WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

GASTON CAPERTON
Governor

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

KAREN S. McCLURE and JANICE K. LAWRENCE

v. Docket Nos. 89-WCF-208/209

WEST VIRGINIA WORKERS' COMPENSATION FUND

D E C I S I O N

Karen S. McClure and Janice K. Lawrence are on staff with Respondent West Virginia Workers' Compensation Fund (WCF). Seeking promotion to Medical Claims Analyst positions, they initiated this grievance on March 1, 1989. After denials at Levels I, II and III,[1] Grievants, on May 12, advanced their cause to Level IV, where it was heard June 12.[2] Both parties presented proposed findings of fact

---

[1] The transcript of the Level III hearing has been made available to the undersigned and is part of the record at Level IV.

[2] Grievants submitted separate but parallel claims at Level IV, which were consolidated prior to hearing. Their complaints were considered jointly at the lower administrative planes, and it is unclear why they were originally filed individually with this Grievance Board.

and conclusions of law by the agreed-to deadline of June 30; accordingly, this case is mature for resolution.

The pertinent facts are essentially uncontroverted. Grievants, who have roughly ten years' service each with Respondent, were among eight applicants for three Analyst vacancies. At least five individuals, all then-current WCF personnel, were deemed qualified by the West Virginia Civil Service System and WCF; Grievants, and apparently the others, had good work records. Each was interviewed and asked a series of technical, Analyst-related questions by James D. McVey, Director of WCF's Claims Management Division. Based on the accuracy of answers and his personal knowledge of the applicants' past WCF job performance, McVey selected the three besides Grievants. He conceded at Level IV that in his view, Grievants could perform the Analyst function well and that, if there had been two more openings, he gladly would have selected Ms. McClure and Ms. Lawrence to fill them. Grievants did not assert that the three selected were not well-equipped to become Analysts,[3] only that they too were so certified and thus deserving of the posts.

---

[3] These three, Mary Fowler, Martha Gerse and Betty McGhee, appeared at Level IV and offered information concerning their Analyst jobs and the interview/selection process therefor. Carolyn Turner, WCF's Personnel Officer, also provided related testimony.

McVey, who has considerable experience in interviewing and hiring, has promoted both Grievants to higher positions during their tenure with WCF. Prior to his conducting the Analyst interviews, he reviewed the specific format not only with his supervisor but also with the Section Chief directly responsible for the Analysts, for their comments and criticism.

In support of their argument, Grievants cited Cowgill & Morris v. WCF, Docket #521 (W.Va.Civ.Svc.Comm. May 21, 1987).[4] Cowgill is, in part, parallel to the instant case, in that two WCF employees grieved their non-selection as Medical Claims Specialists.[5] A "hearing board" was convened, apparently by CSC, which rendered the following pronouncement:

> . . .Belinda Cowgill [shall] be awarded the first vacancy that occurs for the position of Medical Claims Specialist. Brenda Morris shall be given consideration for future openings because of additional experience not previously evaluated. The hearing board felt that the selection process did not consider all relevant information, and that after considering same, grievants' scores would place them competitive among the other candidates. The board recommended that results of evaluations be shared with internal applicants so they may better prepare for further consideration. The hearing board suggested the department refine the evaluation process to include consideration of

---

[4] This decision, styled an "Order of the Commission," was presented for this Grievance Board's review as Grievant's Exhibit 7.

[5] Cowgill was heard and decided by the West Virginia Civil Service Commission prior to the establishment of the state employees' grievance procedure, W.Va. Code §§29-6A-1 et seq., administered by this Grievance Board.

> annual evaluations, past relevant experience, and other such pertinent information. The board further recommended that use of accrued leave, either annual or sick, should not be negatively rated in an applicant's promotion scale unless there is specific documented evidence of abuse of that leave.

Cowgill at 2, 3. CSC's decision was an in toto concurrence with the hearing board's conclusions.[6]

This Grievance Board notes that much of Cowgill is in the form of recommendation and not directive. While CSC ordered, for instance, that WCF place Ms. Cowgill in the next available Medical Claims Specialist position, it merely suggested that the agency, in future hirings, refine its evaluation procedures so that all available pertinent information is included, decline consideration of leave use without abuse, and provide "reasons why" to non-successful job applicants for their future reference. Nonetheless, it appears WCF substantially complied with Cowgill in this scenario. There is no evidence whatsoever that Grievants' use of leave was considered in a negative light or that Grievants would have been refused an explanation for their non-selection had they requested the same. Further, Grievants' Analyst applications, Gr. Ex. 1, 4, containing employment history and other particulars, were reviewed by CSC and WCF personnel and passed along to McVey; at least certain of each Grievant's recent performance evaluations

---

[6] The undersigned is unsure of how, procedurally, or why the Cowgill matter was advanced to CSC for its review.

were known to McVey, as indicated by his signature thereon; and, because of his position, he had personal knowledge of each applicant and her WCF experience.[7]

The remainder of this Decision will be presented as formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievants, employees of Respondent West Virginia Workers' Compensation Fund (WCF), applied for advancement to Medical Claims Analyst slots, of which there were three. All candidates were interviewed by WCF Claims Management Chief James D. McVey, who asked a series of technical questions concerning Analyst duties.

2. Grievants were qualified to become Analysts but were not selected based upon their answers and McVey's overall assessment of all applicants. McVey was favorably impressed with Grievants and, had there been two more Analyst vacancies, they would have been chosen.

3. The three successful applicants were qualified for and able to assume the Analyst jobs.

---

[7] This is certainly not to suggest that WCF's hiring practices could not bear improvement, or that more thorough adoption of the Cowgill recommendations are not desirable.

CONCLUSIONS OF LAW

1. Decisions on promotion are generally the prerogative of management. Individuals selected should be qualified and able to perform the duties of their new positions. In the absence of unreasonableness or arbitrary or capricious behavior on the employer's part, such decisions will not usually be overturned. Riffle v. W.Va. Dept. of Health, Docket No. 89-H-053 (July 21, 1989).[8]

2. In order to prevail, Grievants must prove their claims by a preponderance of the evidence. Payne v. W.Va. Dept. of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988).

3. Grievants have failed to establish that Respondent's selection of three other applicants for promotion to Analyst was in any way improper. In this regard, they have not shown any flaw in the interview/hiring process so significant that, if it had been eliminated, the outcome

---

[8] Grievants, in their proposals as to law, have cited Morgan v. Pizzino, 256 S.E.2d 592 (W.Va. 1979), for the principle that "[p]ersonnel laws are to be strictly construed in favor of personnel, and regulations and statutes for their protection." Although this maxim may extend beyond education employees, Morgan itself specifically relates only to them. It should be noted that the Morgan rule relates to school personnel overall and "is no guarantor that...[an individual] employee...will always be the prevailing party in a work-related dispute." Burdette v. Kanawha Co. Bd. of Educ., Docket No. 20-88-263 (Mar. 16, 1989), n. 3; see also Fairchild v. Boone Co. Bd. of Educ., Docket No. 03-88-160 (Dec. 7, 1988), n. 5.