

DALLAS BROZIK,

Grievant,

v.

DOCKET NO. 00-BOT-071

BOARD OF TRUSTEES/

MARSHALL UNIVERSITY,

Respondent.

D E C I S I O N

Grievant, Dallas Brozik, filed the following grievance against his employer, Marshall University ("Marshall") in or around December 1999, as follows:

Dean Kent has failed to follow the LCOB [Lewis College of Business] policy for assignment of faculty offices. CH255 is now vacant, and as the senior professor able to move offices, I have requested permission to make the move. Kent has instead stated that the office will be reserved for Chandra Akkihal when he steps down as Director of the MBA program. The date of the step down has yet to be determined, and no replacement has been named. This has the effect of allowing Akkihal to occupy two office spaces for some unspecific amount of time. The existing policy does not provide for reserving offices for faculty to occupy at future dates. [\(See footnote 1\)](#)

As Grievant's original request for the vacant office was made to and denied by the Dean of the College of Business, Calvin Kent, the matter advanced directly to level two for hearing. The level two hearing was held on February 9, 2000, and a decision recommending denial of the grievance was issued on February 15, 2000, by Jonathan Brown, grievance evaluator. That recommendation was accepted by F. Layton Cottrill, Jr., Vice President for Executive Affairs and General Counsel, and designated representative of the President of Marshall University, and so communicated to Grievant by letter dated February 15, 2000. Grievant appealed to level four on February 22, 2000, and the parties agreed to submit the grievance on the record developed at level two. Grievant was

represented by Steve Angel, West Virginia Federation of Teachers. Marshall was represented by Dean Kent at level two, and by Beth Ann Rauer, Esq., Assistant Attorney General, at level four. This matter became mature for decision on April 15, 2000, the deadline for the parties' submission of proposed findings of fact and conclusions of law.

SUMMARY OF EVIDENCE

Grievant's Exhibits

Ex. 1 -

December 16, 1998 memorandum from Calvin A. Kent to Dallas Brozik.

Ex. 2 -

December 1, 1999 memorandum from Dallas Brozik to Roger Adkins.

Ex. 3 -

December 2, 1999 memorandum from Calvin A. Kent to Finance/Economics Faculty.

Ex. 4 -

December 6, 1999 memorandum from Dallas Brozik to Calvin Kent.

Marshall's Exhibits

Ex. 1 -

February 7, 2000 memorandum re: Networking in Corbly Hall.

Ex. 2 -

February 7, 2000 memorandum from Gael Setliff re: square footage of offices.

Ex. 3 -

December 11, 1998 memorandum from Dallas Brozik to Roger Adkins.

Testimony

Grievant testified in his own behalf. Marshall presented the testimony of Calvin Kent.

FINDINGS OF FACT

The material facts of this grievance are not in dispute and are set forth in the following findings.

1. Grievant is employed by Marshall as a Professor of Finance in the Division of Finance and Economics, Elizabeth McDowell Lewis College of Business ("LCOB").
2. Grievant has been on the faculty of LCOB since 1987 and has been a full professor since 1998.
3. Dr. Roger Adkins is the Chair of the Division of Finance and Economics.
4. Dr. Calvin Kent is the Dean of LCOB.
5. Grievant was awarded the rank of full professor in LCOB in December 1998. On December 11, 1998, Grievant requested of Dean Kent that "he immediately be assigned to a window office on the north (library) side of the building", which would necessitate the ouster of less senior ranking faculty members. Marshall Ex. 3.
6. Dean Kent replied on December 16, 1998, that no policy existed which would allow "a newly promoted faculty member to bump an established, full time and tenured faculty member of lesser rank from the office that faculty member is currently occupying." Dean Kent advised Grievant that, in the event an office became vacant, it would be "assigned based on seniority in rank." G. Ex. 1.
7. There is no official policy for the assignment of office spaces at Marshall in the University faculty handbook ("the Greenbook") or in the LCOB handbook.
8. Dr. Don Holdren occupied office CH255 until he vacated it in mid-December 1999.
9. On December 1, 1999, Grievant informed Dr. Adkins, by memorandum, of his "intention to move into the office that will soon be vacated by Don Holdren." G. Ex. 2.
10. Grievant copied Dean Kent on this memorandum, and in that memorandum stated that, "I request that you [Dean Kent] assure Adkins follows the established policy for office allocation. I realize that this should not be necessary, but in light of Adkins' recent behavior towards me I feel that he may need some guidance." G. Ex. 2.
11. Grievant cited better computer connections and shelving in CH255, as well as a better view, as the bases for his request to move into that office. G. Ex. 2; LII Brozik Test.

12. On December 2, 1999, Dean Kent replied the office would be assigned “based on seniority in rank” and asked that interested parties apply to him by December 10th, and that he would make a decision on or about December 15. G. Ex. 3.

13. The reason Dean Kent decided to become involved in the office assignment matter was because of Grievant's stated concern about Adkins' ability to treat him fairly.

LII Kent Test.

14. On December 6, 1999, Grievant formally requested to be reassigned to office space CH255. G. Ex. 4.

15. Dr. Chandra Akkihal also requested of Dean Kent reassignment to office space CH255, sometime before December 15, 1999.

16. Dr. Akkihal was, at that time, the Director of the MBA program at Marshall. However, due to medical reasons, Dr. Akkihal informed Dean Kent he wanted to step down from that position and return to faculty service. Dr. Akkihal requested his old office, which just happened to be office space CH255, which Dr. Holdren occupied after Dr. Akkihal was appointed Director of the MBA program.

17.

Grievant concedes that Dr. Akkihal is more senior than he.

18. Dean Kent awarded the office space to Dr. Akkihal, although it was uncertain exactly when he would be stepping down as the Director of the MBA program. Dean Kent expected the transition to take place sometime in the Spring, 2000, semester.

DISCUSSION

The facts of this case are not in dispute. Grievant claims it was arbitrary and capricious, and contrary to policy, for Dean Kent to assign office space CH255 to Dr. Akkihal while he was still serving as Director of the MBA program. Had Dr. Akkihal not been eligible for the office space, Grievant claims he would have been the most senior faculty requesting that office. [\(See footnote 2\)](#) Marshall argues, first, that this matter is not properly within the Grievance Board's jurisdiction, because the matter of office assignments is not found in any written policy, and is solely a matter of internal administration. Secondly, Marshall argues Grievant has no standing to bring this grievance as he has failed to show how he has been harmed by Dean Kent's decision. Finally, Marshall argues Grievant has not established he was entitled to the office space, and that it was properly awarded to

Dr. Akkihal.

W. Va. Code § 18-29-2(a) defines a “grievance” as:

any claim by one or more affected employees of the governing boards of higher education, state board of education, county boards of education, regional educational service agencies and multi-county vocational centers alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules, regulations or written agreements under which such employees work, including any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination; any discriminatory or otherwise aggrieved application of unwritten policies or practices of the board; any specifically identified incident of harassment or favoritism; or any action, policy or practice constituting a substantial detriment to or interference with effective classroom instruction, job performance or the health and safety of students or employees.

Grievant's claim that Dean Kent did not follow his own directive regarding the assignment of office space falls within the definition of “grievance”, specifically, that portion of the definition which specifies “any discriminatory or otherwise aggrieved application of unwritten policies or practices of the board.” While Marshall has demonstrated there is no official policy regarding office assignments, once Dean Kent put in writing that vacant office space would be assigned on the basis of seniority in rank, he was bound to adhere to that directive. If indeed, the office space was not then assigned on that basis, then Grievant has been harmed by the misapplication of that directive.

Nevertheless, Grievant has failed to establish that he was entitled to office space CH225, or that Dean Kent's action in assigning the office to Dr. Akkihal was arbitrary, capricious or contrary to his directive.

Grievant argues there is nothing in Dean Kent's directive which would allow a faculty member already possessing an office to be assigned another office. However, there is nothing in the directive that would prohibit that action, either. Dean Kent testified the transition of Dr. Akkihal between the MBA program and LCOB would be accomplished during the Spring 2000 semester, and that he awarded office space CH225 to him because he would be the most senior faculty in LCOB when that occurred. While different interpretations could be given to Dean Kent's directive, it is ultimately within his discretion to administer it, and Grievant has failed to establish that he did so in an arbitrary, capricious or unlawful way.

CONCLUSION OF LAW

Grievant has failed to prove a violation, misapplication or misinterpretation of any statute, policy,

rule regulation or written agreement in the assignment of office space to a more senior faculty member during the Spring 2000 semester.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of the Cabell County. Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7. 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 Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

MARY JO SWARTZ
Administrative Law Judge

Dated: May 16, 2000

[Footnote: 1](#)

This statement of grievance is taken from the level two decision. The original grievance form, if any, has not been made part of the record.

[Footnote: 2](#)

Dean Kent testified at level two that another more senior faculty member had also applied for the office, but withdrew once he learned that Dr. Akkihal had also applied. However, other than Dean Kent's testimony, no other documentary or testamentary evidence was presented to substantiate this claim.