

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**BRITTANY ALDRICH, et al.,
Grievants,**

v.

DOCKET NO. 2017-0884-CONS

**WEST VIRGINIA UNIVERSITY,
Respondent.**

DECISION

Grievances were filed on or about August 24, 2016, by 62 employees of West Virginia University¹ against their employer, which were consolidated at level one of the grievance procedure. The statements of grievance read: “unfair wages for classified staff - new hires are starting at higher rate of pay.” The relief sought by Grievants is: “back pay from [the date] the higher rate of pay was started and to be equally paid.”

The grievances were waived to level two on September 2, 2016. A mediation session was held on November 4, 2016, and Grievants appealed to level three on December 6, 2016. A level three hearing was held before the undersigned Administrative Law Judge on April 10, 2018, at the Grievance Board’s Westover office. Nine of the Grievants appeared at the hearing, *pro se*, and Respondent was represented by Samuel

¹ The Grievants are Brittany Aldrich, Timothy B. Alkire, Joseph Albert Austin, Barbara E. Bachman, Kayla Marie Campbell, Richard G. Carder, Jr., Ronald Allen Conner, Barbara Ann Cook, Steven Core, Dennis Cornwell, Bradley A. Craft, Randall Lee Crane, Wendy Lee Cress, Kenneth Darnell, Glenna Faye Davis, Tracy Delmar Davis, Timothy Dean Dewitt, Myrtle E. Dodson, Shane Thomas Dolan, Terrence Dunson, Amanda June Fitchett, Betty Jean Flickner, John Nelson George, Richard Haley, Jerry Lee Hill, Sandra A. Huggins, Dalton Izetta, Charmaine Jolliffe, David Lee Jolliffe, John Curtis Jones, Sr., Robin C. Jones, Karl Kalivoda, Diana Louise Lawson, Larry W. Loughry, Richard Albert Malone, Tony Mayfield, LaVelle Meades, Ariel Duane Michael, William Lewis Murphy, Lisa L. Neyman, Thomas E. Nine, Brenda L. Phillips, Ronnie Lee Powers, Delores J. Richards, Diana Lynn Ridgway, Jennifer Lou Robinson, Roy John Shaffer, DeaVonda Sharp, Craig L. Smith, John A. Smith, Debra Kay Sviridendo, Catherine Toothman, David L. Trivett, Michelle L. Troycheck, Florence R. Waxler, Elaina Webber, Samantha L. Whetsel, Frederick Whitaker, John F. Williams, Mary Wilson, William Wingrove, and Kevin Lee Yost.

R. Spatafore, Assistant Attorney General. This matter became mature for decision on April 13, 2018, the deadline for submission of written argument. Respondent submitted Proposed Findings of Fact and Conclusions of Law, but Grievants declined to submit written argument.

Synopsis

Grievants believe they are being treated unfairly and should be awarded a pay increase because some new employees are receiving a starting wage above entry level for the pay grade, and some new hires are being paid more than Grievants, yet Grievants are expected to offer guidance to these new employees. Grievants did not demonstrate that Respondent has violated any law, rule, regulation, policy, or procedure. Moreover, Respondent is not required to compensate all employees at the same level. All that is required is that the employees be properly classified and be paid within the pay range for the classification's pay grade.

The following Findings of Fact are properly made from the record developed at level three.

Findings of Fact

1. Grievants are employed by West Virginia University ("WVU") as Campus Service Workers, Campus Service Worker Leads, Maintenance Worker I's, Trades Specialists, Trades Specialists Lead II's, Work Control Technicians, Information Assistants, Materials Handlers, or Purchasing Attn. II's.

2. Many of the Grievants are paid an hourly rate of pay. The record does not reflect that any Grievant is not being paid within the pay range for the pay grade to which his or her classification is assigned.

3. WVU has recently been offering newly employed Campus Service Workers a starting hourly rate above the entry level for the pay grade for the position, and some newly employed Campus Service Workers are being paid as much as \$4.00 per hour more than some of the Grievants. Grievants are required to assist in training these new employees who are being paid more than Grievants.

4. Some of the Grievants have been employed by WVU for 12 years or more.

5. Grievants employed as Campus Service Workers have not received an increase in pay as a result of the decision to offer newly hired Campus Service Workers a higher starting hourly rate.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). See also *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievants believe they are being treated unfairly because new employees are being hired at salaries above the entry-level for the pay grade, with some of these new employees being paid more than Grievants, yet Grievants are being required to train these new employees. Grievants believe all employees doing the same work should be paid the same hourly rate. Respondent pointed out that Grievants are being paid within their pay grade range, which is all that is required.

WEST VIRGINIA CODE § 18B-9-4 states that “despite any differences in salary that may occur, a classified employee is equitably compensated in relation to other classified employees in the same pay grade if” several conditions exist, the first of which is, “[h]is or her annual salary is at least the minimum salary that was required for his or her pay grade and years of experience on July 1, 2001, on the salary schedule included in this section.” This statutory provision is echoed in the Procedural Rules governing classification and compensation of classified employees, stating that any classified employee “whose base salary is at least at the equity step for that pay grade, shall be deemed to be equitably and uniformly compensated in relation to other classified employees within the pay grade . . .” 133 C.S.R. 8, §19.4.

“These provisions are in line with the well established legal principal in this state that employees in the same classification, who are performing the same duties, need not be paid the same salary, as long as they are paid within the pay range for the pay grade to which their classification is assigned.” *Jones, et al., v. W. Va. Univ.*, Docket No. 2016-0225-CONS (Oct. 18, 2017). The analysis of the concept of equal pay for equal work for a state employee involves a limited inquiry. “The West Virginia Equal Pay Act, W. VA. CODE 21-5B-1 [1965], does not apply to the State or any municipal corporation so long as a valid

civil service system based on merit is in effect.” Syl. Pt. 2, *Largent v. W. Va. Div. of Health and Div. of Personnel*, 192 W. Va. 239, 452 S.E.2d 42 (1994). “[E]mployees who are performing the same tasks with the same responsibilities should be placed within the same job classification,’ but a state employer² is not required to pay these employees at the same rate. *Largent* at Syl. Pts. 2 & 3. The requirement is that all classified employees must be compensated within their pay grade. See *Nafe v. W. Va. Dep’t of Health & Human Res.*, Docket No. 96-HHR-386 (Mar. 26, 1997); *Brutto v. W. Va. Dep’t of Health & Human Res.*, Docket No. 96-HHR-076 (July 24, 1996); *Salmons v. W. Va. Dep’t of Transp.*, Docket No. 94-DOH-555 (Mar. 20, 1995); *Hickman v. W. Va. Dep’t of Transp.*, Docket No. 94-DOH-435 (Feb. 28, 1995); *Tennant v. W. Va. Dep’t of Health & Human Res.*, Docket No. 92-HHR-453 (Apr. 13, 1993); *Acord v. W. Va. Dep’t of Health & Human Res.*, Docket No. 91-H-177 (May 29, 1992). See *AFSCME v. Civil Serv. Comm’n*, 181 W. Va. 8, 380 S.E.2d 43 (1989).” *Nelson v. Dep’t of Health and Human Resources*, Docket No. 05-HHR-315 (May 16, 2006).

Pay differences may be “based on market forces, education, experience, recommendations, qualifications, meritorious service, length of service, availability of funds, or other specifically identifiable criteria that are reasonable and that advance the interest of the employer. See generally *West Virginia University v. Decker*, [191] W. Va. [567], 447 S.E.2d 259 (1994).” *Largent, supra*. “In the area of salary adjustments, an employer should be able to take into account different credentials and different qualifications of

² The Grievance Board has specifically indicated that the principles set forth in *Largent, supra*, apply to higher education employees. *Hartley v. Bd. of Trustees/W. Va. Graduate College*, Docket No. 96-BOT-347 (Mar. 31, 1997). Indeed, higher education classified employees are assigned a classification and pay grade with a pay range just as state employees are assigned a classification and pay grade with a pay range.

employees. Imposing too many restrictions on employers at the hiring, or salary compensation level has a counterproductive effect on the goals of civil right statutes in general.” *Decker, supra*.

Grievants placed into evidence a document entitled “Frequently Asked Questions,” dated September 2012, which they found on Respondent’s website, which states that new hires may receive up to a certain amount of pay, “*provided* that doing so does not result in a problem with the salaries of other current employees in the same job classification.” This document, on its face, is applicable to a new salary structure which went into effect in October 2012, not 2016, when this grievance was filed. The document does not in any way indicate that it has any applicability to more recent changes in hiring practices, or that it is binding on WVU, and will not be further addressed.

Otherwise, Grievants have not alleged a specific violation of any statute, rule, regulation, or policy, nor have they alleged that they are somehow entitled to a pay increase. Absent some showing that they were entitled to a pay increase, the undersigned has no authority to hand out pay raises. While it is entirely understandable that Grievants are unhappy with this situation, and that the situation has affected the morale of these long-time employees, “[t]he undersigned has no authority to require an agency to adopt a policy or to make a specific change in a policy, absent some law, rule or regulation which mandates such a policy be developed or changed. *Skaff v. Pridemore*, 200 W. Va. 700, 490 S.E.2d 787 (1997); *Olson v. Bd. of Trustees*, Docket No. 99-BOT-513 (Apr. 5, 2000); *Gary and Gillespie v. Dep’t of Health and Human Resources*, Docket No. 97-HHR-461

(June 9, 1999).” *Frame v. Dep’t of Health and Human Res.*, Docket No. 00-HHR-240/330 (April 20, 2001).

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep’t of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). See also *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). “The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not.” *Leichliter v. W. Va. Dep’t of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. “An employer may pay like-classified employees different salaries as long as these salaries are within the pay grade for that classification. *Largent v. W. Va. Div. of Health*, 192 W. Va. 239, 452 S.E.2d 42 (1994).” *Hartley v. Bd. of Trustees/W. Va. Graduate College*, Docket No. 96-BOT-347 (Mar. 31, 1997).

3. Pay differences may be “based on market forces, education, experience, recommendations, qualifications, meritorious service, length of service, availability of funds, or other specifically identifiable criteria that are reasonable and that advance the interest of the employer. See generally *West Virginia University v. Decker*, [191] W. Va. [567], 447 S.E.2d 259 (1994).” *Largent, supra*. “In the area of salary adjustments, an employer

should be able to take into account different credentials and different qualifications of employees. Imposing too many restrictions on employers at the hiring, or salary compensation level has a counterproductive effect on the goals of civil right statutes in general.” *Decker, supra*.

4. Grievants did not demonstrate that Respondent violated any law, rule, regulation, policy or procedure, or that they otherwise are entitled to a pay increase.

5. Grievants did not demonstrate they are entitled to a salary increase.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. See W. VA. CODE § 6C-2-5. Neither the West Virginia Public 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 Board with the civil action number so that the certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. See *also* 156 C.S.R. 1 § 6.20 (2008).

Date: April 23, 2018

BRENDA L. GOULD
Deputy Chief Administrative Law Judge