

# **THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**GLEN BLON, et al.,  
Grievants,**

**v.**

**Docket No. 2016-0471-CONS**

**WEST VIRGINIA UNIVERSITY,  
Respondent.**

## **DECISION**

Grievants are employed by West Virginia University as Campus Service Workers, Trade Specialists and other classified employee positions.<sup>1</sup> Grievants filed a Level One grievance dated October 2, 2015, in which various violations of West Virginia University policy and West Virginia Code were alleged and the mishandling of performance review and salary increases. Grievants request a 20% salary increase with interest retroactive to 2011, and to be fairly evaluated going forward. This grievance was granted in part and denied in part at Level One by Chief Grievance Administrator Sue Keller on January 11, 2016. A Level Two mediation session was conducted on July 15, 2016. This case was scheduled for a Level Three hearing before the undersigned on September 28, 2018, however, the parties contacted the Grievance Board and requested the matter be submitted on the lower level record and proposals. This request was granted. Respondent appeared by its counsel, Samuel R. Spatafore, Assistant Attorney General. Grievants appeared by their counsel, David C. White, Esq.

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<sup>1</sup>Grievants are Glen Blon, Sr., Ronald Bishop, Donna Cardier, Christopher Chico, Ralph Decker, Randy Dodson, William Exline, Troy Forquer, Bradley Freeze, Dustin Hartley, Michael Johnson, Charles Lanham, Jr., Marty Libscomb, Robert Loya, Jim Mitchell, Michael Montgomery, Michael Nixon, Joseph Pompura, Susan Ramsey, Michael Robinson, Nicole Robinson, Darnell Singleton, Aaron Srednicki, Sherrie Stohler, and William Teets,

This case became mature for consideration upon the receipt of the last of the parties' fact/law proposals on December 19, 2018.

### **Synopsis**

Grievants allege that their performance reviews were completed in a manner not consistent with a strict application of performance guidelines and that classified employees' salaries have remained stagnant while management salaries have increased. Respondent submits that the guidelines are only recommendations and that any omissions cited by Grievants did not affect the evaluation process, but were inconsequential to the evaluation and did not affect the employee's rating. This grievance is granted to the extent that performance evaluations be completed in compliance with WVU guidelines in the future.

The following Findings of Fact are based upon the lower level record.

### **Findings of Fact**

1. Grievants are employed by Respondent as Trade Specialists, Campus Service Workers and other classified employee positions.
2. Based on the results of a comprehensive market study and financial feasibility, WVU implemented a salary increase plan for all full-time and part-time classified staff employees effective October 1, 2015. Both market increases and performance increases were awarded to eligible employees and were calculated using the employee's base salary as of June 30, 2015.
3. To be eligible for a salary increase an individual must have been employed on or before June 30, 2015, and met performance expectations. Employees receiving a "Needs Improvement" performance rating or were subject to active discipline

at a second letter of warning or higher were not eligible for an increase. Employees hired after June 30 but before October 1 who were compensated below the new minimum of the salary range for their position received an adjustment in pay to the minimum of the salary grade following completion of a six month probationary period.

4. Market pay raises of 2% or \$507, whichever was higher, was awarded to all eligible classified employees.

5. In addition to the market increases, employees who received a performance rating of "exceeds expectations" or "substantially exceeds expectations" were eligible for a merit increase. Employees receiving an "exceeds expectations" rating were awarded an additional 1.5% or \$702 and those employees receiving a "substantially exceeds expectations" rating received an additional 3.25% or \$1,500, whichever was greater.

### **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 W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2018); *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). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, [t]he

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' complaints can generally be categorized as assertions that their performance reviews were completed in a manner inconsistent with the "2015-16 Classified Staff Performance Increase Guidelines" and classified staff salaries have remained stagnant while management salaries have greatly increased. An employer's decision on merit increases will generally not be disturbed unless shown to be unreasonable, arbitrary and capricious, or contrary to law or properly-established policies or directives. *Little v. W. Va. Dep't of Health & Human Res.*, Docket No. 98-HHR-092 (July 27, 1998); *Salmons v. W. Va. Dep't of Transp.*, Docket No. 94-DOH-555 (Mar. 20, 1995). "A grievant must demonstrate more than a flaw in the merit increase process . . . a grievant must also demonstrate that, had the process been properly conducted, [he] would have received a merit increase. *Stone v. W. Va. Alcohol Beverage Control Comm'n*, Docket No. 97-ABCA-151 (Aug. 21, 1997); *Karr v. W. Va. Bureau of Employment Programs*, Docket No. 98-BEP-145 (Aug. 28, 1998)." *Wade v. Div. of Labor*, Docket No. 00-DOL-164 (Feb. 2, 2001).

Grievants' complaints originate from the fact that a 2% market increase was awarded to eligible employees and additional merit increases were awarded to eligible employees who were rated as "exceeds expectations" or "substantially exceeds expectations" on their 2015 performance evaluation. Grievants also argue that they were wrongfully deprived of a merit increase because their performance reviews were not completed in compliance with the guidelines. WVU argues that the guidelines are

only recommendations and/or best practices and that the omissions by Grievants did not fatally flaw the evaluation process.

A review of the guidelines makes evident the requirement that employees review and edit, if necessary, their current job description and complete a pre-review form. The supervisor then reviews the completed pre-review form and completes a performance review form which is to be discussed with the next level supervisor. A meeting with the employee and the supervisor is to be scheduled during which the employee's job description is reviewed and updated, as appropriate, the employees past year's progress on performance standards, goals, objectives, and projects are reviewed; an individual development plan for the current review period discussed and a plan for the upcoming year developed. A completed form is then sent to the second level supervisor for final approval and the employee is to be given a copy of the final signed form.

The lower level record indicates that performance evaluations were not completed with strict compliance to the guidelines. Nevertheless, the lower level record makes apparent that most of the required steps do not affect the employee's performance rating which is the source of Grievants' dissatisfaction. As the lower level evaluator ruled, any technical violations of the guidelines will not support a request that the evaluations be resubmitted or completely ignored for 2015. Consistent with the lower level ruling, in the event an employee did not meet with a supervisor to discuss the evaluation or did not receive a copy of the final signed document, these omissions should be corrected in upcoming evaluations.

Grievants also assert that many of the comments on their evaluations were “canned” as identical wording was used on numerous evaluations. Grievants assert that they are in possession of a document listing comments to be used by the supervisors; however, this document is not in the record of this case. WVU denies Grievants’ claim that “canned” comments were provided or approved for use on the evaluations. Even if certain statements were used by supervisors on multiple evaluations, such practice is not in violation of the guidelines and so long as the statements were correctly applied to an employee, no harm has been demonstrated.

Grievants also argue that supervisory personnel have received substantial salary increases since 2011 while the university is under a legislative mandate to fully fund the classified staff salary schedule. It is undisputed that salary increases were awarded to supervisory personnel. It is also undisputed in the record that WVU has fully funded the classified staff salary schedule since 2012. As determined at the lower level, any claim relating to matters occurring prior to 2012 is untimely filed.

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 W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2018); *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).

2. Grievants failed to prove by a preponderance of the evidence any statutory or Board of Governors policy violation. The lower level decision is affirmed to

the extent that changes consistent with that decision should be applied to the affected employees.

Accordingly, this grievance is **GRANTED** to the extent that performance evaluations be completed in compliance with WVU guidelines in the future.

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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. See *also* 156 C.S.R. 1 § 6.20 (2018).

**Date: January 24, 2019**

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**Ronald L. Reece**  
**Administrative Law Judge**