



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

ELIZABETH ROCOVICH

v.

DOCKET NO. 89-BOR-90

WEST VIRGINIA UNIVERSITY

DECISION

Grievant, Elizabeth Rocovich, is presently employed as a Technical Secretary V assigned to the Department of Microbiology and Immunology at West Virginia University (University). Ms. Rocovich alleges that she was demoted from the position of Office Manager I, in violation of W.Va. Code §§18-26B-5(f) and 18-26-27, Board of Regents Policy Bulletin 62, West Virginia University Classification and Compensation Policy, the "Employee Handbook", her contractual rights, and rights of due process set forth in the West Virginia University Policies and Procedures for Program Change. She further alleges harassment, discrimination and reprisal.

The grievant has been employed at West Virginia University for approximately seventeen years and has served as Office Manager for the Department of Microbiology since November 1973. On or about September 22, 1988 Dr. Irwin Snyder, Chairman of the Department, advised the grievant that the position of Office Manager was to be eliminated and offered her the vacant position of Technical Secretary which she accepted by letter dated September 27.¹ On November 9 Ms. Rocovich filed a level one grievance as a result of the loss of her position of Office Manager. As her immediate supervisor, Dr. Snyder denied the grievant's request to remain as Office Manager on November 15, 1988 but stated that as Technical Secretary her salary would remain the same as that of Officer Manager, pay grade 8, with all future raises to be based upon her current salary.

The grievant appealed the level one decision on December 1 prompting a memorandum from Dr. Snyder dated December 5 in which he advised her that his interpretation of the appeal was a refusal of his "offer" which had been made dependent upon its being in compliance with Board of Regents and West Virginia University regulations. As she had refused to accept his level one decision she would be appointed as Technical Secretary, pay grade 5, effective

¹The position of Office Manager was being replaced with that of an Accountant to better meet the Department's needs as confirmed by the Division of Human Resources.

December 6. Ms. Rocovich responded by filing a second grievance on December 12 in which she alleged that Dr. Snyder's action to reduce her salary and paygrade was reprisal for her attempt to redress her previous grievance. Dr. Snyder also denied this grievance at level one but granted the grievant's request that the two matters be consolidated.

Herman Mertins, Jr., Vice President for Administration and Finance, acting on behalf of President Neil Bucklew denied the grievance at level two on the grounds that it had been untimely filed. The basis for the decision was that the grievant accepted the position of the Technical Secretary on September 27 and was advised of her options, including the filing of a grievance, on October 6 but did not file the level one grievance until November 8. The University asserts the issue of timeliness at level four based upon the previously stated facts and further characterizes the grievant's excuses for the delay in filing as immaterial and irrelevant resulting in an abuse of process. The grievant's explanations for the delay in filing are that she had little knowledge of the grievance procedure, that she avoided the grievance procedure because it was painful and with problems at home she did not think she could handle it and that she had been trying to handle the matter informally.

Evidence supports the contention that the grievant discussed the assignment change with many individuals

including Lois Williams, an Office Manager in the Department of Anatomy, who supported the grievant and attended meetings with her and Charlie Irwin, the Medical Center Human Resources Officer. The grievant also sought advice from Dr. Traffetes, a faculty member; Susanna Renahan of the Division of Human Resources; Karen Riffle, Budget Officer at the School of Medicine; and Paul Walden, Staff Council President. It also appears that these contacts were all made in September and that at least two individuals, Charlie Irwin and Paul Walden, advised the grievant of her right to file a grievance. Ms. Williams testified that when Mr. Irwin advised the grievant of her right to file a grievance her response had been that she did not want to because individuals who file grievances are not respected and other employees avoid associating with them. The grievant herself stated at the level four hearing that she had paid no attention to timelines but that when the accountant arrived and her new assignment became effective she decided that "[i]f I do anything it has to be now."

Unfortunately the grievant's realization that she should do something occurred after she lost the right to file a grievance. Attempts to informally resolve a matter are encouraged; however, the grievance was not filed until nearly six weeks after the last informal attempt at resolution. Further, the grievant's attitude, as evidence by her own testimony and that of others, was that she specifically

did not want to file a grievance and did so only when she became desperate.

The purpose of the grievance procedure as stated in W.Va. Code §18-29-1 is to provide a means by which employees and their employers may resolve problems which arise between them within the scope of their respective employment relationships. The grievance procedure is to be conducted in a fair and expeditious manner to quickly resolve work-related problems. Hence, the employee is required to timely bring the employment problem to the attention of her employer as per W.Va. Code §18A-29-4. The grievance procedure is not available to those employees who do not diligently seek resolutions to their problems. As this grievant did not file a grievance as a result of the elimination of the position of Officer Manager within the statutory timelines and has shown no unavoidable cause for delay, the grievance is untimely.

The grievance relating to the charge of reprisal was timely filed; however, the allegation is not supported by the evidence. Margaret Phillips, Manager of the Classification and Compensation Unit, and Deborah Fusco, Compensation Analyst, both of the Division of Human Resources, testified at the level four hearing that a reorganization of the Department of Microbiology and Immunology resulted in the elimination of the position of Office Manager. This action would have left the grievant unemployed if she had

not chosen to accept the vacant, existing position of Technical Secretary.

This movement from a position requiring a certain level of skill, effort and responsibility to another position requiring a significantly lesser degree of skill, effort and responsibility constitutes a demotion as defined by Board of Regents Policy Bulletin No. 62. A demotion results in a change of classification for the employee and requires the appropriate reduction of salary.

An application of these policies to the relevant facts establishes that: (1) the Department of Microbiology and Immunology was properly reorganized to better meet the needs of the staff; (2) the reorganization resulted in the elimination of the position of Office Manager; (3) the grievant was unable to transfer to a similar position and would have been unemployed but for the Department's offer of the position as Technical Secretary; (4) the grievant accepted the position of Technical Secretary with the knowledge that it was a lower-paying position; and (5) transferring to a position requiring a significantly lesser degree of skill, effort and responsibility constitutes a demotion which results in the employee receiving a lesser salary. Accordingly, Dr. Snyder's offer to maintain the grievant's salary at pay grade 8, while well intended, was contrary to Board of Regents and University policies and could not have been granted. Furthermore, since the grievant appealed the level one decision any perceived retraction of the invalid offer

by Dr. Snyder had no effect on the grievant in any event. The grievant has failed to prove the allegation of reprisal.²

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 has been employed at West Virginia University for approximately seventeen years and is presently assigned as a Technical Secretary in the Department of Microbiology and Immunology. Prior to this assignment the grievant worked as the Department's Office Manager.

²It is of interest to note that prior to the Department's reorganization the grievant had advised Dr. Snyder on numerous occasions that she was not capable of handling the work generated by the office, that she was looking for another position, and that she was interested in working only part-time. As per the grievant's suggestion an accountant was hired to handle the paperwork generated by the faculty relating to the procurement and implementation of grant money. With this position in place there was no longer a need for an Office Manager. The position of Technical Secretary was offered to the grievant on a full or part-time basis at her election. The Department appears to have granted the grievant's wishes to be relieved of responsibilities she did not want and has made possible her desire to work part-time. Now it seems she has changed her mind; however, the reorganization was properly enacted and the grievant was not demoted in violation of any rights which she has as an employee. The situation would more accurately be characterized as the Department giving her an opportunity to remain employed, albeit at a lower classification.

2. In September 1988 Department Chairman Dr. Irwin Snyder advised the grievant that the position of Office Manager was being eliminated but offered her the vacant position of Technical Secretary which she accepted by letter dated September 27.

3. The grievant discussed her employment options with numerous individuals and was advised by at least two of them of her right to file a grievance.

4. There is no indication that the grievant continued any attempts at an informal resolution after her acceptance of the secretarial position in September.

5. Evidence establishes that the grievant specifically did not want to file a grievance and only did so as a last-ditch effort after the office reorganization was implemented.

Conclusions of Law

1. The grievance procedure must be initiated by the employee within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance. W.Va. Code §18-29-4(a)(1).

2. A delay in the filing of a grievance beyond the statutory time limits results in the loss of the grievance.

Sprout v. Harrison County Board of Education, Docket No. 17-86-124 (August 24, 1989); Archibald v. Randolph County Board of Education, Docket No. 42-88-171 (December 9, 1988).

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: August 29, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER