

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

IN THE MATTER OF

[REDACTED],

APPELLANT,

AND

**MONTGOMERY COUNTY
GOVERNMENT,**

EMPLOYER

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CASE NO. 24-20

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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 [REDACTED] (Appellant) from the determination of the County's Chief Labor Relations Officer denying her grievance and requested relief. On June 25, 2024, Appellant filed an appeal with the Board. However, Appellant had yet to exhaust the steps of the grievance procedure per the Montgomery County Personnel Regulations, 2001. The Board stayed the matter until Appellant submitted a Step 2 grievance decision from the Chief Administrative Officer (CAO).

After conducting a Step 2 meeting, the Office of Labor Relations (OLR) issued the CAO Step 2 grievance decision on December 2, 2024. The MSPB subsequently acknowledged the appeal and ordered the County to submit a response on or before January 8, 2025. The County submitted a response to the appeal (County Response) on January 8, 2025. Appellant filed her response to the County's submission on February 13, 2025 (Appellant Response).

The Board has determined that the record is complete based upon a review of the documents and exhibits provided by the parties and issues the following Decision.¹

¹ Appellant did not label Appellant's attachments. For ease of reference, the Board has done so. Appellant provided the following documents:

1. A. Ex. 1 – Appeal Form #281, filed on June 25, 2024.
2. A. Ex. 2 – Appellant Performance Evaluation.
3. A. Ex. 3 – Christmas Card.

FINDINGS OF FACT

Appellant, a Montgomery County government merit system employee, was promoted from an Administrative Specialist II (grade 22 on the OPT/SLT salary schedule) in the Department of General Services (DGS) to an Administrative Specialist III (grade N23 on the General Salary Schedule (GSS)) with the Department of Technology and Enterprise Business Solutions (TEBS), effective May 5, 2024. C. Ex. 1.

On March 14, 2024, Appellant received a conditional offer via email from N [REDACTED] M [REDACTED], Human Resources Specialist with the Office of Human Resources. C. Ex. 5, p. 6 – 8. Appellant's new salary listed in the conditional offer email was \$114,550.58. C. Ex. 5, p. 7. Later that evening, Appellant responded to the conditional offer email, requesting clarification on a few items, including Appellant's new salary. C. Ex. 5, p. 6. Appellant received a response via email on March 15, 2024, clarifying that Appellant's base County salary upon promotion will be \$110,588.00, and Appellant's "Total County Salary," including a 16-year longevity increment that Appellant previously received, will be \$114,182. C. Ex. 5, p. 13. The decrease in total County salary was the result of an error. C. Ex. 5, p. 13.

In its April 15, 2024, offer letter to Appellant, OHR indicated that Appellant's "Total County Salary," including a 16-year longevity step Appellant previously received in her former position, was \$109,095.79, that her new salary upon promotion would be \$114,182.00, and that she was required to accept the position on OHR's online web page. C. Ex. 1. The salary quoted in the April 15, 2024, offer letter would have been at the maximum salary range plus a 16-year longevity increment on the GSS salary schedule. C. Ex. 4.

On April 16, 2024, OHR sent Appellant an email indicating that the offer letter acceptance was currently offline, and that Appellant should reach out to J [REDACTED] T [REDACTED] in OHR to discuss Appellant's salary. C. Ex. 2. On April 17, 2024, OHR issued a second offer letter to Appellant, this time listing Appellant's new salary upon promotion as \$110,588.00, which was the maximum salary for Appellant's new N23 salary grade. C. Ex. 3. Appellant also received another email from OHR, informing Appellant of the need to accept the offer via OHR's online system. C. Ex.

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4. A. Ex. 4 – Timeline.
 5. A. Ex. 5 – CAO Decision, issued on December 2, 2024.
 6. A. Ex. 6 – Appellant Response, filed on February 13, 2025.

The County provided the following documents:

1. CR. – County Response, filed on January 8, 2025.
2. C. Ex. 1 – Email dated April 15, 2024, from N [REDACTED] M [REDACTED] to Appellant.
3. C. Ex. 2 – Email dated April 16, 2024, from N [REDACTED] M [REDACTED] to Appellant.
4. C. Ex. 3 – April 17, 2024, Promotional Offer Letter.
5. C. Ex. 4 – Fiscal Year 2024 (FY24) Salary Schedule.
6. C. Ex. 5 – Appellant Grievance form with attachments.
7. C. Ex. 6 – Appellant Written Statement.

5, p. 34 – 35. Appellant responded, requesting to speak with Mr. T[REDACTED]. C. Ex. 5, p. 34. Mr. T[REDACTED] replied on April 17, 2024, informing Appellant that Appellant’s 16-year longevity increment will be added to Appellant’s base salary, and that Appellant’s promotional salary will be the maximum of the N23 pay range. Appellant responded shortly thereafter, continuing to question what Appellant’s “Total County Salary” will be. C. Ex. 5, p. 33. Mr. T[REDACTED] replied later in the day, informing Appellant that since her 16-year longevity step was on a different salary schedule, Appellant was not eligible for the GSS 16-year longevity step. C. Ex. 5, p. 32. Appellant replied, providing her concerns regarding the loss of the 16-year longevity increment that she previously earned. C. Ex. 5, p. 31.

On April 18, 2024, OHR reached out, apologizing for the confusion and extending the deadline for Appellant to accept the offer until April 22, 2024. C. Ex. 5, p. 31. Appellant ultimately accepted the position, but subsequently filed a grievance on May 28, 2024, claiming that the decision regarding her salary was incorrect. C. Ex. 5.

POSITIONS OF THE PARTIES

1. Appellant

- a. The County arbitrarily and capriciously moved Appellant’s 16-year longevity increment into her base salary from her total county salary (it appears she is arguing that the County should have first applied the promotional increase up to the salary grade maximum, and then add the 16-year service increment to that).
- b. The policy creates a situation where an employee will never be able to reach their maximum salary potential.
- c. The policy creates an inequity where employees who did not receive a longevity increment prior to promoting into a position will be able to earn more money than employees who promote into a position after they receive a longevity increment.
- d. As a principle of the matter, the policy creates a situation where employees feel undervalued.

2. County

- a. The MCPR states that salary after promotion cannot exceed the maximum of the new salary grade; therefore, the County was required by the MCPR to limit Appellant’s salary.
- b. The County followed the MCPR and Appellant has failed to show that the County’s action was arbitrary, capricious, or illegal.

APPLICABLE CODE PROVISIONS AND REGULATIONS

CHARTER OF MONTGOMERY COUNTY, MARYLAND

Sec. 401. Merit System.

* * *

The merit system shall provide the means to recruit, select, develop, and maintain an effective, non-partisan, and responsive work force with personnel actions based on demonstrated merit and fitness. Salaries and wages of all classified employees in the merit system shall be determined pursuant to a uniform salary plan. The Council shall establish by law a system of retirement pay.

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Sec. 402. Personnel Administration.

The County Executive shall be responsible for adopting personnel regulations for the administration and implementation of the merit system law. These regulations shall be adopted in the manner provided for by law. The Chief Administrative Officer, under the direction of the County Executive and subject to merit system laws and regulations, shall be responsible for administering the County's merit system.

MONTGOMERY COUNTY CODE

Sec. 2A-16. Administrative procedures.

* * *

- (d) Prohibition. If a law expressly delegates the authority to adopt a regulation, an issuer must not adopt an administrative procedure instead of a regulation if the subject affects or requires action by:

* * *

- (2) any unit of government not under the issuer's control. An administrative procedure must not be adopted to implement Chapter 19A or Chapter 33.

* * *

Sec. 33-5. Statement of legislative intent; merit system principles; statement of purpose; merit system review commission; applicability of article.

- (a) *Statement of legislative intent.* It is the legislative intent of the county council that this article foster excellence in the public service; high individual competence among employees; recognition that respect for the employee as an individual is first required for achieving such excellence and competence; and harmonious and efficient operation within the various components of county government.
- (b) Merit system principles. The merit system established by this chapter encompasses the following principles:

- (1) All county government authority, including internal supervisory authority, is for service to the people, is derived from law and the people and must not be abused;
- (2) The recruitment, selection and advancement of merit system employees shall be on the basis of their relative abilities, knowledge and skills, including the full and open consideration of qualified applicants for initial appointment;
- (3) Merit system employees shall be provided compensation consistent with standard of comparability with other public agencies and the private sector;
- (4) Merit system employees shall be provided training as needed to assure high quality performance and such training where possible should also provide increased opportunity to facilitate their career advancement;
- (5) Merit system employees are encouraged to excel in their work performance; they shall be retained if they meet standards of satisfactory overall performance and shall be separated from merit system service if they do not; both supervisors and subordinates have an equal responsibility to facilitate work performance correction and improvement;
- (6) All applicants to and employees of the county merit system shall be assured fair treatment without regard to political affiliation or other nonmerit factors in all aspects of personnel administration.
- (7) Merit system employees shall be protected against coercion to engage in illegal or improper actions or partisan political activities and shall be prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or nomination for office;
- (8) The merit system established under this chapter shall be interpreted in accordance with these principles.

* * *

Sec. 33-7. County executive and merit system protection board responsibilities.

- (a) *Generally.* In performing its functions, the Board is expected to protect the merit system and to protect employee and applicant rights guaranteed under the merit system, including protection against arbitrary and capricious recruitment and supervisory actions, support for recruitment and supervisory actions demonstrated by the facts to be proper, and to approach these matters without any bias or

predilection to either supervisors or subordinates. The remedial and enforcement powers of the Board granted herein must be exercised by the Board as needed to rectify personnel actions found to be improper. The Board must comment on any proposed changes in the merit system law or regulations, at or before the public hearing thereon. The Board, subject to the appropriation process, must establish staffing requirements and define the duties of its staff.

- (b) Personnel regulations. The County Executive must adopt personnel regulations under method (1).

The personnel regulations must provide the framework for:

* * *

- (8) Similar personnel matters as may be provided by law.

Sec. 33-9. Equal employment opportunity and affirmative action.

* * *

- (c) *Appeals by applicants.* Any applicant for employment or promotion to a merit system position may appeal decisions of the chief administrative officer with respect to their application for appointment or promotion. Appeals alleging discrimination prohibited by chapter 27, "Human Relations and Civil Liberties," of this Code, may be filed in the manner prescribed therein. Appeals alleging that the decisions of the chief administrative officer were arbitrary and capricious, illegal, based on political affiliation, failure to follow announced examination and scoring procedures, or nonmerit factors, may be filed directly with the merit system protection board. Appeals filed with the merit system protection board shall be considered pursuant to procedures adopted by the board. The board may order such relief as is provided by law or regulation.

Sec. 33-11. Classification; salary and wage plans.

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- (b) *Uniform salary plan.*

- (1) The uniform salary plan consists of:

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- (I) a general salary schedule for all other employees.

- (2) The Chief Administrative Officer may recommend to the County Council amendments to the uniform salary plan.
- (3) The Council must approve the uniform salary plan and any amendments by resolution.

* * *

MONTGOMERY COUNTY PERSONNEL REGULATIONS, 2001

SECTION 1. DEFINITIONS

1-4. Base hourly salary: The base hourly salary for an employee is an amount equal to the annual salary for the employee's position, divided by the number of work hours per year normally assigned to the position. Base hourly salary is calculated on the basis of full-time salary and full-time work hours per year for a given position. The base hourly salary includes only pay differentials that apply even if the employee is not in work status, as, for example, if the employee is on paid leave. The base hourly salary does not include overtime or differentials, such as shift differentials, that are paid only if an employee is in work status.

SECTION 10. EMPLOYEE COMPENSATION

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).

* * *

- (c) Salary on promotion.
 - (1) Compensation for a regular (non-temporary) promotion.
 - (A) A department director must ensure that an employee's base salary following promotion is not less than the minimum or more than the maximum salary for the new pay grade or pay band.

- (B) A department director must give a merit system employee who is promoted at least a 5 percent increase in base salary, except as provided in (C) below.
- (C) A department director must not give a salary increase upon promotion to an employee who took a voluntary demotion in the past but did not lose salary, unless:
 - (i) a salary increase is necessary to restore the employee to the salary that the employee would have had if the employee had not been demoted; or
 - (ii) the employee is promoted to a higher-graded position than the position from which the employee was demoted.
- (D) In addition to the non-discretionary 5 percent increase provided for in (B) above, a department director may approve an additional increase in base salary of up to 5 percent for a single promotion, or a total increase not to exceed 10 percent.
- (E) In addition to the maximum 10 percent increase in base salary for a single promotion that a department director may approve under (D) above, a department director may recommend and the OHR Director may approve an additional increase in base salary of 5 percent for a single promotion, or a total increase not to exceed 15 percent.
- (F) A department director should consider the following factors when recommending to the OHR Director an additional 5 percent salary increase for a single promotion under (E) above, which would constitute a total increase of 15 percent:
 - (i) whether the employee being promoted received an “Exceptional” overall performance rating prior to the promotion; or
 - (ii) whether the position that the employee is being promoted to is a difficult position for which to recruit and retain employees.
- (G) A department director’s recommendation to the OHR Director for a maximum increase of 15 percent in base salary for a single promotion must:
 - (i) document that the promotional increase requested is consistent with the department’s pay practices and policies;

- (ii) provide justification for the request.
- (H) In extraordinary circumstances, the department director may recommend and the OHR Director may approve a total increase not to exceed 20 percent of base salary. Extraordinary circumstances means:
 - (i) a promotion of at least 3 grades; or
 - (ii) a promotion to a supervisory position after which the employee's salary would be less than that of the employees supervised.
- (I) The CAO may approve a total increase in base salary greater than 20% in extraordinary circumstances (as defined in section 10-5(c)(1)(H)) based upon the factors identified in section 10-5(b) where a promotion arises from a competitive promotion that was open to the general public and at least one non-County employee was either in the highest rating category or was interviewed for the vacancy.

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SECTION 12. SERVICE INCREMENTS

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12-9. Twenty-year longevity/performance increment.

- (a) A 20-year longevity/performance increment is a one-time increase to an employee's base salary.
- (b) A department director must award a one-time 20-year longevity/performance increment of 2 percent of base salary to an employee in a position on the General salary schedule if the employee has:
 - (1) a base salary equal to the maximum salary of the pay range; and
 - (2) 20 years of actual County service; and
 - (3) Received an annual overall performance rating of *Highly Successful Performance* or *Exceptional Performance* for the 2 most recent consecutive years.

- (c) An employee is eligible to receive only one 20-year longevity/performance increment.
- (d) Awarding longevity/performance increments to promoted employees.

* * *

- (3) When an employee is promoted from a bargaining unit position to a non-bargaining unit position:
 - (A) the 20-year longevity increment is added to the employee's base salary before the promotional increase is added;
 - (B) the employee is eligible to receive a 2% longevity/performance increment under Section 12-9(b); and,
 - (C) the employee's new base salary cannot exceed the maximum salary of the new pay range.

SECTION 27. PROMOTION

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27-3. Compensation for a promotion. A department director must compensate an employee for a promotion as described in Section 10-5(c).

SECTION 34. GRIEVANCES

34-9. Grievance procedure.

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- (d) Burden of Proof.

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- (2) The grievant has the burden of proof in a grievance on any other issue.

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SECTION 35. MERIT SYSTEM PROTECTION BOARD APPEALS, HEARINGS AND INVESTIGATIONS

35-2. Right of appeal to MSPB.

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- (b) An employee with merit system status may file an appeal with the MSPB over other matters after receiving an adverse final decision on a grievance from the CAO. After the development of a written record, the MSPB must review the appeal. The MSPB may grant a hearing or refer the appeal to a hearing officer if the MSPB believes that the record is incomplete or inconsistent and requires oral testimony to clarify issues. If the MSPB does not grant a hearing, the MSPB must render a decision on the appeal based on the written record.

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ISSUE

Was the County's action regarding Appellant's salary upon promotion arbitrary, capricious, illegal, or nonmerit factors?

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 illegal. *See* MCPR 34-9(d)(2).

Application of the 16-year Longevity Increment to Base Salary

Appellant first argues that the County's decision to apply Appellant's 16-year longevity increment to her base salary was arbitrary and capricious. It is notable that Appellant does not argue that the County's actions violated the Personnel Regulations. A. Ex. 6. Hence, the question for the Board is whether the inclusion of Appellant's 16-year longevity increment in Appellant's base salary was arbitrary and capricious.

The County relies upon MCPR § 10-5(c)(1)(a) to support its argument that Appellant's salary was properly set at the grade 23N maximum, rather than the grade 23N maximum with the 16-year longevity step. Specifically, the provision states that an employee's salary upon promotion cannot exceed the maximum salary of the new pay grade. The salary schedules provided by the County indicate that each salary grade has a minimum, a midpoint, and a maximum. C. Ex. 4. The longevity increments are not included in the maximum of the salary grade; rather they are in addition to the salary grade.

It appears the County properly calculated Appellant's promotional salary. The current language in MCPR § 10-5(c) states that base salary upon promotion cannot exceed the maximum salary for the new grade. Although "base salary" isn't defined in the MCPR, "base hourly salary" is and includes all employee pay other than differentials paid only when an employee is considered in a work status. Because Appellant was already receiving the 16-year increment before

promotion, and because the longevity increment is paid even when the employee is not in a work status (i.e., paid when the employee is on paid leave), the 16-year longevity increment is considered part of Appellant's "base hourly salary." Appellant's annual salary was less than the pay band Appellant was promoting into. Consequently, when applying the promotional salary increase to Appellant's salary, per the Personnel Regulations, the County could only provide a promotional salary increase up to the salary maximum for the new grade.

Other than general complaints about how longevity increments are contemplated in promotional salaries, Appellant has failed to provide the Board with any specific factual evidence to suggest that the County's application of the Personnel Regulations to Appellant's salary upon promotion was either arbitrary or capricious. The Board has previously held that generalized complaints are insufficient to carry the burden of proving that the County's actions were either arbitrary or capricious. *See* MSPB Case No. 16-01. Therefore, Appellant has failed to prove beyond a preponderance of the evidence that the County's actions were arbitrary or capricious.

Outdated Personnel Regulations

Appellant also argues that the MCPR language regarding longevity increments is outdated.

The General Salary Schedule for FY24 (July 1, 2023, to June 30, 2024) that the County provided to the Board includes a 16-year longevity increment that is not referenced in MCPR Section 12. C. Ex. 4. Per Chapter 33 of the County Code, the County Council must approve the salary schedules through resolution. MCC § 33-11(b)(3). Per Resolution 20-184, adopted by the County Council on May 25, 2023, the County Council approved the salary schedule that added a new 3.25% longevity increment at sixteen (16) years of County service to the GSS, and increased the 20-year longevity increment from 2% to 3.25%. Accordingly, qualified employees were eligible to receive the 16-year longevity increment beginning in FY24.

The County Code further requires that provisions in Chapter 33 of the County Code may only be implemented via regulation. MCC § 2A-16(d). Thus, the implementation of the procedures affecting the 16-year longevity step must be accomplished through regulation. Regulations associated with longevity increments are found in MCPR Section 12. However, as previously noted, the current language in Section 12 only contemplates a 20-year longevity increment.

While we agree that the Personnel Regulations are outdated, the fact remains that the application of the current language to Appellant's situation does not violate county merit system principles.² Because Appellant has provided no evidence that the County violated any law,

² The current language in the Personnel Regulations contemplates 2% longevity increment at 20 years of County service. The additions of the 16-year longevity increment and the increase in percentage to the 20-year longevity increment to the GSS have created a situation that is, at the very least, problematic. Applying the current promotional salary regulations as written may require merit system employees who have received longevity increments to accept reductions in pay to promote into positions with increased responsibilities. For instance, if the facts of the present case were slightly different and Appellant had already received a 20-year longevity step prior to promotion, Appellant would have had to accept a reduction in pay for the promotion, as the maximum salary for grade N23 is approximately

regulation, or policy, or that the County's actions were arbitrary, capricious or discriminatory, we conclude that Appellant has failed to meet the burden of proof.

However, because nearly two years have passed since Council approved funding for the 16-year longevity increment, the Board strongly recommends that, should Council approve amendments to the Personnel Regulations that would have benefited Appellant and any other similarly situated employees had they been implemented in FY24, the County should consider retroactively applying the amendments to those employees.

ORDER

For the above discussed reasons, it is hereby **ORDERED** that the appeal in Case No. 24-20 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
May 22, 2025


Sonya E. Chiles
Chair

\$2,000 less than her former grade 22 salary with the 20-year longevity step added. It's not clear to the Board how this situation, while not violative of any County law, regulation, or merit system principle, would be of any benefit to the County, as long-tenured merit system employees would not have any incentive to promote once they reach certain longevity milestones.