GARY BOYD, et al.,

Grievants,

v. **DOCKET NO. 94-BOT-165**

BOARD OF TRUSTEES/

WEST VIRGINIA UNIVERSITY,

Respondent.

D E C I S I O N

Grievants, Gary Boyd, Dave Casteel, Robert Wilburn, and Warren Headley ("Grievants") (See footnote 1) , employed by the West Virginia Board of Trustees as Lead Heating, Ventilation and Air Conditioning ("HVAC") Technicians at West Virginia University ("WVU"), filed a grievance on March 11, 1994, complaining of pay inequity as follows:

> Newly promoted/hired employees which are internal WVU candidates are given a 5% per pay grade raise. One recent promotion resulted in a 45% (See footnote 2) increase in wages for a position which is (2) paygrades lower than the shop seniors. In this scenario the new encumbent has potetially [sic] to receive more wages than shop seniors who have worked within the department for numerous years. These seniors were granted an "upgrade" from the recent Mercer study which should have resulted in a15% increase in their salary. While it is seen as fair & just to receive a 5% per pay grade raise for promotion, it is equally fair & just to receive the 15% raise for the upgrade. (Emphasis in original.)

The remedy sought is a "15% pay increase for those who qualify according to the above terms [as stated in the grievance]", retroactive to January 1, 1994. (See footnote 3)

The parties agreed to submit this matter for decision on the Level II record. This matter became mature for decision on March 6, 1995, with both parties declining to submit proposed findings of fact and conclusions of law. (See footnote 4)

This matter is all but identical to Cramer, et al., v. W. Va. Board of Trustees/W. Va. Univ., Docket No. 94-BOT-148, decided by this Board October 31, 1994. Even the employee who was alleged to have received the 40% salary adjustment is the same employee as inCramer. This grievance is

denied based upon this Board's ruling in Cramer.

Grievants are similarly situated employees, all classified as Lead HVAC Technicians, pay grade fourteen. Grievant Boyd is apparently being paid $22,503.00 annually. No statement was made as to the salary level of the other Grievants. As previously stated in Cramer, Gary Matthews was promoted from custodian (pay grade four) to HVAC Technician (pay grade twelve), and received a salary increase of five percent per pay grade elevation (to $20,988.00 annually), in accordance with Board of Trustees Legislative Rules, Series 62, §13, "Promotion."

As in Cramer, Grievants complain of salary inequity and discrimination in violation of W.Va. Code §18B-9-4, because Matthews received a five percent per pay grade salary increase upon his promotion, which occurred on or about March 1, 1994. Grievants were placed in a higher pay grade (fourteen) on January 1, 1994, when the "Mercer classification system" reclassified them, but the reclassification has not been fully funded. (See footnote 5) Grievants argue that had Matthews been promoted prior to January 1, 1994, he would not have received the same salary increase. Grievants seek to have the Mercer reclassification fully funded.

The record will not support a finding of pay inequity or discrimination. See Cramer, supra. In fact, except for one exhibit, the record is devoid of evidence, period. No witnesseswere sworn at the April 11, 1994 Level II hearing, and the majority of the record is comprised of a discussion between the employee representative and the WVU representative regarding the failure to fund the Mercer reclassification. Assuming these unsworn statements of non-witnesses to be true, Grievants are being paid nearly $2,000.00 more than Matthews. Further, Matthews is not in the same classification as Grievants, and his classification has not been fully funded either. As in Cramer, Grievants have failed to prove a salary disparity exists within their classification.

A grievant alleging discrimination under W.Va. Code §18-29-2(m) must demonstrate, among other things, that his employer has treated him in a different manner than he has treated another employee, and the disparate treatment is unrelated to actual job responsibilities. Grievants have failed to prove discrimination. No evidence was presented to show that Matthews' salary increase was anything other than the result of proper application of a lawful promotion policy which would be equally applicable to each Grievant upon his promotion. See Cramer, supra.

The following findings and conclusions are appropriate in this matter.

Findings of Fact

1. Grievants are employed by the West Virginia Board of Trustees as Lead Heating, Ventilation and Air Conditioning Technicians, pay grade fourteen, at West Virginia University.

2. Grievant Boyd is paid $22,503.00 annually.

3. Gary Matthews was promoted on or about March 1, 1994, from custodian (pay grade four) to HVAC Technician (pay grade twelve), and received a salary increase of five percent per pay grade elevation (to $20,988.00 annually), in accordance with Board of Trustees Legislative Rules, Series 62, §13, "Promotion."

4. Mr. Matthews is not paid more than Grievants.

Conclusions of Law

1. Grievants have failed to prove by a preponderance of the evidence that the BOT promotion policy has created a salary inequity in violation of W.Va. Code §18B-9-4 which requires that the governing boards of higher education "establish by rule and implement an equitable system of job classification...together with the designation of an appropriate pay grade for each job title." Cramer, et al., v. W. Va. Board of Trustees/W. Va. Univ., Docket No. 94-BOT-148 (October 31, 1994).

2. Grievants have failed to prove that the BOT promotion policy has resulted in discrimination as defined by W.Va. Code §18-29-2(m). Id.

Accordingly, the grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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.

BRENDA L. GOULD

Administrative Law Judge

Dated: March 29, 1995

Footnote: 1 Samuel Tucker, a Lead HVAC Technician at WVU, also appeared at the April 11, 1994, Level II hearing. Mr. Tucker is not listed on the grievance form, nor did he request to be made a party to these proceedings at the hearing; therefore he is not a Grievant in this matter.

Footnote: 2 At the hearing this was amended to 40%.

Footnote: 3 Grievants also stated, "[o]ther inequities need to be addressed with Series 62 as well." Grievants did not identify the "other inequities," therefore, this claim is considered abandoned.

Footnote: 4 The grievance was denied at Levels I and II, and Level III was waived. By letter dated July 29, 1994, the parties notified this Board of their desire to submit this matter on the record, and requested they be allowed until August 29, 1994, to submit stipulations. The parties requested that additional time be allowed after that for submission of proposed findings of fact and conclusions of law. Neither party submitted stipulations by the proposed date, nor did they state they were ready to proceed. By letter dated January 4, 1995, the parties were directed by the Senior Administrative Law Judge to file any fact/law proposals by January 31, 1995, and declined to do so. This matter was transferred to the undersigned for administrative reasons on January 25, 1995. By letter dated February 15, 1995, Respondent requested, among other things, additional time to submit fact/law proposals. That request was not opposed, but was later withdrawn on March 6, 1995.

Footnote: 5 Exhibit No. G-1 indicates that Grievant Boyd's salary is between Equity Steps 1 and 2, pay grade fourteen; and Matthews' salary is between Equity Steps 2 and 3, pay grade twelve.