

MARGARET E. SILER, et al.,

Grievants,

v. DOCKET NO. 96-DOH-077

**WEST VIRGINIA DEPARTMENT OF
TRANSPORTATION/DIVISION OF HIGHWAYS,
and WEST VIRGINIA DIVISION OF PERSONNEL,**

Respondents.

DECISION

Grievants, [\(See footnote 1\)](#) Margaret E. Siler, Shelley S. Gorby, and Betty F. Campbell, Associate Personnel Specialists (APS), filed this grievance against Respondent, the West Virginia Department of Transportation/ Division of Highways (DOH). The West Virginia Division of Personnel (DOP) was made a party at Level IV.

Grievants allege that Mrs. Leslie Staggers, who was recently hired by DOH as an APS, receives more compensation than they do after many years of service. As relief, Grievants request "to be compensated at a proportionately equivalent rate," which they define as at least five (5) percent above entry pay for each year of service.

Grievants were denied relief at the lower levels of the grievance procedure. [\(See footnote 2\)](#) At Level IV, an evidentiary hearing was held at the Grievance Board's office in Elkins, West Virginia, on June 26, 1996. [\(See footnote 3\)](#) The case became mature for decision on July 22, 1996.

The following findings of fact were derived from the record.

FINDINGS OF FACT

1. Grievants, Associate Personnel Specialists (APS), were grandfathered into their current APS

positions from the Clerk III classification. The Clerk III position required a high school diploma, or equivalent, and clerical experience. The APS position is also an entry level position for professionals.

2. The APS position requires the following:

Training: Graduation from an accredited four-year college or university.

Substitution: Full-time or equivalent part-time paid experience in professional or paraprofessional personnel work in one of the areas of assignment, or in responsible clerical work processing applications, registers, or other personnel actions which require familiarity with merit system rules and regulations and personnel policies and procedures[,] may substitute on a year-for-year basis for the required training.

OR

Successful completion of college course-work from an accredited college or university may, through an established formula[,] be substituted for the above training on a year-for-year basis.

Experience: No experience necessary.

LIII Gr. Ex. 5.

3. Mrs. Leslie Staggers was hired by Respondent as an APS in June 1995. She earned a Baccalaureate degree in Business Administration in 1977, and an M.B.A. in 1978, earning 36 credit hours, from West Virginia University. Her monthly salary is approximately \$1,766. This is below the mid-point of the salary range. Mrs. Staggers' salary is approximately 31.5% above the minimum entry salary for an APS.

4. Mrs. Staggers worked for over nine years with Burroughs\Unisys Corporation, and performed the following personnel duties: developing and conducting training courses, hiring personnel, evaluating and promoting employees, "development" of employees, and providing on-the-job training for subordinates. The above areas are "areas of assignment" within personnel, and are alluded to under Minimum Training and Experience Requirements, Substitution, are reproduced in Finding of Fact 2.

5. Mrs. Staggers worked for ImagiTex, Incorporated as a Senior Account Manager for approximately two years. Later, she was employed by DuPont Electronic Imaging Systems for approximately a year and a half. She managed fifty campaign workers for Friends of Staggers for Congress, when her husband ran for re-election in 1992. Mrs. Staggers has four years of combined

experience as an Instructor at Shepherd College and Frostburg State University, and has also been employed as a substitute secondary teacher in Mineral County, West Virginia.

6. Mrs. Staggers' salary is approximately \$100 more a month than Mrs. Athey, the person employed previously in the APS position at Burlington. Mrs. Athey worked for Respondent for over thirty- two years, and died in 1995. She had been a Clerk III, and was reclassified and grandfathered into the new APS classification in 1993. LIII Tr. 23-24.

7. The monthly minimum entry salary for the APS position is \$1,343. The APS position is in pay grade 8.

8. Grievant Siler's, Campbell's, and Gorby's monthly salary, as of June, 1996, were \$1,766, \$1,510, and \$1,731, respectively.

9. Under the Pay Plan Implementation pilot policy, a 3-5% increment adjustment is allowed for each six months of pertinent experience, and for each fifteen hours of pertinent college course- work completed, above the minimum qualifications for the class.

DISCUSSION

During the Level IV evidentiary hearing, Mr. Basford, Assistant Director of Classification and Compensation, testified that Mrs. Staggers' M.B.A. degree, a thirty-six hour program, accounted for more than 10% of the salary adjustment. Mr. Basford further opined that Mrs. Staggers had "far more" training and personnel experience "in the areas of assignment," than her salary level reflects. While Mr. Basford did not personally calculate the 31.5% figure, and therefore, could not explain precisely how the salary level was determined, he testified that the figure was determined by two people within Personnel. Mr. Basford further explained:

[w]hat we do is simply evaluate the application and tell the agency here is the outside limit that this individual qualifies. Now, where they hire them within that is strictly a decision made internally by the department. And I would note in the rule, your Honor, and also in the policy, pilot policy, it indicates that the comparison is made between the applicant and the relevant class specification, not what other employees are making. That's not what the rule requires. It does not require them to go back and check where this fits in the overall scheme of things. What they're doing is comparing this applicant to the class specifications. That's what the rule and the policy are about. Not about other salaries. And I think Largent pretty well speaks to that issue as well.

In Largent v. W. Va. Div. of Health, 192 W.Va. 239, 452 S.E.2d 42 (1994), the Supreme Court of Appeals of West Virginia addressed the issue of state employees within the same classification performing the same type of work, but receiving differing rates of compensation. In Largent,

grievants, licensed practical nurses (LPNs), filed a grievance after they discovered that another LPN received eighteen percent more compensation. The Court held that under W. Va. Code [§]29-6-10 [1992], the West Virginia Legislature allows agencies to consider a broad range of factors when setting the salary of a new employee, and that while employees performing the same tasks with the same responsibilities should be placed within the same job classification, it is merit which determinesthe pay grade step of an employee within the classification. The Court found that such a practice did not violate W. Va. Code §29-6- 10, West Virginia's Equal Pay for Equal Work, nor the Federal Equal Pay Act.

Mr. Basford explained that the APS position was a dual track position. While clerical employees were allowed to work up through the ranks to the APS position, it was also an entry level position for professional employees, who could, hopefully in the future, be promoted to Personnel Specialist, and Senior Personnel Specialist.

The difference between Mrs. Staggers' compensation and the lowest paid Grievant, Grievant Campbell, is \$256 a month, or approximately 14.5%. Even though Grievants do not like this fact, they have failed to show a violation, misapplication or misinterpretation of any statute, policy, rule, regulation, or written agreement.

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

CONCLUSIONS OF LAW

1. In nondisciplinary matters the grievant must prove all of the allegations constituting the grievance by a preponderance of the evidence. Ward v. W. Va. Regional Jail and Correctional Facility Authority, Docket No. 95-RJA-410 (Feb. 20, 1996).

2. The West Virginia Legislature allows agencies to consider a broad range of factors when setting the salary of a new employee, and while employees performing the same tasks with the same responsibilities should be placed within the same job classification, it is merit which determines the pay grade step of an employee within the classification. Largent v. W. Va. Div. of Health, 192 W.Va. 239, 452 S.E.2d 42 (1994).

3. Grievants failed to prove by a preponderance of the evidence that they were entitled to any relief.

Accordingly, the grievance is **DENIED**.

Any party 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.

Dated: 10/29/96 _____

JEFFREY N. WEATHERHOLT
ADMINISTRATIVE LAW JUDGE

[Footnote: 1](#)

Leah F. Miller and Tamara L. Diaz, Grievants at Level III, did not appeal to Level IV.

[Footnote: 2](#)

Copies of the Level I grievance decisions were not forwarded to the Undersigned. These grievances were consolidated at Level II.

[Footnote: 3](#)

Inadvertently, Grievants Gorby and Campbell did not receive notice of the June 26, 1996, hearing. Respondents and Grievant Siler desired to proceed. The parties present agreed that Grievants Gorby and Campbell should be sent a copy of the tape of the proceedings, and that if they desired to have a separate hearing or offer any evidence that another hearing would be scheduled. However, Grievants Gorby and Campbell responded that the evidence elicited by Grievant Siler was sufficient, and that they did not wish to offer any additional evidence.