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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
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Charleston, WV 25301
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RANDY KINSLEY, et al.

v.

DOCKET NO. BOR1-87-317-2

WEST VIRGINIA UNIVERSITY

DECISION

Grievants, Randy Kinsley, Don Tichenor, Sam Hart, Henry Arnold, John Gazsi, Ed Thomas, Brad McCuskey and Wayne Helmick, are employed as maintenance workers assigned to the Housing Department at West Virginia University. They began grievance proceedings on August 21, 1987 at which time they alleged discrimination in that they are not allowed to park in the lot of their choice. The grievance was denied following a level two hearing and appealed to level four where a hearing was held on January 27, 1988. The grievants' proposed findings of fact and conclusions of law were received on February 18 as requested by the examiner. The Board of Regents failed to comply with this request.

The evidence reveals that the grievants' assigned workplace is located in Tower IV on the Evansdale campus and that two parking lots are in the immediate vicinity. Area 53, located across the street, is a paved lot reserved for faculty and staff at an annual fee of \$60.00. Area 48 is a gravel lot located behind Tower IV and is reserved for students at an annual fee of \$24.00.

Grievants argue that denying them the opportunity to park in Lot 48 is discriminatory as not only students but any auto with a downtown or medical center permit may park there because it is used as a storage lot and because it entails a higher cost. They assert that sufficient vacancies exist in the lot to meet their needs and that as they must frequently use their private vehicles at work, the arrangement would increase the efficiency of the department.¹

¹Grievant McCuskey indicates that it takes less than one minute to walk to lot 48 and that it takes approximately 15 seconds to walk to their present assignments at lot 53. Of course those individuals who chose to park off campus require considerably more walking time. The grievants also argue that lot 48 is more convenient to load tools and equipment as they do not have to illegally park at the door and risk being ticketed while securing these items.

Grievants request that a certain number of parking spaces be set aside for their department or, in the alternative, that they be given equal consideration for Lot 48 when parking permits are assigned.

Eugene Powell, Manager of the Parking Office, testified that the Advisory Parking Committee determines the most appropriate usage for each of the lots and makes their recommendation to a university vice president with the ultimate decision coming from the president's office. No areas are initially assigned to both students and faculty/staff although when the faculty/staff lots are not filled to capacity permits for that area may be issued to students. However, faculty and staff are never issued permits in student areas. Mr. Powell compares this practice to student seating at athletic events.

In addition to the foregoing it is appropriate to make the following specific findings of fact and conclusions of law.

Findings of Fact

1. Grievants are employed as maintenance workers assigned to the Housing Department at West Virginia University.

2. The grievants assigned workplace is Tower IV at the Evansdale campus.

3. Grievants may apply for parking permits in Lot 53, a paved lot located directly across the street from their workplace at an annual fee of \$60.00.

4. Three of the grievants presently have a parking permit in Lot 53 while the remaining five have not applied for a permit and secure private parking off campus.

5. All of the grievants wish to secure a parking space in Lot 48, a gravel lot located behind Tower IV at an annual fee of \$24.00.

6. Lot 48 is presently reserved for students only. Faculty and staff are not issued permits for this area.

Conclusions of Law

1. It is incumbent upon the grievants to prove the elements of a grievance by a preponderance of the evidence. Damion v. Mingo County Board of Education, Docket No. 29-86-250-4; Parsons v. Cabell County Board of Education, Docket No. 06-87-067-1.

2. The greivants have failed to prove that allocating certain parking areas for students or employees is discrimination as defined by W.Va. Code, 18-29-3(m).

Accordingly, the grievance 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

March 31, 1988

Sue Keller

SUE KELLER
HEARING EXAMINER