Dept. of Highways, Docket No. 89-DOH-043
(Mar. 29, 1989).
2. Grievant neither alleged nor demonstrated any viola
tions of law, regulation or policy with respect to his salary
upon his employment with the Regional Jail Authority.
3. Grievant has failed to demonstrate by a preponderance
of the evidence any basis in fact or theory of law for which to
grant the relief he seeks.
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: December 12, 1995