



REPLY TO:
401 Davis Avenue
Suite 315
Elkins, WV 26241
Telephone: 636-1123

Members
James Paul Geary
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone: 348-3361

RALPH BEATTY

v.

DOCKET NO. BOR1-86-337-2

WEST VIRGINIA UNIVERSITY

DISMISSAL ORDER

On November 25, 1986 the West Virginia Education Employees Grievance Board received a level four grievance appeal filed on behalf of Ralph Beatty, a Senior Mechanical Equipment Worker at the West Virginia University Physical Plant. The appeal did not include a statement of the grievance but referred to the original grievance and indicated that the level four decision could be made on evidence presented at levels two or three.

The level one grievance filed by "Jack McLaughlin on behalf of myself and all of his likeness" alleged that newly appointed/promoted craftsmen were being paid more than other longtime senior craftsmen in the same classification. He requested that all senior craftsmen in the same classification receive the same annual salary equal to the highest rate paid in that classification, that all be made whole economically and that a new promotion policy be negotiated.

The grievance evaluator at level two acknowledged a difference in salary among three employees of the same position but that the applicable policy had been accurately applied and the relief requested could not be provided by the University; therefore, the grievance was denied.

Upon appeal to level four West Virginia University forwarded cassette tapes of the level two hearing as part of the record, however, they were returned and a transcript requested. That transcript was subsequently received on March 10, 1987. By letter of the same date the hearing examiner advised both parties of the information which had been forwarded and inquired if any further documentation, statement of position or other information was to be submitted. University exhibits admitted at level two but not included in the record were also requested. By letter dated March 18, Stephen L. Cook, President of Laborers' International Union Local 814 and the grievant's representative, notified the examiner that no further information would be submitted on his behalf.

Bruce R. Walker, Assistant Attorney General assigned as counsel for the Board of Regents, verbally advised the examiner that a settlement was being contemplated which would negate

the necessity of a level four decision, but that it would require some time to secure the appropriate administrative approval. By memorandum dated May 21, 1987 Herman Mertins, Vice-President for Administration and Finance, notified the grievant that an adjustment to his salary would be made to correct an isolated incident which occurred as a result of the implementation of a change in policy. This adjustment would not extend to any other employee.

By letter dated May 28, 1987, Mr. Cook advised the examiner that the matter had been filed by Jack McLaughlin as a class action grievance and that Mr. Beatty had served only as an example of the problem. Mr. Cook indicated that he was gathering the names and specific facts for each Local 814 member who was affected.

On June 11, 1987 Mr. Walker notified the examiner of the adjustment being made to Mr. Beatty's salary and requested that the grievance be dismissed. Mr. Walker argues that the grievance should not be considered as a class action as the record does not indicate any other affected individuals and, if other isolated cases are identified they should be treated on an individual basis at the University level.

By letter dated July 8, 1987 President Cook advised the examiner that Union Local 814 was anxiously awaiting the decision regarding Mr. Beatty and Mr. Wilburn as a number of other union members were in similar circumstances. Mr. Cook stated "[a]s I indicated in my May 28, 1987 letter to you (enclosed) the Union has 'begun gathering the names and specific facts for each Local 814 member to whom your decision might apply'. We do not plan to submit this information to you..."

Class action proceedings are permitted under the Rules of Civil Procedure when the individuals constituting a class are so numerous that it would be impractical for them to all appear. One or more of the individuals as will fairly insure the representation of all may sue or be sued when the right to be enforced is: (1) joint, or common, or secondary in the sense that the owner of a primary right refuses to enforce that right and a member of the class thereby becomes entitled to enforce it; (2) several, and the object of the action is the adjudication of claims which do or may affect specific property involved in the action; or (3) several and there is a common question of law or fact affecting the several rights and a common relief is sought; or (4) the processing of separate actions by individual

members of the class would create a risk of inconsistent adjudications establishing incompatible standards of conduct for the party opposing the class; or adjudications with respect to individual members of the class which would be dispositive of the interests of other class members or substantially impede their ability to protect their interests.

Although the grievance was originally filed by Jack McLaughlin on behalf of himself and others, the record does not indicate that he personally has any salary dispute with the respondent or that he holds any position other than Business Manager of Union Local 814. The level two transcript primarily reflects facts pertinent to Ralph Beatty, with limited testimony regarding Robert Wilburn, a similarly situated employee, to show that this situation was not an isolated occurrence. (T.pp. 37-38 and Grievant's Exhibit 27). The level four appeal indicates Ralph Beatty to be the sole grievant.

As Mr. Beatty's dispute has apparently been resolved, the limited evidence regarding Mr. Wilburn does not directly or conclusively show him to be subject to similar circumstances, and no evidence has been, or will be, submitted to establish that any other employees are similarly affected, the respondent's motion to dismiss is hereby **GRANTED**.

DATED

July 27, 1987

Sue Keller

SUE KELLER
Hearing Examiner