



REPLY TO:
101 Harper Park Drive
Suite D
Beckley, WV 25801
Telephone: 255-6155

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

JOHN SPRADLING

v.

Docket Nos. BOR2-87-213-1
BOR2-87-228-1

MARSHALL UNIVERSITY

D E C I S I O N

Grievant, John Spradling, is an employee in the Building and Grounds Division of Marshall University. He filed the present grievance in June 1987 alleging he had been harassed by his immediate supervisor, Mr. Paul Ward, and Mr. Ward's supervisor, Mr. D.B. Sargent. A Level II hearing was held on July 15, 1987 and Mr. Dale Nitzchke subsequently denied the grievance. A Level IV evidentiary hearing was held on November 20, 1987.

On or about July 2, 1987 grievant's son became ill and when he took him to a hospital, exploratory surgery was scheduled for the next morning. Grievant was told he should be present prior

to this surgery to sign any necessary consent forms.¹ He then obtained a written note from the attending nurse to this effect and approached his supervisor on June 3, 1987 prior to the time he was to start his shift and requested leave for that day. He was told by Mr. Ward the workload for that day had not been determined and he should speak to Mr. Sargent. Grievant later approached Mr. Sargent in a parking lot and reiterated his request and was told to go to the hospital.

Grievant contends his supervisor, Mr. Ward, used an abrupt tone of voice when he first made his request for leave and unnecessarily made him wait nearly an hour for Mr. Sargent and the latter was also rude in the manner in which he granted the leave.² According to grievant these actions on the part of these two supervisors constitute harassment and he requests apologies from both as relief.

¹Grievant testified at the Level IV hearing he later discovered his signature was not necessary since his son was nineteen (19) years old.

²Grievant testified Mr. Sargent made him read aloud his note from the hospital and then said, "Go then. Go! Go! Go!" (T.__)

Mr. Sargent testified he was wearing an eyepatch at the time and was unable to read and asked grievant to read the note. He denied he was in any way rude with grievant. (T.__)

W.Va. Code, 18-29-2(n) defines harassment as:

Repeated or continued disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession.

It is clear from this definition of the term a grievant has the burden to show a continuous practice on the part of the employer and the grievant has failed to establish by a preponderance of the evidence that the actions of the two supervisors on June 3, 1987 constituted even one incident of harassment.

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

FINDINGS OF FACT

1. Grievant, John Spradling, is employed in the Building and Grounds Division of Marshall University.

2. On June 3, 1987 grievant requested sick leave for the day in order that he might be present at the hospital where his son was scheduled for surgery.

3. Grievant's supervisor, Paul Ward, did not grant or deny his request for sick leave but referred him to Mr. D.B. Sargent who subsequently granted the request.

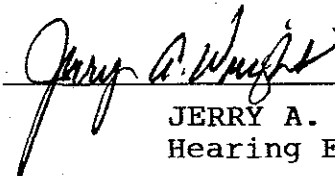
CONCLUSIONS OF LAW

1. A grievant must prove the allegations contained in a grievance by a preponderance of the evidence and when the grievance contains an allegation of harassment the grievant has the same burden of proof to establish a continuous practice of disturbance, irritation or annoyance on the part of the employer.

2. Grievant, John Spradling, has failed to prove by a preponderance of the evidence that he has been subjected to harassment by Mr. Paul Ward, Mr. D.B. Sargent or other administrative staff at Marshall University.

Accordingly, the grievance is DENIED.

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


JERRY A. WRIGHT
Hearing Examiner

DATED: April 6, 1988