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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**

GASTON CAPERTON
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JAMES M. WILLIAMSON

v.

Docket No. 89-DHS-33

**W.VA. DEPARTMENT OF HUMAN SERVICES AND
W.VA. CIVIL SERVICE COMMISSION**

DECISION

Grievant James M. Williamson is an employee of Respondent West Virginia Department of Human Services. On January 25, 1989, he filed the following statement of grievance at Level IV:

The reclassification of E.S. Technician II to Employment Relations Technician is in effect a demotion without just cause and the job duties and responsibilities are equal to or greater than before. RELIEF SOUGHT: Reinstatement back to paygrade 14 or above.

Inasmuch as the grievance form did not indicate whether this matter had been considered at lower levels of the grievance procedure, the undersigned, by letter of January 31, 1989 to Robert McCauley, Grievant's representative, inquired into the history of this case. Grievant himself responded by correspondence of February 6, 1989, as follows:

I am requesting a hearing at Level IV. . .based upon the fact that I was demoted. . .without just

cause while my job duties and responsibilities remain equal to or greater than before.

This is why I have utilized the expedited grievance procedure process as outlined in the July 1, 1988 State Employees Handbook.¹

By letter of February 7, 1989, the undersigned requested further information from Mr. McCauley, i.e., whether or not the alleged demotion was asserted to be for disciplinary reasons. McCauley has advised this Grievance Board, by writing of February 14, that Grievant is not contending any disciplinary motivation on Respondent Department of Human Services' part in these proceedings.

W.Va. Code §29-6A-4(e) is titled "Expedited grievance process" and provides, as applicable, as follows:

An employee may grieve a final action of the employer involving a dismissal, demotion or suspension exceeding twenty days directly to. . . [Level IV].

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

¹ It is presumed Grievant is referring to "State Employee Grievance Handbook," a publication of the West Virginia Civil Service System. It should be noted that, despite appearances, this Grievance Board neither took an active role in the creation of that booklet, nor has it published anything similar.

FINDINGS OF FACT

1. Grievant, an employee of Respondent West Virginia Department of Human Services, claims he has been reclassified from E.S. Technician II to Employment Relations Technician, which reclassification he characterizes as a demotion.
2. Grievant does not assert any disciplinary motivation on the part of the Respondent Department of Human Services in this case.

CONCLUSIONS OF LAW

1. A West Virginia state employee who has been the subject of demotion may file a complaint directly at Level IV of the grievance procedure. W.Va. Code §29-6A-4(e).
2. It is the intent of the grievance procedure law that grievances be resolved at the lowest level possible. Code §29-6A-1. Accordingly, exceptions to instituting a grievance at Level I, e.g., Code §29-6A-4(e), must be stringently limited.
3. "Demotion" for purposes of Code §29-6A-4(e) is defined as a decrease in employment rank, title and/or pay for

disciplinary reasons, e.g., immorality, incompetency, cruelty, insubordination, intemperance or willful neglect of duty. See Code §18A-2-8.

4. Employment reclassification, without disciplinary intent, is not a demotion within the meaning of Code §29-6A-4(e), just as termination due to a reduction-in-force is not a dismissal in certain public employment contexts, e.g., Code §18A-2-8. "The exigencies of reassignment and transfer normally incident to . . . employment in the private sector of business and industry should generally be assumed normal incidents of government employment, without regard to the specific motivation behind a challenged transfer or reassignment." Delong v. United States, 621 F.2d 618, 624 (4th Cir. 1980).

5. Grievant having failed to pursue administrative exhaustion, this Grievance Board is presently without jurisdiction to consider the merits of this case.

Accordingly, this grievance is **DENIED**, without prejudice to Grievant's institution of an identical claim at Level I. It is **ORDERED** that Respondents shall consider the

time for Grievant to initiate his grievance at Level I as commencing five (5) days beyond the date of this Decision.²

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. See W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board or 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.

A handwritten signature in cursive script, appearing to read "M. Drew Crislip", is written over a horizontal line.

M. DREW CRISLIP
HEARING EXAMINER

Dated: February 27, 1989

² Since the West Virginia Civil Service Commission is already a party-respondent, it is anticipated that resolution of this matter might likely be arrived at without return to Level IV.