



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

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

**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
GASTON CAPERTON
Governor

Offices
240 Capitol Street
Suite 515
Charleston, WV 25301
Telephone 348-3361

MICHAEL BENSON

v.

DOCKET NO. 89-BOR-100

WEST VIRGINIA UNIVERSITY

DECISION

Grievant, Michael Benson, is employed by West Virginia University (University) as a patrolman assigned to the Department of Public Safety and Parking Management. Mr. Benson filed a level one grievance on February 1, 1989 regarding the lack of a written policy for promotion. He requested that his questions in reference to a recently filled corporal position be answered and that an accountable promotional system be instituted.¹ Bob Roberts, Interim Director of the Department, responded at level one by providing a list of criteria considered as a basis for the promotion and the format followed in selecting the most qualified applicant. The grievance was denied following a

¹The grievant had applied for but did not receive the position of corporal.

hearing at level two and was subsequently appealed to level four where both parties agreed that the matter could be decided based upon the record.

In his level two appeal the grievant stated that the interviews were scheduled over a period of days and lacked uniformity in that not all applicants were interviewed by the same individuals and the interviewers failed to ask uniform questions of the applicants.² However, the grievant clearly stated that he was not questioning the propriety of the immediate past promotion but was "attacking" the process in general (T. pp. 17-18). His statement of the grievance at the hearing was as follows:

The reason why I'm here is a simple--I don't feel I'm asking for much. I'm just asking that an unwritten policy or procedure with the department be changed and become written and, as such, give a little more of a guideline or information as to the promotion process...

I feel that the promotional procedure here leaves a lot to be desired in the fact that there is nothing written that tells me what is going to happen or gives me some information to rely on so that I can better understand that procedure, or what type of procedure is going to be used in the promotion process. And I would like to see the University write some guidelines and instructions for the promotional process.

(T. p. 4.)

The grievant offered no evidence or testimony other than his own opinion and did not allege a violation of law

²Grievant's Exhibit No. 3 consists in part of nine questions, presumably asked of the applicants during the interview; however, no evidence was submitted by either party to establish their use.

or establish any violation of unwritten policy. However, the grievant's concerns were addressed by Wilson White, Manager of the Classified Employment Division of the Department of Human Resources, who explained that after applicants are screened by his Division to assure that they meet the qualifications for the position, the hiring department makes the final determination of which applicant is accepted. The only guideline provided to the department is that the selection be determined through a system of comparative analysis of the candidates in accordance with the principals outlined in the Affirmative Action Plan (T. pp 13-14).

Mr. Roberts, representing the University at level two, described the process used by the Department of Public Safety which he argues is consistent with University policy and procedure. Each candidate was awarded a number of points in the categories of evaluations, experience, longevity, motivation and interview responses. The candidate with the highest total score was awarded the position.

Because the grievant did not allege any specific violation regarding the filling of the position for which he applied, nor did he allege any defects in any written or unwritten policy, he has failed to state a claim upon which relief may be granted.

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

Findings of Fact

1. The grievant is employed by West Virginia University as a patrolman in the Department of Public Safety.

2. The grievant applied for, but did not receive, a position which he considered to be a promotion.

3. The grievant wants the Department to develop a written policy or procedure to provide information regarding promotion.

Conclusions of Law

1. A grievance means any claim alleging a violation, misapplication or misinterpretation of the statutes, policies, rules, regulations or written agreements any discriminatory or otherwise aggrieved application of unwritten policies or practices of the board; any specifically identified incident of harassment or favoritism; or any action, policy or practice. W.Va Code §18-29-2(a).

2. The grievant's desire that a written promotion policy be developed does not constitute a grievable issue as defined by statute.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Monongalia County or to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code §18-29-7) Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

DATED: December 29, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER