MICHAEL FARLEY,

Grievant,

v. DOCKET NO. 03-HEPC-189

HIGHER EDUCATION POLICY COMMISSION/
MARSHALL UNIVERSITY,

Respondent.

DECISION

This grievance was filed by Grievant, Michael Farley, against his employer, Respondent, Higher Education Policy Commission/Marshall University ("Marshall"). The statement of grievance reads:

> Years of service money owed prior to down grade as pay grade 14 for 9 years +.

As relief, Grievant sought “Paid in full as a pay grade 14 with 10 years of service.” (See footnote 1)

The following findings of fact are made based upon the evidence presented at the Level III and IV hearings.

Findings of Fact

1. Grievant was first employed at Marshall on August 17, 1992, at a salary of $10,332.00. From January 1, 1994, through June 30, 2003, he was classified as a Landscape Gardener Lead, at a pay grade 14.

2. The Job Evaluation Committee undertook a review of the Physical Plant Job Family, and made recommendations that certain classification changes be made. Those recommendations were approved and implemented effective July 1, 2003. As a result, Grievant's classification was changed to Certified Landscape Worker Lead, pay grade 13, effective July 1, 2003. His salary of $28,556.00 was not reduced.

3. On July 1, 2000, Grievant's salary was $27,000.00, which was the only time during the last

10 years that his salary was as much as the salary listed on the salary schedule in W. Va. Code § 18B-9-3, for an employee in a pay grade 14 with Grievant's years of service; that is, it was the only time during the last ten years that the salary schedule was fully funded.

4. Marshall has not had funds available to pay its classified employees in accordance with the salary schedule set forth in W. Va. Code § 18B-9-3. Money would have to be appropriated by the Legislature in order for Marshall to fully fund the salary schedule.

Discussion

Grievant bears the burden of proving his allegations by a preponderance of the evidence. Mowery v. W. Va. Dep't of Natural Resources, Docket No. 96-DNR-218 (May 30, 1997). Grievant argued he was entitled to be paid in the amount of approximately five percent of the difference between his salary and the amount listed on the statutory salary schedule for a pay grade 14 with his years of service, for the last 10 years. The five percent relates to the difference between his old pay grade 14, and his new pay grade 13. The salary schedule is found in W. Va. Code § 18B-9-3, which, in addition to setting forth the salary schedule, provides as follows:

> There is hereby established a state annual salary schedule for classified employees consisting of a minimum annual salary for each pay grade in accordance with years of experience: Provided, That payment of the minimum salary shall be subject to the availability of funds, and nothing in this article shall be construed to guarantee payment to any classified employee of the salary indicated on the schedule at the actual years of experience absent specific legislative appropriation therefor. The minimum salary herein indicated shall be prorated for classified employees working less than thirty-seven and one-half hours per week.

Respondent correctly pointed out that this statutory provision is clear when it states it does not require that higher education classified employees be paid the salary listed on the schedule. The statute further clearly states that classified employees are not guaranteed payment of the salary listed on the schedule. Accordingly, Grievant has not established that he is entitled to be paid in accordance with the statutory salary schedule.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. In order to prevail, a grievant must prove the allegations in his complaint by a preponderance of the evidence. Mowery v. W. Va. Dep't of Natural Resources, Docket No. 96-DNR-218 (May 30,

1997). 2. While W. Va. Code § 18B-9-3 includes a salary schedule for higher education classified employees, the statute does not require that employees be paid the salary listed on the schedule. The statute further clearly states that classified employees are not guaranteed payment of the salary listed on the schedule.

3. Grievant did not demonstrate a violation of any statute, regulation, or policy, or that he was otherwise entitled to the relief requested.

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. Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 29-6A-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. 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

BRENDA L. GOULD

Administrative Law Judge

Dated: September 12, 2003

Footnote: 1

The grievance was filed on or about June 4, 2003, and was apparently denied at Level I on June 5, 2003. Grievant appealed to Level II on June 5, 2003, and a decision was issued at Level II on that same date, stating that Grievant's second level supervisor was unable to grant the relief requested. Grievant appealed to Level III, where a hearing was held on June 13, 2003. A Level III decision denying the grievance was issued on June20, 2003. Appeal was made to Level IV on July 2, 2003. A Level IV hearing was held on August 13, 2003. Grievant represented himself, and Respondent was represented by Jendonnae L. Houdyschell, Esquire. This case became mature for decision upon receipt of Respondent's written argument on August 26, 2003.