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

Offices

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

ANNAGAYLE HARVEY-STEVENS

v.

Docket No. SCA-88-021

SUPREME COURT OF APPEALS OF WEST VIRGINIA

DECISION

Grievant, Annagayle Harvey-Stevens, was discharged from her position as secretary-clerk to Kanawha County, West Virginia Family Law Master¹ William Tantlinger on or about September 17, 1988. Grievant was, and Tantlinger is, employed by Respondent Supreme Court of Appeals of West Virginia. On September 22, 1988, Grievant filed this complaint directly at Level IV, pursuant to W.Va. Code §29-6A-4(e).

A hearing was scheduled for October 17, 1988. On October 11, Respondent filed a Motion to Dismiss, and it was

¹Family Law Masters, and staffs thereto, were created by W.Va. Code §48A-4-1.

agreed that the October 17 hearing would be limited to that Motion. On October 17, the parties appeared at the offices of the West Virginia Education and State Employees Grievance Board and, with leave of the Hearing Examiner, privately discussed the possibility of settlement. It was reported to the Hearing Examiner that tentative terms were negotiated, and that counsel for Respondent desired a continuance of the hearing so that he might have time to consult with his client. Accordingly, a second hearing on the Motion was scheduled for November 9, 1988.

On November 9, the parties announced that they had agreed that this grievance could be dismissed, based on the Motion, and that Grievant could pursue her claim via a "due process hearing" through Respondent's Administrator's office. They expressed intention to submit an agreed order for this Grievance Board's consideration, and such order was presented on December 5, 1988. After review of the Motion, the undersigned concluded that the issue contained should be resolved by formal decision; therefore, the agreed order has not been and will not be entered. However, its substance, in large part, has been incorporated into this document.

The Motion seeks dismissal of this claim on two jurisdictional grounds: one, that Grievant is not an "employee" as defined in Code §29-6A-2(e); and two, that assumption of jurisdiction in this case would be violative of Art. V, §1 and Art. VIII, §3, W.Va. Const.

Code §29-6A-2(e) provides, in pertinent part, as follows:

"Employee" means any person hired for permanent employment, either full or part-time, by any department, agency, commission or board of the state created by an act of the Legislature, except. . . any employees of any constitutional officer unless they are covered under the civil service system and any employees of the Legislature.

Art. V, §1, W.Va. Const. is titled "Division of Powers" and provides, in pertinent part, as follows:

The legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others.

Art. VIII, §3, W.Va. Const., provides, in pertinent part, as follows:

The officers and employees of the supreme court of appeals...shall be appointed and may be removed by the court.

In addition, it is appropriate to make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Grievant, Annagayle Harvey-Stevens, was employed as secretary-clerk to Kanawha County Family Law Master William Tantlinger. She was terminated from this position on or about September 17, 1988.

2. Family Law Masters and their staff members are employees of Respondent Supreme Court of Appeals of West Virginia and are not covered under the State's Civil Service System.

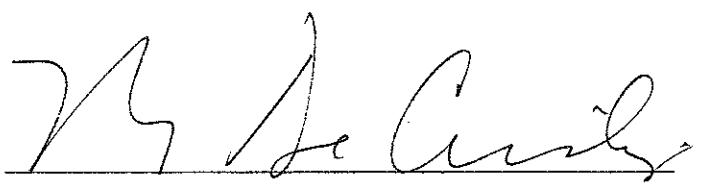
CONCLUSIONS OF LAW

1. The Supreme Court of Appeals of West Virginia is a "constitutional officer" for purposes of W.Va. Code §29-6A-2(e).

2. The Supreme Court of Appeals of West Virginia, which is within the judicial branch of State government, is responsible for personnel matters regarding its own staff. Mayle v. Ferguson, 327 S.E.2d 409, 411-12 (W.Va. 1985); also see W.Va. Const., Art. VIII, §3. Accordingly, intrusion by the West Virginia Education and State Employees Grievance Board, an agency of the executive branch of State government, would be a violation of the separation of powers mandated by W.Va. Const., Art. V, §1.

3. Grievant is not an "employee" for purposes of Code §29-6A-2(e).

Accordingly, Respondent's Motion is **GRANTED**, and this matter is **DISMISSED** and **STRICKEN** from the docket of the West Virginia Education and State Employees Grievance Board. This dismissal should in no way be construed to prevent Grievant from pursuing her complaint in other forums.



M. DREW CRISLIP
HEARING EXAMINER

Dated: December 12, 1988