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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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CONNIE NAYLOR

v.

DOCKET NO. 30-86-121-2

WEST VIRGINIA UNIVERSITY

DECISION

In July, 1985, Connie Naylor, also referred to as the grievant, filed a grievance in accordance with Board of Regents' Policy Bulletin No. 52 after being notified that she had not been selected for the position of Senior Custodian at the Physical Plant. Ms. Naylor stated "...that management has failed to fulfill its responsibility for choosing the best qualified candidate when a position becomes available."

The respondent denied this grievance at levels one and two on the basis that a grievable issue did not exist. In her appeal to level three the grievant stated:

As stated in the second stage response, the "University shall consider the abilities, qualifications, length of service in the employee unit and the desires of the employee." It is my contention that in dealing with these

considerations the University reached conclusions not based on fact, misused information to my detriment, and involved itself with favoritism, again to my detriment. The overall end result has been that the University has failed to fulfill its responsibility for choosing the best qualified candidate when a position becomes available.

S. Thomas Serpento, Director of Human Resources at West Virginia University, determined that Ms. Naylor had amended the statement of her grievance to include issues which did constitute a grievable matter. Mr. Serpento remanded the matter back to level one in order to allow Ms. Naylor's immediate supervisor an opportunity to address these issues.

Ms. Naylor subsequently filed a grievance under W. Va. Code, 18-29-1 in which she alleges that by remanding the grievance back to level one West Virginia University has violated, misapplied and misinterpreted Board of Regents Policy Bulletin No. 52 resulting in a denial of her rights.

The respondent has submitted a motion to dismiss this matter as Ms. Naylor has sought an administrative remedy under Board of Regents policy and is therefore prohibited from seeking the same remedy from the Education Employees Grievance Board.

The grievant argues that she does not wish a hearing on the merits of her case as that matter was pursued

under Board of Regents' policy. However, she contends that W. Va. Code, 18-29-1 grants her the right to file a related grievance concerning the violation, misapplication and misinterpretation of the Board of Regents' Policy Bulletin No. 52 in the processing of the prior grievance. Ms. Naylor further contends the present matter is substantially different from the prior grievance and suggests that if this grievance is dismissed it will signal to employees that they will not be protected from employer violations of other grievance procedures unless they are willing and able to take their cases to court.

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

Findings of Fact

1. In July, 1985, Ms. Naylor filed a grievance in accordance with Board of Regents' Policy Bulletin No. 52.
2. This matter was determined by the respondent not to be a grievable issue at levels one and two.
3. Ms. Naylor revised her statement of the grievance at level three. It was determined that Ms. Naylor had now articulated a grievable issue and the matter was remanded back to level one for consideration.

4. Ms. Naylor alleges this action to be a violation, misapplication and/or misinterpretation of Board of Regents' Policy Bulletin No. 52.

Conclusions of Law

1. Employees of the state institutions of higher education shall have the option of filing grievances in accordance with the provision 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, 18-29-1.

2. A request for review of procedures employed by another grievance process is properly directed to a circuit court or other court of competent jurisdiction and may not be considered by the Education Employees Grievance Board.

Accordingly, the motion to dismiss is hereby GRANTED and this matter stricken from the docket.

DATED November 24, 1986

Sue Keller
SUE KELLER
Hearing Examiner