



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

CHARLES E. HARVEY

v.

DOCKET NO. CID-88-061

**WEST VIRGINIA GOVERNOR'S OFFICE
OF COMMUNITY AND INDUSTRIAL DEVELOPMENT**

DECISION

Grievant Charles E. Harvey filed a grievance October 11, 1988, alleging,

I was called to Director Reger's office in September prior to merit increases being awarded. I was asked if I would consider dropping a grievance that I had filed if I were given a merit increase. I replied that I would not. I did not receive a merit increase and feel that I was discriminated against because of having filed a grievance. I believe I have earned a merit increase and should receive one.

At Level I Grievant's immediate supervisor Sherron Higginbotham found,

I am sorry to inform you that I have no knowledge as to why you did not receive a merit increase. I was not asked by Paul Skaff or the Director (Jake Reger) for recommendations, nor were recommendations discussed with me.

His grievance was denied at Level II by Mr. Reger on October 31, 1988. Mr. Reger stated that during the meeting of October 24, 1988, to which Grievant had alluded, he had told Grievant that his performance did not justify his altering the recommendation of Grievant's manager Paul Skaff that

Grievant not receive a merit increase. On December 1, 1988, the Level III evaluator found that Grievant failed to show he was entitled to a merit increase. Grievant appealed to Level IV on December 12, 1988, and requested a decision on the evidence presented at the lower levels. A brief was received from Respondent February 2, 1989.¹

The record in this matter, that of the Level III hearing, provides limited information. At that hearing little distinction was made between sworn testimony and unsworn statements. For example, neither Grievant nor Mr. Reger testified but both made statements. In the interest of fairness, such statements are accepted insofar as they impart information but, even so, the facts of this case are difficult to discern.

The record does not provide Grievant's title,² although it does establish that he in some way handles vocational education programs for Respondent. He is directly supervised by Ms. Higginbotham, who also supervised four other employees. Grievant's next-immediate supervisor, Mr. Paul Skaff, who testified that it was his practice to make

¹ While Grievant requested December 23, 1988, to submit a brief on this matter and was advised that such brief could be submitted no later than January 31, 1989, no brief has been received from Grievant.

² While the participants at Level III clearly were knowledgeable of Grievant's title and duties and the makeup of Respondent's organization, unfortunately such information was not submitted into the record so that it could be reviewed at Level IV.

recommendations to the Director without consulting the front-line supervisors, testified that he did not recommend Grievant for a merit increase because Grievant had received one the year prior and "the amount of work did not change from March 1 [,1987], when you received one until the present" (Tr. 11-12). Director Reger stated that, just as he rarely fails to follow the managers' recommendations for merit increases, he found no reason not to accept Mr. Skaff's recommendations so he had not submitted Grievant's name for an increase. In his opening statement, Mr. Reger stated,

In making these recommendations, I evaluate employees on the quality work performance judged to deserve reward and honor as directed by Dudley's memorandum of January 8, 1987. Although I do not limit myself in evaluating employees to the following criteria, I do look at attitude, self-initiative, and overall job performance, which is above and beyond just getting the job done.

The "Dudley memo" Mr. Reger referred to is a January 8, 1987, memorandum from Lysander L. Dudley, Sr., Respondent's Director, requiring all Division directors to submit a list of employees to be considered for merit increases and stating, "In recommending employees for merit increases, Division Directors should evaluate employees on the quality of work performance judged to deserve reward or honor." Mr. Reger also denied that he had offered Grievant a merit increase in exchange for Grievant's dropping another grievance.

Grievant submitted no evidence that would support a conclusion that Mr. Reger's statement about the meeting is

less credible than his own. Furthermore, Grievant did not establish that the criteria applied were so unrelated to job performance as to be arbitrary. Finally, the only evidence Grievant presented on why he should receive a merit increase was testimony that the most difficult job in the division is to run the vocational education programs and Ms. Higginbotham's testimony that she would have rated him second to her. That evidence does not establish that he was entitled to a merit raise.³

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

Findings of Fact

1. Grievant was not recommended for a merit increase in September 1978 by Manager Paul Skaff because Grievant had received a merit increase the year before and the amount of work had not increased thereafter.

³ That is not to say that the record established that the criteria of Mr. Skaff and Mr. Reger were proper for evaluating employee work performance, as required by the Dudley memo, and that it was fair to deny Grievant a merit increase because "the amount of work" did not increase since the time Grievant had received a merit raise. However, without further evidence showing impropriety Grievant has not fulfilled his burden of proof.

2. Mr. Jacob Reger saw no reason to overturn Mr. Skaff's recommendation. He also applied the criteria of "attitude, self-initiative, and overall job performance" in recommending employees for merit increases.

Conclusions of Law

1. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. Payne v. West Virginia Department of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988); Hanshaw v. McDowell County Board of Education, Docket No. 33-88-130 (Aug. 19, 1988).

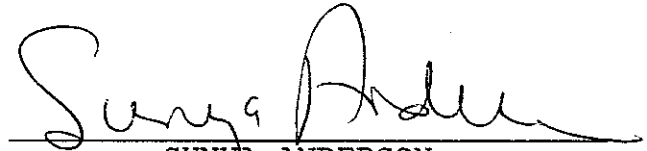
2. Grievant failed to show that Respondent's criteria for awarding merit increases were arbitrary or capricious or not in accordance with the directive that increases be awarded for "quality of work performance."

3. Grievant failed to show he was entitled to a merit increase.

Accordingly, this grievance is **DENIED**.

Either party or the West Virginia Civil Service Commission may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of this decision. W.Va. Code §29-6A-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 your intent to appeal so that the record can be prepared and transmitted to the appropriate Court.



SUNYA ANDERSON
HEARING EXAMINER

Dated: February 27, 1989