DR. PAMELA GARDNER

v. **Docket No. 93-BOT-391**

BOARD OF TRUSTEES/MARSHALL UNIVERSITY

D E C I S I O N

Dr. Pamela Gardner, Grievant, is employed by Marshall University ("MU") as a tenured Associate Professor in the Communication Disorders Department. She grieves the fact that her application for promotion to the rank of full-professor ("full-professor or professor") was denied and seeks to reverse this decision. Her grievance was denied at Levels I and II and waived at Level III. A Level IV hearing was held on January 24, 1994 and following submission of briefs, this case became mature for decision on March 29, 1994.

Dr. J. Wade Gilley, President of Marshall University, informed the Grievant on March 11, 1993 that she would not be promoted to full professor because she did not meet the criteria set forth in The Greenbook. The Greenbook is the faculty handbook which identifies the criteria for promotion and tenure, and also contains Policy Bulletin Number 36 which clarifies the criteria for promotion.

The Grievant requested a statement of reasons for her denial of promotion. On March 31, 1993, Dr. Gilley responded stating that candidates must demonstrate effectiveness in all areas of major responsibility and she had demonstrated insufficient evidence of scholarly activity.

The requirements for the rank of professor are:

1. A candidate must have earned the terminal degree in a major appropriate to the teaching field from a regionally-accredited university.

2. A candidate must have had at least four years of experience in the rank of an associate professor at a regionally-accredited college or university.

3.

> A candidate in a tenure-track position may not be promoted from the rank of associate professor to the rank of professor unless he or she has been granted tenure by Marshall University . . ..

4. A candidate must have demonstrated effective performance in all of his or her major areas of responsibility, and he or she must have demonstrated excellence in two or more such areas, including either teaching and advising or scholarly and creative activities.

The Greenbook, at 15.

The Greenbook further clarifies the requirements for promotion.

> Promotion in rank is a reward for achievement. It is based on the professional qualifications of a faculty member, including performance specific to the candidate's contractual responsibilities and duties. Major faculty responsibilities and duties include teaching and advising, scholarly and creative activities, service to the university, and professional service to the community. Individual colleges are responsible for determining the relative importance of the various faculty functions for purposes of personnel decisions. Colleges should provide flexibility in the weighing of such functions in order to accommodate a range of departments, disciplinary specialties and individuals with varying assignments.

The specific areas in which faculty are evaluated for promotion include the following:

1. **Teaching and advising:** command of disciplinary knowledge and methodology; effectiveness of classroom performance; advising load and effectiveness of academic advising; effectiveness in assessing student learning; rapport with students; contributions to curricular development; instructional development of faculty colleagues, etc.

2. **Scholarly and creative activities:** number, quality and importance of publications and creative productions; memberships and contributions to professional societies; professional growth and development; scholarly presentations and creative performances; contributions to the professional development and achievement of colleagues, etc.

3. **Service to the university:** contributions within the department/division, within the college, or university-wide; contributions to official student organizations or other university-related organizations; other work in behalf of the student body, faculty, staff or administration of the university.

4. **Service to the community:** service on a compensated or pro bono basis to governments, to educational, business or civic organizations, or to the public. (Such service could include applied research, consultation, technical assistance, special forms of instruction, clinical work and performance). Involvement as an official representative of Marshall University, or units thereof, in activities of governments and of educational, business or civic organizations.

Id. at 14-15.

Policy Bulletin 36 states that promotion will not be granted routinely or because of length of service and shall not be denied capriciously. Id. at §6.1.3. (See footnote 1) Further, promotion should not be granted automatically but "shall result from action from thePresident of the institution following consultation with the appropriate academic units." Id. at §6.2. Some examples of the wide-ranging criteria for promotion are:

> [E]xcellence in teaching; accessibility to students; professional and scholarly activities and recognition; significant service to the college community; experience in higher education and at the institution; possession of the doctorate, special competence or the highest earned degree appropriate to the teaching field; publications and research; potential for continued professional growth; and service to the people of the State of West Virginia.

Id. at §6.1.1.

Grievant, who has a Ph.D. in speech and hearing science, received tenure and promotion to the rank of associate professor in 1984. Her argument is in essence two-fold. First, she argues she meets the requirements for full-professor as outlined in the Department of Communication Disorders procedures for promotion and tenure. Marshall University argues that these procedures were never approved by the Board of Trustees as required and thus are not the proper criteria by which to judge

the Grievant.

The Grievant's next argument is in the alternative. The Grievant states that she meets the criteria specified in The Greenbook, and the committee and individuals who stated she did not were "following old wives tales" and not the specific, written requirements stated in The Greenbook. Respondent argues that Grievant did not meet the criteria and was on notice of the requirements through The Greenbook and her fourteen years on campus, including her service as acting chairperson of her department and in grievance hearings.

Background

The road to promotion at Marshall University is a multi-step process. The candidate must prepare a promotion application outlining her accomplishments since the last promotion. To be promoted to full-professor, a candidate must demonstrate effectiveness in all major areas of responsibility. As noted above, the major areas of responsibilities are teaching and advising, scholarly and creative activity, service to the university, and service to the community.

Next, the candidate must demonstrate excellence in two or more areas and one of the excellent areas must be teaching and advising or scholarly and creative activities. Although not specifically stated in the criteria, a candidate is expected to demonstrate increasing ability as they travel up the academic ladder.

Dr. Gardner's application followed the usual steps as it went through the review process. First, her application was reviewed by the Promotion and Tenure Committee of the Department of Communications Disorders. The committee recommended Dr. Gardner for promotion to full-professor, as "she had demonstrated effective performance in her major areas", but the decision was not unanimous as "there was divided opinion that she had demonstrated excellence in two or more areas." The committee stated her service to the university was her strongest area, but was divided on whether her teaching and advising demonstrated excellence. Dr. Gardner was found to be effective in the area of research and scholarly activities using the departmental guidelines. The committee alsonoted the Grievant had no professional publications, had made no scholarly contribution to her professional organizations, and her presentations and creative activities had been limited. The area of service to the community was not discussed. While the committee recommended promotion, the recommendation was "necessarily weakened" because it was "lacking unanimity in the various areas

assessed by this committee."

This recommendation went to the chair of the Communication Disorders Department, Dr. Chezik. She concurred with the recommendation. Dr. Chezik spoke highly of the Grievant teaching and advising activities and her service to the University. Dr. Chezik noted that the Grievant had no research or scholarly activities but had participated actively in faculty development and actively maintained her clinical and academic knowledge. The letter contained no discussion of service to the community.

The Grievant's application was then sent to the College of Liberal Arts Promotion and Tenure Committee ("COLA P&T"). The Committee did not recommend the Grievant for promotion because her level of research and scholarly activity was not commensurate with the rank of professor. The Committee noted the divided recommendation of the Grievant's own promotion and tenure committee.

Next, Dr. Leaming, Dean of the College of Liberal Arts reviewed the Grievant's application and lower level recommendations. He agreed with the COLA P&T Committee. He stated that "[the Grievant] presents no evidence that either promotion andtenure committee members or I except as scholarly activities. COLA P&T Committee members feel strongly that those going up for full professor should have evidence they are in engaged in productive scholarly activity. I agree."

The application was next reviewed by Dr. Gould, Vice President of Academic Affairs, and Dr. Gilley. Both thought Grievant should not be promoted to full professor because she did not meet the criteria in The Greenbook, especially in the area of scholarly activity.

The Grievant argues she met the guidelines set up by her department's promotion and tenure committee and that these were approved by the University. Testimony at Levels II and IV clearly demonstrated that the Department of Communication adopted these guidelines in January, 1990. They were approved by the COLA P&T on October 3, 1990. That, however, is as far as these guidelines went. They have never been submitted for approval to Dr. Gould, Dr. Gilley or the Board of Trustees.

Although the Grievant argued she thought approval by the COLA P&T was all that was necessary for the guidelines to be accepted, this argument is not convincing. As a fourteen year veteran of academia, and a former acting chairperson of a department, she was surely aware of the numerous steps necessary for approval of any guidelines.

Accordingly, whether the Grievant met her department's guidelines for promotion is not at issue here. They are not appropriate guidelines for Grievant's promotion review. The nextquestion is whether the Grievant met the guidelines for promotion as outlined in The Greenbook.

As previously stated, to be promoted to full professor a candidate must demonstrate effectiveness in four major areas: teaching and advising, scholarly activity and creative productions (See footnote 2), service to the university and service to the Community. Further, the candidate must demonstrate excellence in at least two areas, and one of the areas of excellence must be either teaching and advising or scholarly and creative ability. The key area of disagreement between Marshall University and the Grievant is whether she demonstrated effective performance in scholarly and creative activity.

The Greenbook at 14 identifies the primary examples of scholarly and creative activity. The first identified example is "number, quality and importance of publication and creative productions." Dean Leaming at Level II testified that publications are required before a person can be promoted to full professor. Dr. Gould testified at Level IV that publications were not required, but research which could lead to publications was. Both gentlemen testified that no one had ever been promoted to full professor at Marshall University without doing some research.

The Grievant testified she has not published anything nor has she conducted any research. She states because she is in the clinical area and has such a heavy teaching load, she has no timeto do research. Additionally, Grievant contends that since she only seeks to be effective in the clinical area, research and publications are not necessary, and she has demonstrated effectiveness in the area in other ways. Grievant's contentions are somewhat difficult to accept. There are many professionals teaching in other clinical areas, as well as her own, such as nursing, medicine and dentistry, who performs research as a part of their academic career.

The next example listed for research and scholarly activity is membership and contribution to professional societies. Although somewhat unclear from her application, it appears the Grievant belongs to one national and one state professional association. She has attended these meetings routinely. She has made no presentation to these societies and thus has not contributed to them professionally.

Professional growth and development is the next area identified by The Greenbook. Grievant has attended workshops and meetings on approximately a biannual basis. The Grievant also identified

the new courses she developed as part of her scholarly activity. As these activities were considered part of her excellence in teaching activities, it is not properly included in this section. Also, the study necessary to develop this curriculum was not research, but teaching preparation.

Scholarly presentations are also considered as part of this area. Over the eight year period since her last promotion, the Grievant gave two presentations in 1986 to another class, assistedin validating a certification exam in 1986, and participated in a workshop designed to develop a model for multi-cultural literacy in 1991.

Another area of scholarly achievement is contributing to the professional development and achievement of colleagues. Grievant has shared her knowledge of speech disorders and techniques for their treatment with her colleagues at Marshall University, her students, and a private practitioner. She has also shared her knowledge gained at a 1991 work shop on multi-cultural issues with other Marshall University faculty. Grievant also listed her work as the chair of the Faculty Senate Development Committee in this section. Since the Grievant extensively documented this Committee's work in the section on service to the University and since this Committee work did not deal with any research or scholarly activities in her area of specialization, it should not be considered here.

In addition to the above examples identified by The Greenbook, Policy Bulletin 36 identifies publication and research as factors to be considered in promotion in rank. As previously stated, the Grievant did not perform any research or publish any articles.

Grievant also identified her grant writing as research and scholarly activity. Since this grant money, although very important, did not result in any money or activity in research and was documented by the Grievant as service to the Community, it cannot be considered here.

In addition to the above facts and discussion, the undersigned makes the following findings of fact and conclusions of law:

Findings of Fact

1. Grievant has a Ph.D. which is a terminal degree in her teaching field.
2. The Grievant was tenured and promoted to Associate Professor in 1984.
3. The Grievant's Departmental Promotion and Tenure Committee recommended her for promotion to full professor, but this recommendation was not unanimous and was seen as a weak recommendation.

4. The Grievant's department chair recommended Grievant for promotion.

5. The COLA P&T Committee and the Dean of the College of Liberal Arts recommended non-promotion because the Grievant had not demonstrated effectiveness in the area of scholarly activities.

6. The Vice President for Academic Affairs, Dr. Gould, recommended non-promotion and Dr. Gilley, President of Marshall University denied the Grievant's application for promotion because she had not demonstrated effectiveness in the area of scholarly activities.

7. The Grievant demonstrated some evidence of scholarly activity but did not conduct any research or publish any articles. The Grievant belonged to one State and one National Professional organization, but did not make any presentations to either of these groups. Grievant's scholarly presentations to other groups werevery limited. Grievant did work on her own and others professional growth and development, but this work was mostly related to her areas of teaching and advising and service to the University.

8. The Department of Communication Disorders guidelines for promotion and tenure had not been approved by the University.

Conclusions of Law

1. The Grievant must prove all her allegations constituting the Grievance by a preponderance of the evidence. Baroni v. The Board of Directors/Fairmont State College, Docket No. 92-BOD-271 (February 11, 1993).

2. "The decisional subjective process by which promotion and tenure are awarded or denied is best left to the professional judgement of those presumed to possess a special competency in making the evaluation unless shown to be arbitrary and capricious or clearly wrong." Sui v. Johnson, 784 Fed. 2d 238 (4th Cir. 1984); see also Carpenter v. Board of Trustees/West Virginia Univ., Docket No. 93-BOD-220 (Mar. 18, 1994).

3. Grievant did not meet her burden of proving a violation of valid policy or demonstrate that denial of promotion to full professor was arbitrary and capricious or clearly wrong.

Accordingly, this grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Cabell County and such appeal must be filed within thirty (30) days of receipt of this decision. W.

Va. Code § 18-29-7. 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.

_____

JANIS I. REYNOLDS

Administrative Law Judge

Dated: August 26, 1994

Footnote: 1The Board of Trustees has codified Policy Bulletin 36 as a procedural rule effective May 4, 1992. 128 C.S.R.36

Footnote: 2Creative productions is a term used by the faculty in fine arts for plays, novels, art projects, etc.