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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

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MARSHA MITCHELL

v.

DOCKET NO. 30-86-139-2

WEST VIRGINIA UNIVERSITY

DECISION

Marsha Mitchell, the grievant, was denied promotion in 1985 and appealed that decision to the Institutional Hearing Committee for review in accordance with Board of Regents' Policy Number 36. That Committee determined the decision to deny promotion was arbitrary and capricious. President Diane Reinhard rejected the findings of the committee and affirmed the decision to deny promotion.

Following President Reinhard's decision, Ms. Mitchell filed a level one grievance under W. Va. Code, 18-29-1. Ms. Mitchell alleges a violation of Board of Regents' Policy Bulletin Number 36 in the respondent's denial of her promotion and that the decision was arbitrary and capricious.

This grievance has been denied at levels one and two as Ms. Mitchell had pursued the matter through Board of Regents' procedure and because it was not timely filed. At level

four the respondent has submitted a motion to dismiss based on the prior grievance processed under the Board of Regents' procedure.

The grievant argues that she may grieve a violation of Board of Regents' policy under W. Va. Code, 18-29-1 and that to grant respondent's motion would deprive her of grievance rights and cause her to bear the "...heavy financial burden of legal fees."

In addition to the foregoing it is appropriate to make the following findings and conclusions.

#### Findings of Fact

1. Marsha Mitchell is employed by the Board of Regents and holds the position of Assistant Professor at West Virginia University.

2. Sometime prior to June 25, 1985, Ms. Mitchell was denied promotion and appealed that decision to the Institutional Hearing Committee in accordance with Board of Regents' Policy Bulletin Number 36.

3. That committee found the denial of promotion to be arbitrary and capricious in nature.

4. President Diane Reinhard rejected the findings and recommendations of the committee and affirmed the denial of promotion.

5. Ms. Mitchell subsequently filed a grievance under W. Va. Code, 18-29-1 in which she alleges a violation of Board of Regents' Policy Bulletin Number 36.

6. The effective date of W. Va. Code, 18-29-1 was July 1, 1985, and therefore not an option available to the grievant at the time her promotion was first denied.

#### Conclusions of Law

1. Employees of the state institutions of higher education shall have the option of filing grievances in accordance with the provisions of W. Va. Code, Chapter 18, Article 29 or in accordance with the provisions of policies, rules and regulations of the Board of Regents regarding such employees. W. Va. Code 18-20-1.

2. A statute is presumed to operate prospectively unless the intent that it shall operate retroactively is clearly expressed by its terms or is necessarily implied from the language of the statute. State ex rel. Glauser v. Board of Education of the County of Ohio, 318 S.E. 2d 424 (W. Va. 1984).

Accordingly, the grievant has pursued an administrative remedy under Board of Regents' Policy Bulletin Number 36 and is foreclosed from seeking a second administrative remedy

or a review of the Board of Regents' procedure from the Education Employees Grievance Board. The appropriate forum for this matter now is circuit court or other court of competent jurisdiction. Therefore, the respondent's motion to dismiss is hereby GRANTED and the matter stricken from the docket.

DATE: November 24, 1986

Sue Keller  
SUE KELLER  
Hearing Examiner