



The issues are whether BOPA has jurisdiction over this appeal, and if so, whether the anchor point was improperly fixed at the Right-of-Way Technician III occupation rather than the Right-of-Way Technician II occupation, and if so, whether BOPA should order the agency to adjust all appellants' salaries retroactive to 30 days prior to the date of filing of this matter, in accord with the adjusted anchor point.

### III. FINDINGS OF FACT

1. The Montana Department of Administration is the agency charged by the Montana legislature with establishing, maintaining, and managing the pay plans applicable to all state employees, the work of which is done by the State Personnel Division (SPD).

2. The State utilizes three pay plans. Most state employees are currently paid according to the State's market-based, broadband pay plan (Pay Plan 20), which is described in Mont. Code Ann., Title 2, Chapter 18, Parts 1, 2, and 3.

3. Prior to the adoption of Pay Plan 20, most state employees were paid according to the classification/pay plan (Pay Plan 60). Montana state government created and moved to Pay Plan 20 for four reasons:

a. To match more closely salaries for comparable work in competing markets, making Montana state government more competitive in hiring and retaining qualified employees;

b. To compensate similar work similarly across all state agencies, ensuring a significant degree of internal equity;

c. To base employees' compensation on merit; and

d. To establish a pay plan that could be maintained in a fiscally responsible manner.

4. Starting in the late 1990's, the Montana legislature began the move to the market-based, broadband pay methodology by authorizing state agencies to develop and submit compliant pay plans to SPD. The Montana Department of Transportation (MDT) began the move to Pay Plan 20 in the early 2000's.

5. Under Pay Plan 20, all occupations are classified within nine "broadbands." Each broadband contains large numbers of related occupational groups (also called "families"), and each such family contains a number of occupations.

6. MDT's Right-of-Way Bureau has positions in the "Right-of-Way Agent" occupation, at ascending Right-of-Way Agent levels I through IV. The four Right-of-Way Agent levels were defined in conformity with a "career ladder" developed and implemented by MDT and the collective bargaining unit for the Right-of-Way Agents over many years prior to conversion to Pay Plan 20, and maintained in the conversion to Pay Plan 20.

7. There are a few other occupations under Pay Plan 20 with four levels. Most occupations have three levels that typically signify entry-level, journey-level, and senior-level employees.

8. Under Pay Plan 20 methodology, SPD must identify an appropriate salary range, consisting of a minimum and maximum salary, for each of the nine broadbands. SPD must also establish an appropriate salary range, an “occupational pay range,” for each occupation within the broadband, and the occupational pay range must fall within the salary range for that broadband. An occupational pay range consists of an entry salary, a market salary, and a maximum salary for the occupation.

9. The “anchor point” is the specific position within an occupation to which the overall “market salary,” for purposes of comparable pay, attaches. By definition, the anchor point – the proper place for the market salary to attach – is the position for the fully competent employee within the occupation. The fully competent employee is neither an entry-level employee nor a senior-level employee. The fully competent employee, for anchor point purposes, is also called the journey level employee.

10. From the anchor point level, salary ranges for all levels within the occupation are calculated. The anchor point salary or pay band is assigned the market salary. Each pay band above or below that pay band is assigned market salary plus or minus 20% for each band up or down from the anchor point pay band, calculating a pay band for each level with a 50% spread from entry level to maximum. In essence, changing an anchor point from one pay band to the next pay band below it will necessitate increasing salaries throughout all of the pay bands for that occupation by 20%. Changing the anchor point from one pay band to the next pay band above it will necessitate decreasing salaries throughout all of the pay bands for that occupation by 20%.

11. SPD first reported occupational salary ranges for the Right-of-Way Agent occupation in 2002, and fixed the anchor point at the Right-of-Way Agent IV position, pay band 6, because that position was occupied by the greatest number of employees within the occupation. At that time, SPD’s methodological assumption was that the fully competent employee within the occupation—the journey level position—would be the position held by the greatest number of employees within the occupation.<sup>1</sup>

12. In 2004, SPD changed its approach to fixing anchor points, using comparison of job functions, responsibilities, and primary duties, according to factor level language in the classification manual. In essence, this new methodology involved comparing the occupational descriptions of work performed for the state to occupational descriptions provided by the salary survey sources that SPD determined were reliable comparisons. The salary survey sources are essentially the equivalent human resources personnel in the employing entities in other

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<sup>1</sup> How it was possible to designate the journey level at the top of a 4 pay band spread when by definition there was supposed to be a senior level above the journey level was never satisfactorily explained by SPD, and Finding 23 (proposed by SPD) suggests that the former anchor point needed to be adjusted as it subsequently was.

jurisdictions.<sup>2</sup> SPD fixed the Right-of-Way Agents' anchor point at Right-of-Way Agent III, pay band 5. This resulted in pay increases for Montana state government Right-of-Way Agents, across their pay bands.

13. In the 2006 biennial review, SPD reconfirmed the anchor point for this occupation at Right-of-Way Agent III, pay band 5.

14. In this appeal, appellants assert that SPD should have identified the anchor point for the Right-of-Way Agent occupation at the Right-of-Way Agent II, pay band 4, and that all salaries should be adjusted accordingly. Substantively, the result of appellants' requested remedy would be to increase all salaries of the Right-of-Way Agent occupation at MDT by 20%.

15. Appellants provided information regarding a number of positions in Idaho, Wyoming, North Dakota, and South Dakota that perform similar primary functions as Right-of-Way Agents at MDT, obtaining their information directly from the websites of those state's highways and transportation agencies, and not from the survey information SPD obtained from its counterparts in the other jurisdictions.

16. Appellants did not apply the Pay Plan 20 market analysis methodology when gathering, evaluating, or interpreting the information upon which they relied.

17. Appellants provided no evidence that SPD had improperly applied the statutes, regulations, or practices applicable to determining the appropriate anchor point for the Right-of-Way Agent occupation.

18. Appellants did not provide substantial and credible evidence that SPD's interpretation of the statutes, regulations, and practices applicable to determine the appropriate anchor point for the Right-of-Way Agent occupation—in other words, SPD's choice of comparative information and how to use it—was unreasonable or improper.

19. MDT's career ladder identifies the journey level position, Right-of-Way Agent occupation, as Right-of-Way Agent III, pay band 5. MDT's career ladder was developed by MDT prior to completion of the salary survey with which appellants disagree. The career ladder is based upon job functions performed by the Right-of-Way Agents.

20. Setting the anchor point for the Right-of-Way Agent occupation as it now exists results in compensation schedules for the Right-of-Way Agents consistent with other occupations in the family in which the Right-of-Way Agent occupation is grouped (see Finding No. 5), and with the salary information obtained and relied upon by the SPD in comparing Montana salaries to its competing employment markets (mainly other states, either in this region of the country or across the country).

21. If the anchor point for the Right-of-Way Agent occupation was set at the Right-of-Way Agent II, pay band 4, Montana's Right of Way Agents would make approximately \$10,000

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<sup>2</sup> SPD's choice of comparative information, which in essence is the "Pay Plan 20 market analysis methodology" for purposes of this case, is the central issue of this case.

more per year, at the “senior” level, than the national average for senior Right-of-Way Agents as identified by the American Association of State Highway and Transportation Officials (“AASHTO”). In almost all occupations, compensation in Montana is below the national average. There is no evidence here explaining why Right-of-Way agents should differ so greatly from this trend.<sup>3</sup>

22. The Right-of-Way Agent I position routinely includes only one or two of the total number of Right-of-Way Agents that MDT employs. The Right-of-Way Agent I and II levels, combined, represent MDT’s entry-level work assignments for Right-of-Way Agents. If the four Right-of-Way Agent levels at MDT were to be compressed to conform to the three “normal” levels (Entry, Journey, and Senior), that compression would reasonably involve combining the lowest two levels into a single entry level.

23. There is very little turnover in the Right-of-Way Bureau at MDT. A significant majority of Agents have progressed through the Right-of-Way Agent career ladder to the Right-of-Way Agent IV position (now the senior agent position). This retention rate suggests that the Right-of-Way Agent levels at MDT are competitively compensated.

24. The current designation of the anchor point maintains internal equity and external competitiveness. Appellants’ requested adjustment of the anchor point would make MDT very competitive in the national marketplace, but would also create substantial internal inequities. Obviously, if the Right-of-Way Agent positions in MDT must be significantly higher than what SPD considers comparable salaries from other jurisdictions, while the rest of Montana state government salaries remain comparable with what SPD considers comparable salaries from other jurisdictions, Right-of-Way Agents will be paid much better than other occupations at what SPD considers to be comparable levels.

25. Finally, a forced adjustment of the anchor point as requested by appellants would result in a significant increase in salary expense to MDT, an increase inconsistent with collectively bargained salaries negotiated by MDT with appellants’ bargaining unit over a substantial period of time.<sup>4</sup>

#### IV. CONCLUSIONS OF LAW

1. The Board of Personnel Appeals has jurisdiction over this case and controversy. The appellants properly appealed (also called “grieved”) allocation of their positions to a particular

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<sup>3</sup> Regularly using this kind of comparison could perpetuate the lower salary schedules, but as a “snap-shot” method of checking the current accuracy of an assigned anchor point, it is reasonable.

<sup>4</sup> SPD also argued that an ordered or “forced” anchor point adjustment would not be subject to legislative approval, and therefore would be an improper pay adjustment, but this argument is purely tautological. If SPD were ordered to change an anchor point that it had done incorrectly, the correction would be consistent with the law and therefore already approved by the legislature, which had passed the law in the first place. If SPD were ordered to change an anchor point that it had done properly, the order would presumably be reversed on review as inconsistent with the law, *i.e.*, as not consistent with what the legislature had approved. The legislature did not absolutely delegate its power to decide state government’s spending on wages to SPD. SPD’s decisions are subject to review.

pay band. Mont. Code Ann. §§ 2-18-203(2) and 1011; Admin. R. Mont. 24.26.508(1)(d)(iv) and (v).

2. The Department of Administration's State Personnel Division did not fail to follow the statutes, regulations, and practices applicable to determination of the appropriate anchor point for the Right-of-Way Agent occupation when fixing that anchor point at the Right-of-Way Agent III rather than the Right-of-Way Agent II level, thereby allocating the positions of the appellants to a particular pay band. Mont. Code Ann., Title 2, Chap. 18, Parts 1-3.

3. The Hearing Officer recommends the following order, mandated by the appellants' failure to prove incorrect application of the statutes, regulations, and practices related to pay band allocation of their position.

## VI. RECOMMENDED ORDER

Appellants Amber C. Brandt, Linda Martin, Cecia Clearwood, Bruce Crawford, Donna Franklin, Daniel W. Walls, Marlene Pirtz, Cheryl Tull, Maura Procter, Don Vanica, John Haas, Therese Iwaniak, Lamont Lamphier, Larry Thomas, Joe Rask, Tracy Tiner, Mandy Potts, Jamie Landon-Maas, Linda Marin, Krista Ferguson and Michael Sprague, with their union, failed to prove that the Montana Department of Administration's State Personnel Division did not follow the statutes, regulations, and practices applicable to determining the appropriate anchor point for the Right-of-Way Agent occupation when fixing that anchor point at the Right-of-Way Agent III rather than the Right-of-Way Agent II level. Therefore, their classification appeal must be and is dismissed.

DATED this 16th day of April, 2008.

BOARD OF PERSONNEL APPEALS

By: /s/ TERRY SPEAR  
TERRY SPEAR  
Hearing Officer

NOTICE: Pursuant to Admin. R. Mont. 24.26.215, the above RECOMMENDED ORDER shall become the Final Order of this Board unless written exceptions are postmarked no later than May 9, 2008. This time period includes the 20 days provided for in Admin. R. Mont. 24.26.215, and the additional 3 days mandated by Rule 6(e), M.R.Civ.P., as service of this Order is by mail.

The notice of appeal shall consist of a written appeal of the decision of the hearing officer which sets forth the specific errors of the hearing officer and the issues to be raised on appeal. Notice of appeal must be mailed to:

Board of Personnel Appeals  
Department of Labor and Industry  
P.O. Box 6518

Helena, MT 59624-6518