

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIMS)	Case Nos. 204-2010, 261-2010,
OF ERIK K. PRATT, RONALD S.)	597-2010, and 604-2010
STOTTLEMYER, TOMAS L. GRAMAN, AND)	
LOREN E. GRAHAM,)	
)	
Claimants,)	
)	FINAL AGENCY DECISION
vs.)	
)	
CARROLL COLLEGE, A Montana Public)	
Benefit With Members,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

Claimants Professor Erik Pratt, Dr. Ronald Stottlemyer, Dr. Tomas Graman, and Professor Loren Graham filed wage complaints with the Wage and Hour Unit alleging that their employer, Respondent Carroll College, failed to pay them annual 3% step increases they were due under their respective wage agreements during the 2006-2007, 2007-2008, and 2008-2009 academic years. The Wage and Hour Unit dismissed the claims, finding that the professors had been paid in accordance with their annual employment contracts and were not due additional money. The claimants then appealed this matter to the Hearings Bureau.

Hearing Officer Gregory L. Hanchett held a contested case hearing in this matter on July 19, 2012 in Helena, Montana. Steven Shapiro, attorney at law, represented the claimants. John Sullivan, attorney at law, represented the respondent. Professor Pratt, Dr. Stottlemyer, Dr. Graman, Professor Graham, Human Resources Director Renee McMahan, former Carroll College Academic Vice President Dr. Jerry Berberet, and former Carroll College Chief Financial Officer Lynn Etchert all testified under oath. Exhibits 101 through 306 were admitted into evidence. The parties graciously agreed to provide the hearing officer with post-hearing briefs which were all timely received. Based on the evidence adduced at

hearing and arguments made in the post-hearing briefing, the following findings of fact, conclusions of law and final agency decision are rendered.

II. ISSUE

Did Carroll College fail to pay the claimants in accordance with their wage agreements such that the claimants are due additional wages as alleged in their complaints?

III. FINDINGS OF FACT

1. Carroll College is an institution of higher learning in Helena, Montana. The college employs professors, associate professors, assistant professors, and instructors.

2. When a new faculty member is hired, he is provided with a copy of the faculty handbook which contains, among other things, provisions that govern faculty salaries. The provisions pertinent to this matter are contained in Section 8.1 to 8.3 of the faculty handbook. Those provisions state:

8.1 SALARY SCHEDULE

Each new full time member at Carroll College shall be placed on the faculty Salary Schedule at the time the initial contract is offered.

8.2 STEP INCREASES

8.2.1 Step increases in the Faculty Salary Schedule are made within academic ranks and recognize faculty performance. An annual step of three percent will be included each year as part of the base budget. The step can be expected unless the financial status of the college necessitates otherwise.

8.2.2 In accordance with the faculty summative evaluation process, the step increase may be withheld on an individual basis if a satisfactory level of faculty performance is not achieved.

8.2.3 A faculty member who is promoted will go to the new rank on the salary schedule and will advance one step. Such a promotion is a twelve percent increase in salary.

8.3 COST OF LIVING ADJUSTMENTS

8.3.1 A cost of living adjustment changes every salary in the Faculty Salary Schedule by the same percent. Price changes in the local, regional, and national economies will be taken into consideration in determining such adjustments. Adjustments will be considered during the annual budget process.

8.3.2 The administration will consult with the faculty Welfare Committee and with the Budget Committee in determining a budgetary figure for the cost of living adjustment.

3. Under the parties' wage agreement, a step increase does not change the faculty pay scale. Only a COLA has the effect of adjusting the faculty scale.

4. Under the wage agreement, the decision to implement a step increase is contingent upon the college having sufficient revenue in any year that it might be given. Each year, the budget committee meets to determine whether the college can afford to pay step increases.

5. Under the wage agreement, the professors are not entitled to receive a 3% COLA nor are they entitled to receive any type of market adjustment. They are only entitled to a 3% step increase in those years where the college budget committee has met and determined that the college can afford a step increase.

6. Professor Erik Pratt has, at all times relevant to this claim, been employed by Carroll College as a faculty member. Prior to the 2005-2006 academic year, the college employed Professor Pratt as an associate professor. Beginning with the 2005-2006 academic year, the college employed Professor Pratt as a regular tenure track professor.

7. Professor Pratt began working for the college prior to 1992. At the time his employment began, he was informed about the provisions in the faculty handbook set out above in Finding of Fact 2.

8. During each year of Professor Pratt's employment, he and Carroll College have entered into an employment agreement whereby the professor has agreed to provide his services teaching and the college has agreed to pay the professor a specified salary for his services. See generally, hearing exhibits 101 through 120.

The salary amount which was to be paid is prominently noted in the annual employment agreement.

9. Since 1999, in every year of his employment (except for two years wherein the college could not afford to provide step increases), Professor Pratt's base salary has increased by 3% or more over the previous year's base salary. Those increases are as follows:

1999-2000: salary of \$37,332.00

2000-2001: salary of \$38,452.00 ($\$37,332.00 + (.03 \times \$37,332.00) = \$38,452.00$)

2001-2002: salary of \$40,340.00 ($\$38,452.00 + (.03 \times \$38,452.00) + \$735.00$ market increase adjustment = \$40,340.00)

2002-2003: salary of \$41,928.00 ($\$40,340.00 + (.03 \times \$40,340.00) + \$378.00$ market increase adjustment = \$41,928.00)

2003-2004: salary of \$41,928.00 (no step increase as financial status of college prevented giving increase)

2004-2005: salary of \$44,014.00 ($\$41,928.00 + (.03 \times \$41,928.00) + \$829.00$ market increase adjustment = \$44,014.00)

2005-2006 (Professor Pratt's first year as a professor): salary of \$49,626.00 (which included a market adjustment of \$330.00)

2006-2007: salary of \$51,414.77 ($\$49,626.00 + (.03 \times \$49,626.00) + \$299.50$ market increase adjustment = \$51,414.36)

2007-2008: salary of \$51,928.91 (no step increase as financial status of college prevented giving increase but faculty nonetheless given a 1% wage increase at insistence of college president)

2008-2009: salary of \$53,494.00 ($\$51,928.91 + (.03 \times \$51,928.91) = \$53,494.00$)

10. Professor Pratt conceded at hearing, and the hearing officer finds, that he was paid all amounts due to him under each year's employment agreement.

11. Dr. Ronald Stottlemeyer has, at all times relevant to this claim, been employed by Carroll College as a faculty member. Prior to the 1999-2000 academic year, the college employed Professor Stottlemeyer as an associate professor. Beginning with the 1999-2000 academic year, the college employed Professor Stottlemeyer as a regular tenure professor.

12. At the time his employment began, Dr. Stottlemeyer was informed about the provisions of the faculty handbook set out above in Finding of Fact 2.

13. During each year of Dr. Stottlemeyer's employment, he and Carroll College have entered into an employment agreement whereby the professor has agreed to provide his services teaching and the college has agreed to pay the professor a specified salary for his services. See generally, hearing exhibits 125 through 144. The salary amount which was to be paid is prominently noted in the annual employment agreement.

14. Since 1999, in every year of his employment (except for years wherein the college could not afford to provide step increases), Dr. Stottlemeyer's base salary has increased by 3% or more over the previous year's base salary. Those increases are as follows:

1999-2000: salary of \$40,594.00

2000-2001: salary of \$41,811.00 ($\$40,594.00 + (.03 \times \$40,594.00) = \$41,811.00$)

2001-2002: salary of \$44,738.00 ($\$41,811.00 + (.03 \times \$41,811.00) + \$1,671.00$
market increase adjustment = \$44,736.00)

2002-2003: salary of \$46,941.00 ($\$44,738.00 + (.03 \times \$44,738.00) + \$861.00$
market increase adjustment = \$46,941.00)

2003-2004: salary of \$46,941.00 (no step increase as financial status of college prevented giving increase)

2004-2005: salary of \$50,039.00 ($\$46,941.00 + (.03 \times \$46,941.00) + \$1,690.00$
market increase adjustment = \$50,039.00)

2005-2006: salary of \$55,814.00 ($\$50,039.00 + (.03 \times \$50,039.00) + \$4,274.00$
market increase adjustment = \$55,814.00)

2006-2007: salary of \$59,603.10 ($\$55,814.00 + (.03 \times \$55,814.00) + \$2,115.19$ market increase adjustment = \$59,603.10)

2007-2008: salary of \$60,199.13 (no step increase as financial status of college prevented giving increase but faculty nonetheless given a 1% wage increase at insistence of college president)

2008-2009: salary of \$62,005.10 ($\$60,199.13 + (.03 \times \$60,199.13) = \$62,005.10$)

15. Dr. Stottlemeyer conceded at hearing, and the hearing officer finds, that he was paid all amounts due to him under each year's employment agreement.

16. Dr. Thomas Graman has, at all times relevant to this claim, been employed by Carroll College as a faculty member. Prior to the 2000-2001 academic year, the college employed Dr. Graman as an associate professor. Beginning with the 2000-2001 academic year, the college employed Dr. Graman as a regular tenure track professor.

17. At the time of his employment with the college, Professor Graman was informed about the provisions of the faculty handbook set out above in Finding of Fact 2.

18. During each year of Professor Graman's employment, he and Carroll College have entered into an employment agreement whereby the professor has agreed to provide his services teaching and the college has agreed to pay the professor a specified salary for his services. See generally, hearing exhibits 147 through 169. The salary amount which was to be paid is prominently noted in the annual employment agreement.

19. Since 1999, in every year of his employment (except for years wherein the college could not afford to provide step increases), Dr. Graman's base salary has increased by 3% or more over the previous year's base salary. Those increases are as follows:

1999-2000: salary of \$36,245.00

2000-2001 (Dr. Graman's first year as a regular tenure track professor): salary of \$41,811.00

2001-2002: salary of \$44,438.00 ($\$41,811.00 + (.03 \times \$41,811.00) + \$1,372.00$ market increase adjustment = \$44,437.33)

2002-2003: salary of \$46,478.00 ($\$44,438.00 + (.03 \times \$44,438.00) + \$706.00$ market increase adjustment = \$46,477.11)

2003-2004: salary of \$23,592.00 (no step increase as financial status of college prevented giving increase and decreased salary figure represented fact that Dr. Graman was on sabbatical during a portion of the academic year)

2004-2005: salary of \$49,738.00 ($\$46,478.00 + (.03 \times \$46,478.00) + \$1,139.00$ market increase adjustment = \$49,011.00)

2005-2006: salary of \$54,188.00 ($\$49,738.00 + (.03 \times \$49,738.00) + \$2,958.00$ market increase adjustment = \$54,188.00)

2006-2007: salary of \$56,181.92 ($\$54,188.00 + (.03 \times \$54,188.00) + \$368.05$ market increase adjustment = \$56,181.69)

2007-2008: salary of \$56,743.73 (no step increase as financial status of college prevented giving increase but faculty nevertheless given a 1% wage increase at insistence of college president)

2008-2009: salary of \$58,466.05 ($\$56,743.73 + (.03 \times \$56,466.05) = \$58,466.05$)

20. Dr. Graman conceded at hearing, and the hearing officer finds, that he was paid all amounts due to him under each year's employment agreement.

21. Professor Loren Graham was first employed by the college during the 2001-2002 academic year. Prior to the 2004-2005 academic year, he served in the capacity of assistant professor. In the 2004-2005 academic year, he moved into an associate professor position.

22. At the time of his employment with the college, Professor Graham was informed about the provisions of the faculty handbook set out above in Finding of Fact 2.

23. During each year of Professor Graham's employment, he and Carroll College have entered into an employment agreement whereby the professor has agreed to provide his services teaching and the college has agreed to pay the professor

a specified salary for his services. See generally, hearing exhibits 173 through 183. The salary amount which was to be paid is prominently noted in the annual employment agreement.

24. Since 2001, in every year of his employment (except for years wherein the college could not afford to provide step increases), Professor Graham's base salary has increased by 3% or more over the previous year's base salary. Those increases are as follows:

2001-2002: salary of \$35,360.00 (this number matches the amount prescribed for an assistant professor at Step 19 in the 2001-2002 salary schedule contained in Exhibit 202)

2002-2003: salary of \$36,697.00 ($\$35,360.00 + (.03 \times \$35,360.00) + \$277.00$
market increase adjustment = \$36,697.00)

2003-2004: salary of \$36,697.00 (no step increase as financial status of college prevented giving increase)

2004-2005 (Professor Graham's first year as an associate professor): salary of \$41,823.00 (tracking exactly the 12% increase described in Section 8.2.3 of the faculty handbook, comprised of \$41,101.00 ($\$36,697.00 \times .12 = \$41,101.00$) + market adjustment of \$722.00 = \$41,823.00)

2005-2006: salary of \$43,456.00 ($\$41,823.00 + (.03 \times \$41,823.00) + \$379.00$
market increase adjustment = \$43,456.00)

2006-2007: salary of \$45,905.55 ($\$43,456.00 + (.03 \times \$43,456.00) + \$1,145.39$
market increase adjustment = \$45,905.07)

2007-2008: salary of \$46,364.61 (no step increase as financial status of college prevented giving increase but faculty nevertheless given a 1% wage increase at insistence of college president)

2008-2009: salary of \$23,877.77 (no step increase as financial status of college prevented giving increase and decreased salary figure represented fact that Professor Graham was on sabbatical during a portion of the academic year)

25. Professor Graham conceded at hearing, and the hearing officer finds, that he was paid all amounts due to him under each year's employment agreement.

26. Renee McMahon is the director of Human Resources at Carroll College. During the academic years material to this case, she prepared salary tables that were maintained by the administration. The claimants did not rely upon and were not even aware of the existence of these tables when they entered into their annual employment agreements.

27. Due to McMahon's errors in calculating the salary numbers on the tables, the tables that she produced contained erroneously inflated annual salary amounts for the various steps. These tables do not reflect the correct 3% step increases which the professors were due under the wage agreement and which they were paid as shown by the above findings of fact.

28. At no time from 2001 through 2009 were any of the claimants told that the 3% increase they received during each academic year was a COLA. Neither were they told that the increases were not step increases.

29. During the 2005 to 2006, 2006 to 2007, and 2008 to 2009 academic years, each of the claimants received a 3% step increase to his base pay which fully satisfied the terms of the wage agreement between the employer and the claimants. The salary increases during these years were not COLA increases.

IV. DISCUSSION

The claimants contend that their wage agreement required the employer to pay them a 3% step increase each year for the last several years (except in years during which the employer could not afford the increase) and that the employer failed to do so and instead paid them a 3% cost of living increase. They contend that the failure to pay them a 3% step increase has resulted in their being substantially short of where they should be on the employer's step salary pay plan. The claimants do not dispute that for each year of employment they each agreed to a distinct annual wage agreement with the employer and that in each one of those years they each in fact received all amounts they were due under the annual employment agreement. They also agree that each year's salary agreement represented a 3% increase in salary over the previous year's annual salary. The primary evidence upon which they rely for their contentions are salary tables created by the employer's human resource director which the claimants agree they never saw and which they further agree they never relied upon in signing their annual employment agreements.

In response to the wage claim, the employer argues that the claimants' arguments are without merit because they received all amounts they were due under

their annualized wage agreements and each year included a 3% increase over the previous year's salary. The employer further contends that the tables upon which the claimants base their argument were never provided to the claimants, never relied upon by the claimants, and were, in fact, simply a mistaken compilation of salaries that did not reflect the true salaries the claimants were due.

Montana law requires that employers pay wages when due, in accordance with the employment agreement, pursuant to Mont. Code Ann. § 39-3-204. An employee seeking unpaid wages has the burden of proving by a preponderance of the evidence that he was not compensated in compliance with the extant employment agreement. *Berry v. KRTV Comm.* (1993), 262 Mont. 415, 426, 865 P.2d 1104, 1112; *see also Marias Health Care Serv. v. Turenne*, ¶¶13-14, 2001 MT 127, 305 Mont. 419, 28 P.3d 494 (holding that lower court properly concluded that the plaintiff's wage claim failed because the plaintiff failed to meet her burden of proof to show that she was not compensated in accordance with her employment contract). As part of this burden of proof, the claimants must prove that in fact an employment agreement for the compensation sought existed between them and the employer.

This tribunal has no power to adjudicate contract disputes between parties. *Auto Parts of Bozeman v. Employment Relations Division*, 2001 MT 72, ¶39, 305 Mont. 40, 23 P.3d 193. This tribunal has only those powers granted to it by statute or rule and it does not have "the power of the district court to hear all facets of a case." *Auto Parts*, ¶38. The only authority bestowed upon this tribunal is to determine what the employment agreement calls for in terms of wage payment and then determine whether or not the wages due pursuant to that agreement have been paid. Mont. Code Ann. § 39-3-204; *Turenne*, ¶11.

The claimants do not dispute that they were properly paid through the 1999-2000 school year. Beginning with that year, the claimants each received 3% increases to their base salaries for the 2000-2001 school year, 2001-2002 school year, 2002-2003 school year, 2004-2005 school year, 2005-2006 school year, 2006-2007 school year, and 2008-2009 school year. The claimants do not dispute that the agreement did not entitle them to a step increase during the 2003-2004 school year as the college's financial condition did not permit it. Likewise, they agree that they were not entitled to a step increase during the 2007-2008 school year as the college's financial condition once again did not permit it. During the 2007-2008 time period, they did, however, receive a 1% increase, granted by the college president even though the claimants were not entitled to a step increase. Exhibit 205.

Referring back to the faculty handbook, the language commands no more of the college than that it grant a 3% step increase each year that it is financially able to do so. There is no requirement that any cost of living adjustment be granted and any such adjustment is entirely discretionary. The documentation of the claimants' annual wage contracts reflects that in each year from 2001 onward when the college's finances permitted it to do so, a 3% increase in base salary was given and in the following year, that base salary with the additional 3% represented the new base salary upon which the following year's 3% increase was made. There simply is no evidence here to show that the increase of 3% was not in fact a step increase.

In an effort to prove their case, the claimants argue that the increases were cost of living adjustments, not step increases. They point to both the actual cost of living increase in the economy and the existence of the mistaken salary tables to show that the increases were not the required step increases. They also argue that the fact that increases were given to both faculty and non-faculty employees shows that the increases were not step increases but were instead COLAs. There are several problems with their arguments.

The first problem with the claimants' argument is that the only potentially enforceable wage agreement which they have proven exists is one that requires an increase of 3% each year in which the college can afford one. What they have also proven is that in each year that it could afford to do so, the college gave them an increase of 3% over the previous year's base salary. The college had no obligation to provide a cost of living increase under any circumstance, regardless of what label was applied to the increase. What the college was obligated to provide, under the only potentially enforceable wage agreement proven, was a 3% increase, in each year that it could be afforded by the college, and that is precisely what the college did provide. That contractual obligation is all that this tribunal can enforce in this limited administrative proceeding. *Auto Parts of Bozeman*, ¶139. The claimants have failed to prove that they were not paid in accordance with their employment agreement.

The second problem with the argument is that the evidence provided does not persuade the hearing officer that the claimants received anything but a step increase. Stated differently, the claimants bear the burden of proving that the raises they got, which in fact appear to track with the required step increases, were not in fact step increases (as that is the essence of their claim). They have attempted to do so by arguing that the annual salary increases actually track with cost of living adjustments. As the respondent correctly points out, the evidence presented in fact suggests that the 3% increases were in excess of the annual cost of living increases that occurred during the years in question. This evidence actually cuts against the argument that

the increases were in fact cost of living increases and not step increases. More convincingly, the testimony of Lynn Etchert establishes that at no time during the time period in question did the college ever grant a cost of living increase to the claimants. This being so, no other explanation can account for the increases – which track the correct annual step increases – except that they were the step increases. Once again, the claimants have failed to demonstrate that they were not paid in accordance with their wage agreement.

The third problem with the argument is the unstated premise upon which it also relies, to wit; that the mistaken salary schedules from 2001 onward are in fact a “smoking gun” that show the true salaries that the professors should have been receiving had they been kept on step. The facts demonstrate here that the mistaken salary schedules were in fact just that – mistaken. Tracking the 3% step increase from 1999-2000 academic year onward (by looking at each professor’s annual employment agreement, as the hearing officer has done in his findings of fact) shows that the salary amounts paid during the 2006-2007 academic year, the 2007-2008 academic year, and the 2008-2009 academic year match the step increases that the claimants should have been receiving during that time, 3% of the previous year’s base salary. In light of this, Renee McMahon’s testimony that those salary schedules – which were never shown to the claimants nor relied upon by the claimants – were simply mistakes, is highly credible. Those schedules were not a true reflection of the wages due the claimants under their wage agreement.

The argument that non-faculty also received similar wage increases does nothing to dissuade the trier of fact from his conclusion that the increases were in fact step increases. The college’s evidence demonstrates that the college, in order to retain a highly trained workforce, also gave its non-faculty members wage percentage increases that were on par with the step increases received by faculty. The fact that the college did so does not prove that the college’s annual increases to the professor’s salaries were not step increases.

Finally, the claimants’ reliance on *Clouse et. al. v. Lewis and Clark County*, 2008 MT 271, 345 Mont. 208, 190 P.3d 1052 is misplaced. In that case, the claimants demonstrated that they had not been paid in accord with the statutory criteria for longevity and supplement pay. Unlike the claimants in *Clouse*, the claimants here failed to show that they were not reimbursed in accordance with their wage agreement. Because the claimants failed to demonstrate that they were not paid in accordance with their wage agreements, their wage claim in turn must fail. *Turenne, supra*.

V. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this complaint under Mont. Code Ann. § 39-3-201 et seq. *State v. Holman Aviation* (1978), 176 Mont. 31, 575 P.2d 925.

2. The claimants were paid all amounts they were due under their wage agreements. The claimants received 3% step increases in their salaries in each year where such increases were due under the faculty handbook and they were paid in accordance with their annual wage agreements.

3. Because the claimants have failed to demonstrate by a preponderance of the evidence that they were not paid all sums they were due under their wage agreements, their wage claims fail and must be dismissed.

VI. ORDER

The wage claims of Professor Pratt, Dr. Stottlemyer, Dr. Graman, and Professor Graham are hereby dismissed.

DATED this 29th day of November, 2012.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Officer

NOTICE: You are entitled to judicial review of this final agency decision in accordance with Mont. Code Ann. § 39-3-216(4), by filing a petition for judicial review in an appropriate district court within 30 days of the date of mailing of the hearing officer's decision. See also Mont. Code Ann. § 2-4-702.