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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
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JOHN LOZIER

v.

Docket No. 30-86-231-2

WEST VIRGINIA UNIVERSITY

DECISION

Grievant, John Lozier, is a classified employee at West Virginia University whose present position is Supervisor of Inspectors, Physical Plant. Sometime in June, 1986 he filed a grievance alleging that university officials refused to pay him longevity pay pursuant to W.Va. Code, 5-5-1, et seq.¹ Denied at the lower administrative levels the grievance was appealed to level four in July, 1986. Due to scheduling and other difficulties, an evidentiary hearing was not conducted until February 2, 1987.

Grievant appeared at the February, 1987 hearing and presented testimonial and documentary evidence on his own behalf. Counsel for respondent had earlier indicated that the facts of the dispute were uncontested and involved only a legal determination, therefore, he declined to appear at the hearing stating it would

¹W.Va. Code, 5-5-2 grants eligible state employees an annual salary increase of \$36 times years of service. W.Va. Code, 5-5-1 excludes college faculty members from the increment while they are so employed.

serve no useful purpose. By letter dated March 5, 1987 counsel for the respondent requested that a decision on the grievance issue be held in abeyance pending an attempt to satisfy grievant's claim and that grievant had no objection to a delay.

After an extended period of time with no word from the parties, a case status inquiry was made by this examiner by letter dated May 7, 1987. A response by grievant was received May 13, 1987: "I...received...a letter...confirming that I was entitled to longevity pay.... While my grievance appears to have been resolved, I feel that the precedent should be established formally for the sake of myself and others. Therefore I welcome your formal decision and do not wish to withdraw the grievance." It appears that pursuant to W.Va. Code, 18-29-3(k), grievant seeks a change in relief from that of his original request.²

Respondent's counsel advises that the university has agreed to pay the grievant the incremental pay and by letter dated June 11, 1987 he further stated: "Furthermore, the Board of Regents is presently attempting to resolve the question of whether persons in the grievant's position qualify for such incremental pay. It is the Board's opinion that they do. The Governor's office of Finance and Administration, which allegedly once stated that they do not has been approached for clarification." Counsel argues the grievance should be dismissed since there is no actual matter in controversy and any opinion in the matter would be merely advisory.

²W.Va. Code, 18-29-3(k): "Any change in the relief sought by the grievant shall be consented to by all parties or may be granted at level four within the discretion of the hearing examiner."

In addition to the foregoing, the following findings of fact and conclusions of law are incorporated herein.

FINDINGS OF FACT

1. Grievant has been employed as a classified employee at WVU since October, 1985. He had previously been employed by the university as a faculty member for approximately seven years.

2. In June, 1986 grievant filed a grievance when the university refused to pay him longevity pay for his total years of past service as an employee of the Board of Regents.

3. In March, 1987 the Board of Regents conceded that grievant was eligible for longevity pay under "Senate Bill #231."³ Grievant received his initial longevity pay disbursement with a credit of eight years.

³ Senate Bill 231 refers to W.Va. Code, 18-26B-5, enacted in 1986. Section 5(b) provides: "Commencing with the fiscal year beginning on the first day of July, one thousand nine hundred eighty-six, and each fiscal year thereafter, each classified employee with three or more years of experience shall receive an annual salary increase equal to thirty-six dollars times the employee's years of experience, less any incremental salary increase granted in a prior fiscal year and actually incorporated into and becoming an integral part of base salary prior to fiscal year one thousand nine hundred eighty-seven: Provided, That such annual salary increase shall not exceed the amount granted for the maximum of twenty years of experience. These incremental increases shall be in lieu of any salary increase received pursuant to section two [§ 5-5-2], article five, chapter five of this code; shall be in addition to any across-the-board, cost-to-living or percentage salary increases which may be granted in any fiscal year by the Legislature; and shall be paid in equal installments within the regular pay periods."

4. In May, 1987 grievant wrote that while his grievance was resolved, he did not wish to withdraw the grievance but desired a formal decision for his sake and others similarly situated.⁴

5. The BOR supports the position that all university classified personnel with previous years of university teaching experience are entitled to longevity pay credit for those service years as a faculty member and have approached the Office of Finance and Administration for clarification.

CONCLUSIONS OF LAW

1. Pursuant to W.Va. Code, 18-29-3(k) the parties to a grievance may consent to a change in the relief sought by the grievant or the hearing examiner may grant the request at level four.

2. The Education Employees Grievance Board will not issue advisory opinions. Douglas Richmond v. Raleigh County Board of Education, Docket No. 41-86-127; Raymond Dunleavy v. Kanawha County Board of Education, Docket No. 20-87-102-1.

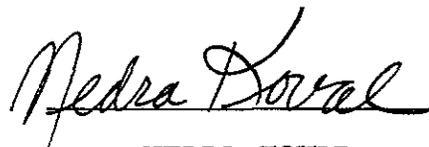
⁴Grievant in effect amended the relief he had previously requested and instead now seeks an advisory opinion from the West Virginia Education Employees Grievance Board.

Accordingly, grievant's amended request for relief, that the West Virginia Education Employees Grievance Board issue an advisory opinion, is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the court.

DATED:

August 17, 1987



NEDRA KOVAL
Hearing Examiner