KENNETH HARTLEY,

Grievant,

v. Docket No. 96-BOT-347

BOARD OF TRUSTEES/WEST

VIRGINIA GRADUATE COLLEGE,

Respondent.

D E C I S I O N

Grievant, Kenneth Hartley, grieves "the failure of West Virginia Graduate College to provide [him] a discretionary increase in salary." He requests a salary increase as relief. This grievance was denied at Levels I and II, and waived at Level III. Grievant appealed to Level IV, and a Level IV hearing was held on November 18, 1996. The case became mature for decision on that date, as the parties elected not to submit proposed findings of fact and conclusions of law.

The material facts are not in dispute and will be set out below.

Findings of Fact

1. Grievant is employed by the West Virginia Graduate College ("WVGC") as an Application Systems Analyst Programmer ("ASAP").
2. On May 16, 1996, WVCG hired Ms. Kathleen Dent, who had no state experience, as an ASAP at a salary above the minimum and greater than Grievant's. Ms. Dent's salary fell within the compensation for the pay grade.
3. Grievant was expected to train Ms. Dent in her new position and did.
4. WVGC was allowed to hire Ms. Dent at a salary above the minimum because the college had been unable to fill the position at the posted salary.
5. Grievant's supervisor, Mr. Joe Gregg, told Grievant he would attempt to obtain a salary increase for him because he thought the difference in the salaries was inequitable.
6. Mr. Gregg and Mr. Jim Stephens, Director of Human Resources Development, both worked to obtain a discretionary pay increase for Grievant.

7. On June 12, 1996, Mr. Clifford Trump, Chancellor, State College System of West Virginia, sent a memo to all state college and university presidents stating "[d]iscretionary increases for market, merit, or other reasons, are not to be granted to classified staff . . .". Level II Hrg., Employer's Exh. 3.

8. On June 20, 1996, Mr. Stephens sought clarification of this statement.

9. Mr. Stephens informed Grievant on June 24, 1996, that this issue had been clarified by Ms. Margaret Buttrick, Human Resources Administrator for the State College and University System. She informed Mr. Stephens that discretionary increasescould not be given to classified employees "for any reason during fiscal year 1996-1997."

10. Grievant filed this action on the date he was informed of Ms. Buttrick's response.

Discussion

This grievance presents an unfortunate set of circumstances. Grievant, an employee with almost two years of experience, is now paid less than the inexperienced, new employee he is expected to train. It is understandable he is upset by this situation. Apparently his supervisors, as well as WVGC's President, Mr. Dennis Prisk, are aware of and troubled by this situation as well. Level II Grievance Decision, July 16, 1996. However, they do not possess the authority to rectify a situation they see as inequitable. In essence, a "freeze" has been imposed by Chancellor Trump, and state colleges and universities cannot award discretionary pay increases to any classified employees. The rationale for this action is to assure that all classified employees within the state's college and university system are paid in a uniform and equitable manner. (See footnote 1) No discretionary raises were to be granted for any reason. Level IV Hrg., Employer's Exh. 3.

Grievant did not attack Chancellor Trump's dictates or the rationale for them; he only argued it is unfair for him to receive less compensation than Ms. Dent. The holding of the West VirginiaSupreme Court of Appeals in Largent v. W. Va. Div. of Health, 192 W. Va. 239, 452 S.E.2d 42 (1994) is instructive. See also Salmons v. W. Va. Dept. of Transp., Docket No. 94-DOH-555 (Mar. 20, 1995); Hickman v. W. Va. Dept. of Transp., Docket No. 94-DOH-435 (Feb. 28, 1995); Tennant v. W. Va. Dept. of Health and Human Resources, Docket No. 92-HHR-453 (Apr. 13, 1993). Largent dealt with employees in a situation similar to Grievant's. The Court

held that "employees who are performing the same tasks with the same responsibilities should be placed within the same job classification", but a state employer is not required to pay these employees at the same rate. Largent at Syl. Pts. 2 & 3. Additionally, 128 C.S.R. 62, §19.4 states 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. . .". Further, Grievant has not shown an entitlement to the increase. A discretionary increase is by its very nature non- mandatory and indicates an employer may grant the increase if he so chooses.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. In a non-disciplinary action, the grievant has the burden of proving his case by a preponderance of the evidence. W. Va. Code §18-29-6. 2. Grievant did not allege, nor did he demonstrate a violation of any statute, rule, regulation, or policy.

3. 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). 4. The rules governing Board of Trustees employees' salary schedule and its implementation state at 128 C.S.R. 62, §19.4, 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. . .".

Accordingly, this grievance is DENIED.

Any party or the West Virginia Division of Personnel may appeal this decision to the circuit court of the county in which the grievance occurred, and 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. 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.

JANIS I. REYNOLDS

Administrative Law Judge

Dated: March 31, 1997

Footnote: 1

It is noted that the state's higher education system recently completed a reclassification of all employees in an attempt to pay all employees who were performing the same duties within the same pay grade. This reclassification project is frequently referred to as the "Mercer" project.