



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

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

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

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

ANN COLLINS SAUVAGEOT

v.

DOCKET NO. BOR1-87-224-2

WEST VIRGINIA UNIVERSITY

DECISION

Grievant, Ann Collins Sauvageot, was employed by the University Affiliated Center for Developmental Disabilities (UACDD) until June 30, 1987 when her employment was not renewed. Ms. Sauvageot filed a level one grievance on July 17, 1987 and a level two hearing was conducted on October 30, 1987.

According to the grievant a level two decision was not issued until December 19, 1987 and a level four appeal was filed on January 13, 1988.<sup>1</sup> Evidentiary hearings were scheduled

---

<sup>1</sup>An undated and unsigned copy of the hearing evaluator's recommendations were submitted into the record, however, the official level two decision was not. The grievant's statement regarding receipt of the decision was contained on the level four appeal form.

on February 17, March 18, April 22 and was held on May 9. Proposed findings and conclusions were submitted by May 31, 1988.

The UACDD is a program within the College of Human Resources and Education but is funded solely through grants from and contracts with federal and state agencies and other outside sources. Its employees are classified as temporary, neither probationary or tenured, and normally receive appointment from July 1 to June 30. In addition to their academic duties the staff members must acquire funding through grants or contracts to maintain financial resources to support their positions. The grievant had been employed at UACDD since July 1976, was the most senior employee in the program and most recently held the position of Research Assistant Professor.

The grievant argues that the termination of her employment was discriminatory, arbitrary and capricious, violative of liberty and property interests, statutes and West Virginia University policies and practices. Specifically, the grievant notes that in the spring of 1986 she strongly protested a peer review within the center resulting in the faculty being granted the

option of having the review materials removed from their personnel files. In June of that year the Director advised her that her position would be terminated.<sup>2</sup> The grievant argues that in other instances when contracts or grants have expired the individuals continued their employment under the base grant or other grants or contracts which they may or may not have helped develop. The grievant believes that this could have been done in her behalf as the center's budget has increased the last three years and because the director could restructure the staffing and responsibilities. She asserts that the past practice within the College of Human Resources and Education established a reasonable expectation for continued employment which was supported by the "Program Change Document" which provides that to the greatest extent possible employees with the greatest seniority will be retained when a program is reduced.

---

<sup>2</sup>In 1985-86 the grievant held the position of Assistant Director for Training/Research Assistant Professor. This position was eliminated and in 1986-87 she was reemployed as a Research Training Professor.

The University asserts that the position held by the grievant in 1986-87 was fully funded by a contract with the West Virginia Department of Human Services. When the Department notified the UACDD that it wanted to eliminate the training position for the next year the grievant was promptly notified that the position would terminate. Efforts were made to assist the grievant in her reemployment by providing her with position announcements, however, she did not apply for any of the openings.

The University relies on Board of Regents Policy Bulletin No. 36 which provides that temporary employees are appointed for only the specified period of time and purposes with no other interest or right accorded to the person appointed by virtue of such appointment. It further argues that the grievant did not present any evidence to establish discrimination and the "Policies and Procedures for Program Change" does not apply to temporary employees whose appointments expire or to this specific grievant as it was not made available to Deans and Directors until after her appointment had expired.

Although faculty members at institutions of higher education do not have the extensive statutory job protection afforded

public school employees, in March 1987, West Virginia University formally adopted in-house guidelines regarding personnel matters as a result of program changes. As the UACDD has lost one position this could accurately be characterized as a program reduction. The "Policies and Procedures for Program Change" provide that tenure, seniority, protection of minorities and women, program need and relocation potential are to be considered when making personnel decisions during a program reduction. The policy provides that "(w)hen programs are reduced, staff with the most seniority will be retained." In order for the reduced programs to remain academically viable "(t)he retained faculty may need to be retrained to meet the program need." To be in compliance with this policy, which in no way excludes temporary employees, the UACDD would have to release another employee with less seniority than the grievant.

#### Findings of Fact

1. The grievant has been employed at the University Affiliated Center for Developmental Disabilities (UACDD) at West Virginia University since 1976 and has most recently held the position of Research Assistant Professor.

2. The UACDD is solely funded through governmental and private grants and contracts.

3. The Department of Human Services eliminated the training and technical assistance position from the grant which funded the grievant's salary for the 1986-87 year.

4. The grievant was notified by letter of June 12, 1987 that her position would be terminated effective June 30, 1987.

5. Testimony indicates that the grievant was qualified for other positions at the UACDD although they may be at a lower salary.

6. The grievant was the most senior faculty member assigned to the UACDD.

#### Conclusions of Law

1. The nonrenewal of the most senior employee's annual appointment of employment as a result of a reduction in funding is contrary to West Virginia University policy that staff with the most seniority will be retained.

2. The nonrenewal of the grievant's employment was contrary to University policy.

Accordingly, the grievance is **GRANTED** and the respondent is **ORDERED** to reinstate the grievant to full employment with the UACDD in compliance with the "Procedures for Program Change" policy and to reimburse her for lost wages less any appropriate set off.

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 16, 1988

Sue Keller

SUE KELLER  
HEARING EXAMINER