

**BEFORE THE
MERIT SYSTEM PROTECTION BOARD
FOR
MONTGOMERY COUNTY, MARYLAND**

IN THE MATTER OF

████████████████████,

APPELLANT,

AND

**MONTGOMERY COUNTY
GOVERNMENT,**

EMPLOYER

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CASE NO. 24-08

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FINAL DECISION

This is the Final Decision of the Montgomery County Merit System Protection Board (MSPB or Board) on the appeal of ██████████ (Appellant) from the determination of the County’s Chief Labor Relations Officer denying his grievance and requested relief. On January 30, 2024, appellant filed an appeal with the Board. The County submitted a response to the appeal (County Response) on February 28, 2024. Appellant filed his response to the County’s submission on April 3, 2024 (Appellant Response).

The appeal was reviewed and considered by the Board.

FINDINGS OF FACT

In September 2014, appellant was hired as a Security Officer IV Grade 23 with the Montgomery County Police Department (MCPD). He was hired at the bottom of the pay grade (also referred to as “entry level pay”) for the classification. At the time of his hiring, appellant was told that there were no salary negotiations and that all new employees were hired at entry level pay. *See* CE Ex. 1, Grievance.

It was the practice of MCPD at that time to hire many job classes at the base-level salary to avoid salary inequities caused by hiring individuals at higher salaries than existing employees in the same job class. This practice changed in May 2018 when the Office of Human Resources (OHR) authorized departments to extend salary offers up to the grade’s mid-point salary and conducted training on providing wage equity analyses for new hires. *See* County’s Response at 2.

In 2022, at appellant's request, MCPD asked OHR to review appellant's salary for potential pay inequity and to consider providing appellant with a 20% increase in pay pursuant to Montgomery County Personnel Regulations (MCPR) § 10-16. *See* CE Ex. No. 4, MCPD Request for Special Within-Grade Pay Increase.

On February 13, 2023, OHR denied the request.¹ *See* CE Ex. No. 6, OHR's Response to MCPD's Request for Special Within Grade Request Pay Increase; CE Ex. No. 5, OHR's Analysis of MCPD's Request for Special Within-Grade Pay Increase.

On October 9, 2023, a Security Officer IV was hired at a midpoint Grade 23 salary, as opposed to minimum salary or entry level pay. *See* CE Ex. 1, Grievance; CE Ex. 2, Response to Grievance. Thereafter, on October 30, 2023, appellant filed a grievance with the Chief Administrative Officer (CAO) alleging that the County violated its hiring practices and/or unfairly changed its hiring practice which created a pay disparity or pay inequity between him and the newly hired employee.² *See* CE Ex. 1, Grievance.

In his grievance, appellant requested that his salary be adjusted to the amount it would have been had he been hired at the midpoint in 2014, to include all cost-of-living increases, general wage increases, longevity steps, seniority adjustments, and back pay that he would have accrued based on the midpoint salary.³ *See* CE Ex. 1, Grievance.

On January 29, 2024, the CAO determined that, based on MCPR § 10-5⁴, the Department had the authority to hire the most recent Security Officer IV at the midpoint of the salary range

¹ In its denial, OHR provided the following information as rationale:

A review of the incumbents in the classification indicates approving this adjustment would create inequities within those similarly situated. The last three incumbents, inclusive of [REDACTED] requesting, were brought in at the grade minimum.

A review of the direct reports of those within the classification indicates that these employees who are the top-earning have been long-term county employees with 18 to 24 years of county service and salaries are based on their longevity.

Both positions of Shift Supervisor over County Building and Facilities Security Force and Special Police Officer providing protection for the County Executive are represented in the Classification Specification for the Security Officer IV.

See CE Ex. No. 6, OHR's Response to MCPD's Request for Special Within Grade Request Pay Increase; CE Ex. No. 5, OHR's Analysis of MCPD's Request for Special Within-Grade Pay Increase.

² Notably, appellant's current salary is higher than that of the Security Officer IV who was hired in 2023 which prompted the grievance. *See* County's Response at 3.

³ Since his hire, appellant has received all scheduled wage increases. *See* County Response.

⁴ MCPR § 10-5 outlines the County's salary-setting policies.

and doing so did not create any wage inequity. *See* CE Ex. 3, Grievance Decision. The grievance was thus denied. Appellant filed a timely appeal with the Board.

On appeal, appellant contends that it is not “fair to hire one employee at entry level salary and another employee in the same job classification and grade at mid-level salary[.]” *See* Appeal Form. Appellant further contends that the department’s 2018 change in policy (allowing new employees to be hired at the midpoint salary) was done “without notice or opportunity given to a select group, incumbent employees[.]” and that the new policy amounted to “wavering hiring practices [that] have created inconsistencies” and “single out and penalize a marginalized population of employees.” *See* Appellant’s Response.

APPLICABLE LAW AND POLICY

Montgomery County Personnel Regulations (MCPR)

MCPR § 10-2. General compensation policy. The County must provide a total compensation system designed to recruit and retain a high quality workforce. The CAO must periodically compare the compensation of County employees with the appropriate labor market and other area compensation systems to maintain a standard of comparability.

MCPR § 10-3

(a) The uniform salary plan consists of salary schedules authorized in Code Section 33-11(b) for:

- (1) employees represented by certified employee organizations;
 - (2) minimum wage/seasonal employees;
 - (3) sworn police managers in the Police Leadership Service (PLS);
 - (4) uniformed fire/rescue managers;
 - (5) sworn deputy sheriff managers;
 - (6) uniformed correctional managers;
 - (7) medical doctors;
 - (8) employees in positions in the Management Leadership Service (MLS);
- and
- (9) a General salary schedule (GSS) for all other employees.

(b) The Council must approve the uniform salary plan and any amendments adopted by Council resolution.

(c) The CAO must issue approved salary schedules for employee groups with salary rates or a salary range for each pay grade or pay band.

- (d) The CAO must assign an occupational class to an appropriate pay grade or pay band on an approved salary schedule in the uniform salary plan.
- (e) The salary rate or range for each pay grade or pay band on an approved salary schedule must remain in effect until a change to the salary schedule is approved by the County Council.
- (f) The CAO must base a recommendation to amend a salary schedule on the factors outlined in Section 33-11 of the County Code.
- (g) The CAO must ensure that all occupational classes that require comparable experience and have comparable duties, responsibilities, and authority are paid comparable salaries that reflect the relative value of the services performed, except for occupational classes on the following salary schedules:
 - (1) police bargaining unit;
 - (2) fire/rescue bargaining unit;
 - (3) deputy sheriffs in the OPT bargaining unit;
 - (4) minimum wage/seasonal;
 - (5) sworn police managers;
 - (6) uniformed fire/rescue managers;
 - (7) sworn deputy sheriff managers;
 - (8) uniformed correctional managers;
 - (9) medical doctors; and
 - (10) Management Leadership Service.
- (h) Collective bargaining agreements may supersede the comparable pay for comparable work standard for some salary schedules.

MCPR § 10-5 Salary-setting policies.

- (a) General. A department director must ensure that an employee's base salary does not exceed the pay rate or range for the pay grade or pay band assigned to the employee's class, unless the department director:
 - (1) demoted the employee because of reduction-in-force or disability under

Section 10-5(d); or

(2) reclassified or reallocated the employee's position to a lower pay grade or pay band under Section 10-5(f).

(b) Salary on appointment and reappointment for employees on the General Salary Schedule and Management Leadership Service Salary Schedule. A department director must set the base salary of a newly appointed or reappointed employee within the applicable pay grade or pay band under these Regulations and guidance established by the OHR Director and CAO.

MCPR § 10-16. Special within-grade pay increase.

(a) A department director may, with the written approval of the OHR Director, increase the base salary of a merit system employee to:

(2) resolve a pay inequity affecting an employee.

County Code § 33-11

(a) Classification.

(1) The Chief Administrative Officer must apply the classification standards in this Chapter and the Personnel Regulations to:

(A) establish and abolish occupational classes as necessary for effective and economical operation of the County government;

(B) assign all positions in the merit system to proper classes;

(C) assign pay grades to classes; and

(D) establish a procedure for the administrative review of an employee's objection to an assignment action that downgrades the employee's position.

ISSUE

Did the County violate its hiring practices and create a pay disparity when it hired a Security Officer IV at the midpoint for the Grade 23 pay grade?

ANALYSIS AND CONCLUSIONS

Appellant bears the burden of proof to show by a preponderance of the evidence that the County's actions violated a law, regulation, or policy, or were arbitrary, capricious, or discriminatory. *See* MCPR 34-9(d)(2).

The Montgomery County Personnel Regulations expressly authorize departments to negotiate salaries for newly appointed employees. *See* MCPR § 10-5(b)(1) (“[d]epartments and agencies have the authority to negotiate and determine salaries for candidates equal to or less than the midpoint of the salary range or pay band for a specific position.”). This provision does not require that new employees be hired at the midpoint of the salary range. Rather, it is discretionary, meaning new employees may be hired starting at the base level salary or above up to the midpoint. *Id.*

The County is permitted to change its policies regarding pay grades, salary rates, and compensation. *See* County Code § 33-11(a)(1)(C) (detailing authority for the CAO to assign pay grades). The County may institute such changes in policies for the purpose of recruiting and retaining a high-quality workforce as well as maintaining a standard of comparability with the appropriate labor market. *See* MCPR § 10-2.

Here, the County adhered to its own policies and procedures when it hired a Security Officer IV at the midpoint salary in October 2023. Appellant has offered no evidence to support his allegation that the 2018 change in policy resulted in “severe salary inequity” or otherwise penalizes any specific group. *See* Appeal Form; Appellant’s Response. Allegations without proof may not form a basis for us to uphold an appeal. *See* MSPB Case No. 20-04 (2020).

Because appellant has provided no evidence that the County violated any law, regulation, or policy, or that its actions were arbitrary, capricious or discriminatory, we conclude that the appeal is denied.

ORDER

Accordingly, for the above discussed reasons it is hereby **ORDERED** that the appeal in Case No. 24-08 be and hereby is **DENIED**.

If any party disagrees with the decision of the Merit System Protection Board, pursuant to Montgomery County Code, §33-15, *Judicial review and enforcement*, and MCPR, §35-18, *Appeals to court of MSPB decisions*, within 30 days of this Order a petition for judicial review may be filed with the Circuit Court for Montgomery County, Maryland in the manner prescribed under the Maryland Rules, Chapter 200, Rule 7-202.

For the Board
April 30, 2024


Barbara S. Fredericks
Chair