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MARGARET BERDINE, et al.

v.

Docket No. BOR87-307-3

PARKERSBURG COMMUNITY COLLEGE

D E C I S I O N

Grievants, Margaret Berdine, Marshall Griffin, Catherine Lewis and Devika Malhotra are all faculty members at Parkersburg Community College (PCC), a state institution governed by the West Virginia Board of Regents (BOR). On November 23, 1987 they filed a level four grievance alleging they were wrongfully denied a five percent across the board salary increase accorded all BOR employees for the 1987-88 academic year. A level four hearing was conducted January 14, 1988 in Parkersburg, West Virginia; a brief was filed on behalf of the respondent institution on March 8, 1988 and grievants filed their proposals April 4, 1988.¹

¹A level two hearing was conducted October 19, 1987 (T2.____). A level four hearing scheduled for December 22, 1987 was continued by agreement of the parties. A written motion to dismiss tendered by the respondent's counsel at the January 14 hearing was denied pending a full hearing on the grievance matters. Reference to the level four hearing shall be cited (T4.____).

On May 21, 1987 the grievants were all informed they had been promoted in academic rank. In June 1987, all signed employment contracts reflecting the newly attained rank and mandated ten percent salary increase for the 1987-88 academic year commencing August 18, 1987. By BOR action of July 29, 1987 all BOR employees were granted a five percent pay increase for the 1987-88 academic year despite substantial budget cuts imposed by the legislature. Money for the salary increase was, in part, to be funded by a temporary student surcharge of fifty dollars per semester for each full-time college student as the legislature did not provide salary increases for any state employees fiscal year 1987-88.

It is clear from the record grievants herein were fully cognizant of past practice, at least at PCC, of limiting salary increases for promoted faculty members to ten percent since the passage of W.Va. Code, 18-22-3(f) in 1984. (See, (T2.1), October 19, 1987).

Grievants contend that circumstances with respect to the 1987-88 five percent raise were different than previous years and was unique because their 1987-88 contracts providing the ten percent salary increase were signed and in full effect prior to the date the BOR elected (July 29, 1987) to provide the five percent raise to all BOR employees on September 1, 1987, after the contract period began.² Thus, they argue, they are

²Grievants appear to be relying on some theory of contract law but cited no case law, policy or practice to support their position.

entitled to an additional five percent increase based on the already provided ten percent raise and stated salary on the contracts signed in June.

Grievants rely on W.Va. Code, 18-26-8, denoting the power and duties of the BOR, and W.Va. Code, 18-22-1, et. seq., governing faculty salaries and instituting guidelines for the resolution of salary inequities, and case law to support their argument that their salaries are inadequate and that the five percent increase supplementing the salaries determined in June was the board's intention and would be justified.³

Eldon Miller, President of PCC, addressed the issue in his response to grievants at the lower level proceedings.⁴ He noted that BOR guidelines clearly stated that the five percent increases encompassed the regular nine month 1987-88 academic year contract

³Grievants' citations are not persuasive or applicable as their propositions overlook the obvious: The persons whose function is to advise the BOR and implement directives strictly adhered to past practice governing salary increases for promoted faculty and although the five percent raise was effected in an unique manner, the evidence does not suggest that the application to faculty should be any different than in past years since 1984.

⁴It is noted that grievants have apparently modified their grievance as it was originally filed and heard on October 19, 1987. At that time they had additionally protested because they were denied an opportunity to choose between accepting their promotions at the ten percent salary increase and retaining the status quo and receiving the five percent increase provided by the July 29 BOR action. In his October 26, 1987 decision, President Eldon offered them that option. President Eldon, who felt he had to act in accord with past practice and BOR guidelines, nevertheless sympathized with his faculty members whom he felt were underpaid and expressed a hope that the future would bring appropriate rewards to professional college faculty.

notwithstanding the fact that the contract period preceded the September 1 initiation date of the salary increase and, further, the effective date of grievants' contracts was August 18, 1987 not the date they were signed in June.

The respondent cites articles of the State Constitution, W.Va. Code sections and case law to support proposals that the grievants cannot request back pay due to the BOR's sovereign immunity and raises the question of timeliness on grievants' part precluding an award of both backpay and a six and three-quarter percent salary increase sought by grievants.⁵

The respondent further states and argues that the BOR relies upon its staff to promulgate guidelines and regulations for its various resolutions and the BOR staff properly disseminated guidelines to college presidents for the 1987-88 salary increases which clearly directed that faculty promoted in rank should receive a total ten percent increase for the 1987-88 academic year which met the provisions of W.Va. Code, 18-22-3(f).

In addition to the foregoing narration, the following findings of fact and conclusions of law are appropriate.

⁵Counsel apparently calculated that five percent added to the previous salary amount providing ten percent netted six and three quarter percent.

Due to the ultimate disposition of this case these arguments by the respondent's counsel will not be reached.

FINDINGS OF FACT

1. Grievants herein are all faculty members at Parkersburg Community College (PCC) whose promotional requests for the 1986-87 academic year were denied but subsequently granted for the 1987-88 academic year with a commensurate ten percent promotional salary increase as mandated by W.Va. Code, 18-22-3(f).

2. Grievants all signed contracts for the 1987-88 academic year in June 1987. The contract period began on August 19, 1987 for a nine month academic year.

3. In an unprecedented action, on July 29, 1987 the West Virginia Board of Regents (BOR) elected to provide all BOR employees with a five percent salary increase; the raises did not come from the Legislature. BOR staffers, in accordance with their occupational responsibilities, disseminated guidelines for implementation of the five percent increase, effective September 1, 1987, to the various college and university presidents.

4. Guidelines for the salary increases promulgated July 31, 1987 by Edward Grose, BOR Vice Chancellor for Administrative Affairs, states, among other things, "faculty promoted in rank for the 1987-88 academic year should receive a ten percent total increase" which is consistent with past practice since 1984.

Evidence adduced at the level four hearing preponderates that promoted faculty members serving the State's colleges and universities were held to the ten percent promotional increase and did not receive the five percent BOR increase although a few may have been awarded a discretionary merit increase above the ten percent mandated amount (T4.25,26).

5. Grievants herein began grievance procedures when they were not granted the five percent increase in addition to and based upon the salary amounts stated in their 1987-88 contracts already providing a ten percent promotional salary increase which were signed in June and reason that their contracts were in effect prior the the BOR action providing the five percent raise and the five percent raises were not implemented until September 1, 1987 after the start of the 1987-88 academic year.

6. Regardless of when grievants signed their 1987-88 contracts or the date of the BOR decision to provide salary increases, grievants herein have shown no law, policy or practice to support their contention that they deserve more than the ten percent salary increase provided any other promoted faculty member for past academic years since 1984, or for the present 1987-88 academic year.

CONCLUSIONS OF LAW

1. W.Va. Code, 18-22-3(f) requires that any faculty member receiving a promotion in academic rank be awarded a ten percent raise in salary.

2. W.Va. Code, 18-29-1, et. seq. requires that grievants must prove all of the elements of their grievance by a preponderance of the evidence and grievants herein have failed to show a violation of law, policy or practice or otherwise demonstrated a basis upon which their request for relief can be granted.

Accordingly, the grievance is **DENIED** in its entirety.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wood County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the court.

DATED: April 6, 1988

A handwritten signature in cursive script, reading "Nedra Koval", is written over a horizontal line.

NEDRA KOVAL
Hearing Examiner