

Largent v. West Virginia Division of Health and West Virginia
Division of Personnel
No. 21864

McHugh, J., concurring in part and dissenting in part:

I concur with the majority opinion with regard to its general conclusions that state agencies may consider a broad range of factors when setting the salary of a new employee and that employees who are performing the same tasks with the same responsibilities should be placed within the same job classification. However, there is a lack of factual development in the majority opinion and, because of that lack of factual development, I am further of the opinion that syllabus point 4 of the opinion is overly broad and unjustified. For those reasons, I dissent.

The principle of "equal pay for equal work" has received not only recognition in federal and state statutes, as the majority opinion indicates, but also recognition by this Court in various contexts. In particular, "equal pay for equal work" was discussed by this Court in the "AFSCME" cases, AFSCME v. Civil Service Commission, 181 W. Va. 8, 10, 380 S.E.2d 43, 45 (1989); AFSCME v. Civil Service Commission, No. 17929 (W. Va. Per Curiam order May 20, 1988); AFSCME v. Civil Service Commission, 176 W. Va. 73, 75,

341 S.E.2d 693, 695 (1985); and AFSCME v. Civil Service Commission, 174 W. Va. 221, 225, 324 S.E.2d 363, 367 (1984), and in other cases, West Virginia Dept. of Health and Human Resources v. Hess, 189 W. Va. 357, 432 S.E.2d 27, 29 n. 5 (1993); State ex rel. West Virginia Magistrates Association v. Gainer, 175 W. Va. 359, 363, 332 S.E.2d 814, 818 (1985); Atchinson v. Erwin, 172 W. Va. 8, 11-12, 302 S.E.2d 78, 81 (1983); and syl. pt. 4, Donaldson v. Gainer, 170 W. Va. 300, 294 S.E.2d 103 (1982).

The majority opinion sets forth, at length, the qualifications, training and experience of D. M. for the LPN II classification but does not mention the qualifications, training and experience of the appellants, although much of that information is contained in the record before us. Furthermore, although the majority opinion emphasizes flexibility, it implies that D. M. is receiving more pay than the appellants because of the "mechanics" of the system.

Finally, although market forces may be a factor to consider in the setting of the salary of a new employee, the majority opinion discusses market forces to the exclusion of a factual comparison between the qualifications, training and experience of D. M. and the appellants. Therefore, the majority opinion unjustly concludes in syllabus point 4 that "W. Va. Code, 29-6-10 [1992], does not provide that employees who are performing the same tasks with the

same responsibilities be placed at the same step within a job classification." The majority opinion's assumption that only D. M.'s background and circumstances need be discussed is, as I indicated in another matter, "too tenuous a premise upon which to anchor any steady standard of law." State ex rel. J. L. K. v. R. A. I., 170 W. Va. 339, 346, 294 S.E.2d 142, 149 (1982).

I am authorized to state that Justice Cleckley joins in this separate opinion.