LARRY FARLEY et al.,

Grievants,

v. **Docket No. 00-PEDTA-015**

WEST VIRGINIA PARKWAYS DEVELOPMENT

AND TOURISM AUTHORITY,

Respondent.

D E C I S I O N

Grievants (See footnote 1) **filed this grievance against the West Virginia Parkways Economic Development and Tourism Authority ("PEDTA"), in several grievances, on or about August 10 through 13, 1998. The Statement of Grievance says:**

> **Disparity and unfair treatment. Feel that an unjust action has been performed by management, by not dispensing the Years of Service Pay fairly and equally among all hourly Parkway Employee's (sic). RELIEF SOUGHT: Pay Toll Collectors Years of Service Pay at 40¢ per hour as other hourly employees are payed (sic) and make Years of Service Pay retroactive back to 1995 when it was implemented for maintenance.**

These grievances were denied at Levels I and II, consolidated at Level III, denied at Level III, and appealed to Level IV on January 11, 2000. A Level IV hearing was held on April 7, 2000. After a request for an extension by the Grievants' representative, this grievance became mature for decision on June 7, 2000, after receipt of the parties' proposed findings of fact and conclusions of law. (See footnote 2) **After a detailed review of the record in its entirety, the undersigned Administrative Law Judge makes the following Findings of Fact.**

Findings of Fact

1. **Grievants are employed by PEDTA as Toll Collectors.** (See footnote 3)

2. **PEDTA is a classified-exempt agency, and as such has the right to establish pay plans for all positions and departments.** (See footnote 4)

3. **For a substantial time prior to the filing of this grievance, PEDTA had separate**

compensation plans for maintenance and toll employees. These separate compensation plans are still in effect.

4. In the Spring of 1995, PEDTA began discussing ways to eliminate the complex pay scale that had evolved in the Maintenance Department over many years.

5. In Maintenance, many workers were performing the same tasks, but because of the pay system were paid at different levels and at different classifications.

6. Also PEDTA wanted to find a way to reward employees who had many years of satisfactory service, but who had not received merit increases. 7. In December 1995, PEDTA implemented a set amount of base pay for satisfactory maintenance employees at five and ten years, and did away with multiple classification levels (I, II, and III) within the same classification.

8. This increase is known as years of service pay, for lack of a better term.

9. At the start of this process, PEDTA did not intend to include all employees in this plan, as the object of this effort was to correct problems in the pay of maintenance employees.

10. If a maintenance employee was already making the base pay when he reached the five and ten year mark, he received no increase. If he were not making the set amount, his salary was increased to the set amount. Thus, the amount of increase a maintenance employee received varied.

11. The next year, maintenance employees at the fifteen and twenty year mark were given an increase to a set amount.

12. As time went on, and PEDTA had sufficient funds, the years of service pay increases were given to almost all hourly employees.

13. Many factors went into consideration when calculating the years of service pay. Primary among these factors, was the consideration that no employee would have his salary decreased as a result of this change. Some equalization among classifications was also planned.

14. Another factor was the reality that certain positions were worth only a certain amount of money, and these positions were capped. 15. Toll employees were given increases for ten and twenty years of service in 1996.

16. Toll employees were given increases for five and fifteen years of service in 1998.

17. The process of establishing years of service pay increases ended in July 1998.

18. During most of the first twenty years of service, a Toll Collector receives a greater rate of compensation than a maintenance employee. (See footnote 5)

19. At twenty years of service, a Toll Collector and a maintenance employee would have the same level of base pay, if all other factors are equal.

20. Although the amount of increase varied within classifications, and the amount increase varied from employee to employee, many classifications received an increase of approximately 40 cents per hour. The amount of increase received by Toll Collectors was less. Toll Collectors received a large increase at the 30 month mark. See n. 5.

21. Although merit increases are available to Toll Collectors, these are seldom recommended by their supervisors. Other sections receive merit increases more frequently. Toll Collectors receive bonuses for accuracy in their work; other employees do not.

Issues and Arguments

Grievants argue it is unfair for their years of service pay to be less than 40 cents, and maintain they have been discriminated against. They believe the increase they receive should be the same as other employees, and their years of service should be counted the same as other employees. (See footnote 6) **This argument will be viewed as a claim of discrimination and favoritism. Additionally, Grievants want this increase to be granted from 1995, when the first group of maintenance employees received an increase.**

Respondent argues it has not violated any rule, regulation, policy, or statute, and there was no requirement to give a years of service pay increase to anyone. Additionally, Respondent notes the amount varied from classification to classification and from employee to employee. There was no set rate of increase. Respondent further notes the increases were given as they were voted on by PEDTA, and no one received retroactive payment; thus, to give Grievants this relief would be to grant them something no other employee received. Respondent notes, as a classified-exempt agency, it has the right to set the pay scales of its employees, and to decide what compensation should be paid as long as its acts are not an abuse of discretion or arbitrary and capricious.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); McCoy v.W. Va. Parkways Economic Dev. and Tourism Auth., Docket No. 99-PEDTA-074 (July 19, 1999); Howell v. W. Va. Dep't of Health & Human Resources, Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6.

II. Discrimination and favoritism

Grievants contend PEDTA's decision to award a substantially greater years of service pay increase to employees in other classifications is unfair. Discrimination is defined in W. Va. Code § 29-6A-2(d), as "any differences in the treatment of 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 § 29-6A-2(h) defines favoritism as "unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees."

This Grievance Board has determined that a grievant, seeking to establish a prima facie case (See footnote 7) of discrimination and favoritism under W. Va. Code §§ 29-6A-2(d) & (h), must demonstrate the following:

> **(a) that he is similarly situated, in a pertinent way, to one or more other employee(s);**
>
> **(b) that he has, to his detriment, been treated by his employer in a manner that the other employee(s) has/have not, in a significant particular;**
>
> **and,**
>
> **(c) that such differences were unrelated to actual job responsibilities of the grievant and/or the other employee(s) and were not agreed to by the grievant in writing.**

Parsons v. W. Va. Dep't of Transp., Docket No. 91-DOH-246 (Apr. 30, 1992).

Once a grievant establishes a prima facie case of discrimination or favoritism, the

employer can offer legitimate reasons to substantiate its actions. Thereafter, the grievant may show the offered reasons are pretextual. See Tex. Dep't of Community Affairs v. Burdine, 450 U.S. 248 (1981); Frank's Shoe Store v. W. Va. Human Rights Comm'n, 178 W. Va. 53, 365 S.E.2d 251 (1986); Hendricks v. W. Va. Dep't of Tax & Revenue, Docket No. 96-T&R-215 (Sept. 24, 1996); Runyon v. W. Va. Dep't of Transp., Docket Nos. 94- DOH-376 & 377 (Feb. 23, 1995).

Grievants have not met their burden of proof and established a prima facie case of discrimination or favoritism. Grievants are not similarly situated to the other employees to whom they compare themselves for a variety of reasons.

First, Grievants do not hold the same classifications as any of the PEDTA employees to whom they compare themselves. In a recent decision involving application of W. Va. Code § 18-29-2(m), the parallel provision in the grievance procedure for school employees prohibiting generic "discrimination," (See footnote 8) Flint v. Board of Education, No. 25898 (W. Va. Supreme Ct. of Appeals, Dec. 10, 1999), the West Virginia Supreme Court of Appeals determined that service employees in one classification were not "similarly situated" to service employees in a separate classification for purposes of establishing aprima facie case of discrimination or favoritism. (See footnote 9) Here, as in Flint, the differences in treatment are related to, or based at least in part, on the job duties of the employees.

Second, in a previous decision involving comparisons of compensation in state classifications, Aultz v. West Virginia Department of Transportation, Docket No. 90-DOH- 522 (Feb. 28, 1991), this Grievance Board refused to find that state salaries can be compared and equal compensation required across classification lines. In Aultz, the grievants' contention they should receive the same upward salary adjustments awarded to employees in the Highway Engineer II, Chemist IV, and Geologist IV classifications, was rejected. The Administrative Law Judge in Aultz denied the grievance because the grievants did not establish they should be paid the same as employees in another classification, or that their employer and DOP abused their discretion in setting rates of compensation for employees in other classifications. (See footnote 10)

Third, the initial purpose of the years of service pay increase was to correct problems within the maintenance department and within their classification system. PEDTA believed satisfactory employees with certain years of service should receive a certain amount of

compensation. The practice was later expanded to include other PEDTAemployees, but without the goal of correcting specified problems. Grievants received a benefit of what actually started out as a process to correct a problem in maintenance. Toll Collectors were within only two classifications, and all were compensated in a similar manner; thus, there was no "problem" to fix. They were not similarly situated to maintenance, as no classification or compensation problems such as those noted in maintenance existed.

Fourth, it must be noted that employees performing similar work need not receive identical pay, so long as they are paid in accordance with the pay scale for their proper employment classification. Largent v. W. Va. Div. of Health, 192 W. Va. 239, 452 S.E.2d 42 (1994); W. Va. Univ. v. Decker, 191 W. Va. 567, 447 S.E.2d 259 (1994); Hickman v. W. Va. Dep't of Transp., Docket No. 94-DOH-435 (Feb. 28, 1995); Tennant v. W. Va. Dep't of Health & Human Resources, Docket No. 92-HHR-453 (Apr. 13, 1993); Acord v. W. Va. Dep't of Health & Human Resources, Docket No. 91-H-177 (May 29, 1992). In this matter, Grievants did not submit any evidence that they were not properly paid for their classification. This variance in years of service pay does not violate any current statute, regulation, or policy applicable to Grievants.

Further, this Grievance Board previously attempted to redress a pay disparity between two separate classifications of employees in Skeen v. West Virginia Bureau of Employment Programs, Docket No. 92-CLER-183 (Mar. 18, 1993). There, Employment Security Tax Examiners were paid substantially more than Workers Compensation Fund Field Auditors, although their duties were similar in several ways. This Grievance Board granted relief to the lower-paid employees on the basis that those employees were notreceiving equal pay for equal work. However, this decision was reversed on appeal. W. Va. Bureau of Employment Programs v. Skeen, No. 93-AA-91 (Cir. Ct. of Kanawha County Dec. 1, 1993).

Since Skeen, the West Virginia Supreme Court of Appeals has noted this Grievance Board's jurisdiction to resolve grievances, as defined in W. Va. Code § 29-6A-2(i), does not provide authority for an Administrative Law Judge to substitute her management philosophy for that of the employer. Skaff v. Pridemore, 200 W. Va. 700, 490 S.E.2d 787 (1997); See Settle v. W. Va. Parkways Economic Dev. and Tourism Auth., Docket No. 00- PEDTA-031 (May 23, 2000); Bennett v. Dep't of Health and Human Resources, Docket No. 99-HHR-517 (Apr. 26, 2000); Terry v. Dep't of Transp./ Div. of Personnel, Docket No. 99-DOH-207 (Mar. 17, 2000).

Ultimately, the pay scale assigned to a given classification reflects a value judgement by the employing agency or agencies as to the need of having employees with specific knowledge, skills, and abilities available to perform the agency's work, and the effects of the law of supply and demand upon its ability to recruit and retain such personnel. Terry, supra. While it is clear that Grievants make valuable and important contributions to PEDTA on a routine basis, the comparison would be an "apples to oranges", comparison which this Grievance Board has no legal basis to make. See Flint, supra; Terry, supra; Aultz, supra. See also Largent, supra.

II. Arbitrary and capricious The next issue to examine is whether PEDTA's decision to make these changes in the pay scale and to create and calculate the years of service pay in the manner in which they did was arbitrary and capricious.

"Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. See Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); Yokum v. W. Va. Schools for the Deaf and the Blind, Docket No. 96-DOE-081 (Oct. 16, 1996)." Trimboli v. Dep't of Health and Human Resources, Docket No. 93-HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. State ex rel. Eads v. Duncil, 198 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." Eads, supra (citing Arlington Hosp. v. Schweiker, 547 F. Supp. 670 (E.D. Va. 1982)). " While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of [the agency]. See generally, Harrison v. Ginsberg, [169 W. Va. 162], 286 S.E.2d 276, 283 (W. Va. 1982)." Trimboli, supra.

PEDTA has the authority and responsibility to establish a pay plan for all positions within its classified-exempt service. PEDTA has wide discretion in performing these duties, although it cannot exercise this discretion in an arbitrary or capricious manner. In general,an agency's determination of matters within its expertise is entitled to substantial weight. Princeton Community Hosp. v. State Health Planning, 174 W. Va. 558, 328 S.E.2d 164 (1985). This

standard of entitlement to substantial weight applies when a grievant attempts to review PEDTA's interpretation of its own regulations and class specifications to determine if PEDTA's decision was arbitrary and capricious or an abuse of discretion. Farber v. W. Va. Dep't of Health and Human Resources/Div. of Personnel, Docket No. 95- HHR-052 (July 10, 1995).

Unless Grievants present sufficient evidence to demonstrate PEDTA's determination of years of service pay is clearly wrong, inappropriate, or the result of an abuse of discretion, an administrative law judge must give deference to PEDTA and uphold the plan. O'Connell v. Dep't of Health and Human Resources, Docket No. 95-HHR-251 (Oct. 13, 1995); Farber v. Dep't of Health and Human Resources, Docket No. 95-HHR-052 (July 10, 1995). As stated in Moore v. West Virginia Department of Health and Human Resources/Division of Personnel, Docket No. 94-HHR-126 (Aug. 26, 1994), this Grievance Board is reluctant to act as an expert in matters of classification of positions, job market analysis, and compensation schemes, and substitute its judgment for that of the administrative agency in charge of classification and compensation.

It is understandable Grievants would want the largest increase in their pay possible, and it is also understandable they would be disappointed when this increase was less than other employees received. However, PEDTA has the discretion to change and adapt its pay scales, and the discretion to decide that salaries among various workers should be more closely aligned. People can argue and disagree about the relative merits anddifficulties of the classifications at issue, and can maintain one classification deserves more compensation than another. It was pointed out and stipulated to at the Level IV hearing that Toll Collectors' work can be uncomfortable and, at times, dangerous. It was also pointed out, for comparison, that the work of the maintenance workers can be uncomfortable and dangerous also, especially in the winter with snow and ice removal.

Each position has its problems and dangers, and all classifications are important for PEDTA to function. However, the question here is whether PEDTA's decision was "unreasonable, without consideration, and in disregard of facts and circumstances of the case." Eads, supra. PEDTA examined each classification's compensation, compared these rates of compensation between classifications, capped the pay to be received by some

classifications as sufficient and appropriate to the position, and set rates for the years of service pay increase. Keeping these factors in mind, as well as the standard for reviewing an agency's discretionary decision, PEDTA's decision to set the years of service pay increases at the rate it did cannot be found to be arbitrary and capricious. See Trimboli, supra.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Howell v. W. Va. Dep't of Health & Human Resources, Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6. See also Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. Discrimination is defined in W. Va. Code § 29-6A-2(d), as "any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees."

3. W. Va. Code § 29-6A-2(h) defines favoritism as "unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees."

4. To establish a prima facie case of discrimination and favoritism under W. Va. Code §§ 29-6A-2(d) & (h), must demonstrate the following:

> **(a) that he is similarly situated, in a pertinent way, to one or more other employee(s);**
>
> **(b) that he has, to his detriment, been treated by his employer in a manner that the other employee(s) has/have not, in a significant particular;**
>
> **and,**

(c) that such differences were unrelated to actual job responsibilities of the grievant and/or the other employee(s) and were not agreed to by the grievant in writing.

Parsons v. W. Va. Dep't of Transp., Docket No. 91-DOH-246 (Apr. 30, 1992).

Once a grievant establishes a prima facie case of discrimination or favoritism, the employer can offer legitimate reasons to substantiate its actions. Thereafter, the grievant may show the offered reasons are pretextual. See Tex. Dep't of Community Affairs v. Burdine, 450 U.S. 248 (1981); Frank's Shoe Store v. W. Va. Human Rights Comm'n, 178 W. Va. 53, 365 S.E.2d 251 (1986); Hendricks v. W. Va. Dep't of Tax & Revenue, DocketNo. 96-T&R-215 (Sept. 24, 1996); Runyon v. W. Va. Dep't of Transp., Docket Nos. 94- DOH-376 & 377 (Feb. 23, 1995).

5. "[E]mployees who are doing the same work must be placed within the same classification, but within that classification there may be pay differences if those differences are based on market forces, education, experience, recommendations, qualifications, meritorious service, length of service, availability of funds, or other specifically identifiable criteria that are reasonable and that advance the interests of the employer." Largent v. W. Va. Div. of Health, 192 W. Va. 239, 452 S.E.2d 42 (1994). State agencies, such as PEDTA, that are classified-exempt have similar discretion in compensating employees who hold different classifications. See Aultz v. W. Va. Dep't of Transp., Docket No. 90-DOH- 522 (Feb. 28, 1991).

6. Grievants failed to establish a prima facie case of discrimination and favoritism under W. Va. Code § 29-6A-2(d) & (h), because they are not similarly situated to PEDTA employees to whom they compare themselves. See Flint v. Bd. of Educ., No. 25898 (W. Va. Supreme Ct. of Appeals Dec. 10, 1999); Aultz, supra.

7. "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. See Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); Yokum v. W. Va. Schools for the Deaf and the Blind, Docket No. 96-DOE-081 (Oct. 16, 1996)." Trimboli v. Dep't of Health and Human Resources, Docket No. 93-HHR-322 (June 27, 1997). Arbitrary andcapricious actions have been found to be closely related to ones that are unreasonable. State ex rel. Eads v. Duncil, 198 W. Va. 604,

474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." Eads, supra (citing Arlington Hosp. v. Schweiker, 547 F. Supp. 670 (E.D. Va. 1982)).

8. While searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of the agency. Trimboli, supra. See generally, Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276, 283 (1982). 9. This Grievance Board does not have the authority to substitute its judgement for the management philosophy of the employer. Skaff v. Pridemore, 200 W. Va. 700, 490 S.E.2d 787 (1997). See Settle v. W. Va. Parkways Economic Dev. and Tourism Auth., Docket No. 00-PEDTA-031 (May 23, 2000); Bennett v. Dep't of Health and Human Resources, Docket No. 99-HHR-517 (Apr. 26, 2000); Terry v. Dep't of Transp./ Div. of Personnel, Docket No. 99-DOH-207 (Mar. 17, 2000).

10. Interpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous, and an agency's determination of matters within its expertise is entitled to substantial weight. Syl. Pt. 3, W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681 (1993); Princeton Community Hosp. v. State Health Planning, 174 W. Va. 558, 328 S.E.2d 164 (1985).

11. Grievants have not demonstrated the actions of PEDTA were arbitrary and capricious. 12. Grievants did not establish the failure of PEDTA to grant them the same amount of increase for years of service pay violated W. Va. Code §§ 29-6A-2(d) & (h), or any other statute, rule, or regulation.

Accordingly, this grievance is DENIED.

Any party, may appeal this decision to the Circuit Court of Kanawha County, or to the "circuit court of the county in which the grievance occurred." Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 29-6A-7 (1998). 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit

court.

JANIS I. REYNOLDS

ADMINISTRATIVE LAW JUDGE

Dated: June 22, 2000

Footnote: 1

The named Grievants are Randall Nierman, Stephen Smith, Roberta Harper, Clara Riddle, Rebecca Coon, Mary Samples, Marian Edwards, James Thomas, Larry Farley, Hal Myers, Steven Fortner, Alisa Blankenship, Terry Griffith, Melissa Smith, Faye Codle, Shirley Bonham, Jean Via, Troy Harvey, Wanda Cook, Edwin Bailey, Phyllis Wyatt, Louie Constantino, Robin Weddle, Retha Greer, Jasper Smith, George Epperley, Thomas Covey, Kimberly Worrell, Bonnie Hall, Alicia Burdette, James Deck, Robert Taylor, Shirley Martin, Nora Greene, John Romage, Billie Dunlap, Patricia Rose, Carol Tigert, Ruth Brunty, Jim Vandal, Jacqueline Robinson, and Fredrick Elmore.

Footnote: 2

Grievants were represented by Steve Rutledge, from the West Virginia State Employees Union, with assistance from fellow employees, Boyd Lilly and Fred Elmore. Respondent was represented by General Counsel, David Abrams.

Footnote: 3

Randall Nierman, Clara Riddle, and Stephen Smith are not Toll Collectors and do not have standing to participate in this grievance. They "signed on" to indicate their support of Grievants' position. Pursuant to Respondent's Motion, these individuals are dismissed from this grievance.

Footnote: 4

These types of management decisions are entitled to wide discretion unless the action is an abuse of discretion or arbitrary and capricious. See discussion on pages 11 through 14. .

Footnote: 5

For example, in 1998 at 24 months, a Toll Collector's base pay is $12.07 an hour and a maintenance employee's is $12.37. At 30 months, a Toll Collector's base pay is $13.08 an hour and a maintenance employee's is $12.81. The Toll Collector continues to make more than the maintenance employee until they reach the 20 year mark.

Footnote: 6

As support for this argument, Grievant cited W. Va. Code § 18A-4-15 dealing with supplements for school service personnel, and argued PEDTA has violated this Code Section. This Code Section does not apply to Grievants, as they are not school service personnel.

Footnote: 7

A prima facie case generally refers to a set of facts which, if not rebutted or contradicted by other evidence, would be sufficient to support a ruling in favor of the party establishing such facts. See Black's Law Dictionary 1353 (4th ed. 1968).

Footnote: 8

See Vest v. Bd. of Educ., 193 W. Va. 222, 455 S.E.2d 781 (1995).

Footnote: 9

Likewise, the employees were not performing "like assignments and duties" for purposes of the applicable uniform pay statute, W. Va. Code § 18A-4-5a. Flint, supra. Because Flint explicitly encompassed the issue of favoritism under W. Va. Code § 18-29- 2(o), Grievants' allegation of favoritism in violation of W. Va. Code § 29-6A-2(h) need not be analyzed separately. See also W. Va. Dep't of Health & Human Resources v. Hess, 189 W. Va. 357, 432 S.E.2d 27 (1993).

Footnote: 10

The Aultz case related to recruitment and retention problems, but the same analysis is valid here.