WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

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CARL STEELE, LARRY HECK, ELAINE RIGGS, CHARLES CURNUTTE, MICHAEL DILLON, DONALD NELSON, OLIVIA MAZE & CHARLES HUGHES

v. **Docket No. 89-50-260**

WAYNE COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants are professional and service employees of Respondent Wayne County Board of Education. All are assigned to the Northern Wayne County Vocational-Technical Center[1] and filed the following complaint at Level IV on June 14, 1989:

> Violation of. . .[W.Va. Code §]18A-4-5a in regard to payment of vocational teachers in violation of . . .[W.Va. Code §]18-29-2 sections m, discrimination, and o, favoritism. Relief sought is uniform payment of summer school under grievants' contracts of employment.

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[1] Messrs. Steele, Curnutte, Dillon and Nelson are teachers; Mr. Heck is the director; Ms. Riggs is a secretary; and Ms. Maze and Mr. Hughes are custodians.

Prior thereto, a similarly-worded claim, reproduced infra and dated May 31, 1989, was denied at Level I,[2] and the grievance as stated above was disallowed relief at Level II[3] and waived at Level III per Code §18-29-4(c). After filing at Level IV, the parties agreed to submit the matter for decision on the record adduced below, and to present proposed findings of fact and conclusions of law by August 31. These documents were timely received; thereafter, the undersigned requested additional information and such was provided by September 29, rendering the case mature for disposition.

Grievants each claim to have held a 200-day-plus employment contract during school year 1987-88, with service beyond 200 days to be performed during Summer 1988.[4] Even

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[2] The photocopy of the Level I response provided in the Level IV record is partially illegible, so precisely what action Grievants' immediate supervisor took is not clear. It is assumed that the matter was processed properly at that step and that relief was denied based on lack of authority to grant the same.

[3] The Level II hearing transcript is part of the Level IV record.

[4] In a previous grievance, Steele v. Wayne Co. Bd. of Educ., Docket No. 50-87-261-1 (May 31, 1988), Grievant Steele conceded that his contract was for 200 days, with only a contingency agreement for summer work beyond that. However, the evidence herein is to the contrary, and Respondent has not refuted the same.

Grievants have not been consistent in their claims as to the number of days' employment they are contractually promised. At one point, all Grievants say they were deprived of 40 days of work; at another, some claim that figure is only 20, 30, or 35 days with regard to them. This Grievance

(Footnote Continued)

though the Wayne County Board of Education did not, for pertinent purposes, provide or pay for summer employment in 1988, several other of its staff members, in two separate grievance decisions, were awarded pay under their contracts for that period. Marcum v. Wayne Co. Bd. of Educ., Docket No. 50-88-167 (Nov. 28, 1988) (service), and Phillips v. Wayne Co. Bd. of Educ., Docket Nos. 50-88-175/197 (Feb. 8, 1989) (professional). Another vocational teacher, Mr. Doug Adkins, who was not party to Phillips or any related grievance, also was paid for Summer 1988.

By its proposals, Respondent urges this Grievance Board to find as fact that Grievants did not initiate this complaint over the payment to Mr. Adkins, but on the basis of the Phillips decision and that it is thus untimely per W.Va. Code §18-29-4(a). It is true that the original Level I grievance read as follows, emphasis supplied:

> March 27, 1989 [,] [w]e learned that payment was granted for summer employment 1988 to some employees and not all that was affected. We feel that we are entitled to payment for 40 days work as has been granted to other employees with contracts the same as ours.
>
> . . .
>
> Payment has been received by employees for summer work through grievance procedures for summer 1988. Therefore we the. . .[Grievants] feel we are entitled to payment for . . . days, that we were denied opportunity to work.

(Footnote Continued)
Board will leave details such as these to the parties to resolve between themselves.

Indeed, even the grievance as it was filed at Levels II, III and IV references payment of "vocational teachers," which must refer to the Phillips grievants, since not all of Grievants herein are teachers. Further, Grievants' representative, in opening statement at Level II, explained,

> [G]rievants were of the impression and understanding that past practice would guarantee back payment to them also [since the Phillips grievants won backpay]. Time lines are not an issue here today, since the [G]rievants filed within the time line of. . .[W.Va. Code §]18-29-3 in regard to their knowledge of payment to Teacher Doug Adkins.
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> The [G]rievants seek relief by being paid back wages lost and all benefits as awarded on the Jim Phillips decision at Level IV.

At Level II, Grievant Steele testified that he was grieving the fact that his "contract has been deleted and changed to 200 days"; that Mr. Adkins "was paid, and we were refused payment"; and that "[b]ecause when I won a grievance approximately a year ago, other people. . .were paid that were not a part of the grievance. . .[a]nd I felt that we should be paid even though we weren't a part of this [Phillips] grievance." T. 7-8.[5] Grievant Heck stated that he was not party to Phillips because "I was under the understanding by the Board of Education that it would be paid," T. 11, although on cross-examination, he admitted that "I just heard it, just rumors." T. 12. His only professed knowledge of Mr. Adkins' payment was "hearsay." T. 11.

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[5] According to the record in the Phillips case, Mr. Steele indeed was a party thereto through Level I.

Grievant Riggs likewise knew "[o]nly hearsay" concerning Mr. Adkins. T. 15. She was not part of the previous grievance because she "did not know the grievance was being filed at the time." Id.[6] She understood "through past practices" that she "would probably be awarded. . .back pay" since the Phillips grievants were successful; she had been "told by other people who received pay when a grievance was settled, that other people in the same situation would be paid, if everybody files a grievance or not." T. 15, 16. Grievant Curnutte averred that he was "grieving, really, more than anything else, because other people have been paid when they didn't work. . .[a]nd I feel that we should also be paid." T. 18. He had no direct knowledge of payment to Mr. Adkins and "was really not aware that counties proceeded" to award non-grievants the same relief granted successful grievants. He was not part of the original grievance because he "really didn't know it was being filed," [b]ecause the filing was from another school. . .[a]nd it's one of those deals where it's already filed before you are aware of anything, basically."[7]

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[6] It is difficult to believe that at least some of Grievants, besides Mr. Steele, were not aware of Phillips at its inception, in that all are represented by and presumably members of the West Virginia Education Association. WVEA acted as consultant to eleven of the fourteen grievants in Phillips and perhaps also to Mr. Steele at Level I of that case.

[7] It is noted that all Grievants, including Mr. Steele
(Footnote Continued)

Grievant Dillon declared he asked Mr. Adkins "personally if he had filed a grievance with the original group. . .[h]e said, no. . .I asked him if he had been paid. . .[and] [h]e said. . .he had been." T. 23. Dillon understood "[f]rom the knowledge I have received" that past practice applied to the Phillips outcome would afford him backpay, although he admitted this information was not gleaned from Superintendent Ferguson. T. 23-25. He too, "was not aware that the [Phillips] grievance was filed," at least at the time it was initiated. T. 23. Grievant Nelson had "[o]nly hearsay" knowledge of payment to Mr. Adkins, and he is grieving "[e]qualization of pay." T. 26. He was not part of the Phillips grievance because he "heard that there was a grievance filed by Mr. Steele when he worked twenty days and then stopped, I think. . .[b]ut I thought that it was only meaning for a portion of the term. . .[,] [a]nd the other part, I knew nothing about. . .I did not hear anything about the filing of the grievance." Id.[8]

Grievant Maze said that she, too, understood past practice to guarantee her the same backpay awarded other employees through the grievance procedure, although that did

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(Footnote Continued)
and Mr. Curnutte, are and have been employed at the same facility. See Steele (May 31, 1988).

[8] It is not absolutely clear whether Mr. Nelson was referring to Steele (May 31, 1988), to Mr. Steele's lower-level involvement in the Phillips grievance, or to another matter.

not come from Superintendent Ferguson or anyone from his office. She knew nothing of payment to Mr. Adkins, and did not know about the original grievance at the time it was filed. T. 28-29. Grievant Hughes explained his claim was based on the fact that he "had a 240-day contract and wasn't paid for it" and his "understanding that some other people were." He was not a part of the original grievance because "I was not aware that there was a grievance, that I had a right." T. 30.

Superintendent Ferguson testified that Mr. Adkins, although not part of any related grievance, was paid for Summer 1988 based on Steele v. Wayne Co. Bd. of Educ., Docket No. 50-87-261-1 (May 31, 1988). Ferguson quoted from this decision, at p. 11, "the Board [of Education] is bound to offer. . .employment to [the] grievant for the period of time in which [the] grievant meets proper quota," and went on to explain that Mr. Adkins' normal assignment, the Governor's Summer Youth Program, was indeed "offered and. . .in effect during the summer of 1988," and, "I felt that from a legal point of view, I was required to issue payment to him."[9] Ferguson added that no Grievant herein met "student enrollment requirements necessary to effect a responsible, efficient, needs-based summer program." He

[9] Superintendent Ferguson, in affidavit, explained that the State of West Virginia staffed and ran the program in Wayne County in 1988, and not the Board of Education.

characterized the within claim as untimely since it, like Phillips and Marcum, "arose in June of 1988," when Grievants were first aware they would be denied work for that summer.[10] T. 34-35.

Respondent's fact-law proposals also credit Steele with prompting Mr. Adkins' payment. Confusingly, however, in affidavits submitted post-hearing, Superintendent Ferguson denied that Mr. Adkins was paid pursuant to Steele; instead, he then cited Phillips as the basis. This late assertion is clearly more plausible, since Mr. Adkins was not compensated until March 8, 1989, and the decision to take this action was made approximately March 1. Ferguson attested that the "Wayne County Board of Education paid Mr. Doug Adkins because of the Phillips decision and because he was the only employee outside of the successful grievants in the Phillips decision who had a summer program. . .[n]one of the present [G]rievants. . .had participated in the governor's summer youth program." Furthermore, Mr. Owen Haney, the only other teacher involved in the Governor's program, and coincidentally a Phillips grievant, was not paid after Steele was

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[10] Mr. Ferguson also stated that Phillips "ruled that those persons who grieved were to be awarded payment without working because of a technicality in the wording of their contracts." T. 34. To the contrary, the Phillips grievants who prevailed did so due to the failure of the Wayne County Board of Education to comply with statutory procedure.

handed down. It is accepted that Mr. Adkins was paid on the basis of Phillips and not Steele.[11]

Grievants' assertions will be analyzed separately. First of all, Grievants simply cannot stand on any past practice exhibited by Respondent toward non-grievants who happened to find themselves in parallel work situations to successful grievants. There has been no proof that Respondent has ever adopted any policy of "transforming non-grievants into co-grievants" or, indeed, that such has been the routine practice in Wayne County. Furthermore, Grievants have presented no basis upon which they could reasonably rely that such was the case. It is rather amazing that some employees assume they have "piggy-back privileges," i.e., none of the investment but all of the return. Grievances are in essence an individual and not a tag-team endeavor; otherwise, Respondents would effectively be denied the timeliness defense provided them by Code §§18-29-3, 18-29-4(a). Administrative adjudications, like

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[11] Even if Mr. Adkins was belatedly paid under the auspices of Steele, it is of no moment. Steele's thrust is that a county board of education may establish a needs-based summer program, and that the grievant therein was due employment for any period he was under contract and met certain conditions; however, Mr. Adkins was not party to that action. It could be said that under the rationale of either Phillips or Steele Respondent should have paid Mr. Adkins for Summer 1988 since he had a contract therefor. It did not, and the question thus becomes whether there is significant enough distinction between Mr. Adkins and Grievants to justify Respondent's action of paying him and not them.

most dispute resolutions, generally affect directly only the parties thereto, at least in the area of retroactive remedy. If a county board of education chooses to grant like relief to non-parties, it is certainly within its authority to do so.[12] However, there is no universal entitlement to such consideration, and clearly, Grievants have demonstrated none herein.[13]

Nor do Grievants have any advantage because they "did not know" about the previous grievance,[14] even if the decision thereon made them aware they should have been compensated under their contracts. It was their non-payment for Summer 1988 that at least originally gave rise to this concern, and they clearly were cognizant of that at the time it happened. Cf. Harris & Tackett v. Lincoln Co. Bd. of Educ., Docket No. 89-22-049 (Mar. 23, 1989).[15] To the extent Grievants have attempted to ground their claim on

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[12] This is not to say that consequences may not flow from this choice, e.g., the instant grievance.

[13] It is particularly surprising that Grievant Steele would claim such privilege, since he withdrew from the Phillips matter prior to Level IV resolution. His chagrin at doing so is quite understandable, however.

[14] The reader's attention is again invited to n. 5, 6, 13. It is noted that many of these Grievants were very careful to say that knew nothing of the Phillips grievance at the time it was filed, as opposed to learning about it prior to final decision on February 8, 1989.

[15] See also the related cases of Isaacs v. Lincoln Co. Bd. of Educ., Docket No. 22-88-122 (Sept. 28, 1988), and Watts v. Lincoln Co. Bd. of Educ., Docket No. 89-22-054 (Apr. 28, 1989).

Phillips or Marcum, there is no viable basis for doing so, and this grievance must be absolutely denied. It also must be rejected, as untimely, to the extent it was based on Respondent's June 1988 failure to honor their contracts. W.Va. Code §18-29-4(a).

It is clear that if these Grievants are to prevail, they must do so on the strength of the payment to Mr. Adkins. While it appears unlikely that some and perhaps any of Grievants knew of this March 8, 1989, occurrence when they initiated this case at Level I, the fact that he was remunerated and at this point in time, a quite fortuitous circumstance for them since it cures their timeliness defect,[16] certainly became an issue at Level II and was effectively amended into the complaint. See Code §18-29-3(j). Respondent did not meaningfully object to this joinder of issues and, indeed, squarely addressed the same in argument, although it was not dealt with in the Level II decision.

The payment to Mr. Adkins must first be looked to in light of Phillips. According to Superintendent Ferguson, Mr. Adkins was granted salary pursuant to that pronouncement because the Governor's Summer Youth Program was offered in Wayne County in 1988. The Phillips teachers were successful

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[16] Respondent did not specifically argue Grievants' case was untimely if based on Mr. Adkins' payment. However, it appears that the claim was instituted within an acceptable period of time thereafter. Code §18-29-4(a).

since they had valid contracts of employment for the period in question and not for any other reason; the viability of the Governor's Program in Wayne County in 1988, in and of itself, was irrelevant. This Grievance Board certainly does not want to discourage the following of precedent or encourage resort to litigation every time a potential conflict between employee and employer arises. Labor and management would do well to educate themselves as to Grievance Board and other-forum decisions and attempt to apply them to their professional situations; however, they would be well-advised to seek informed counsel in the process. In this instance, it appears that Mr. Adkins' payment was based upon a good-faith misinterpretation of Phillips. The result is, one employee who did not choose to pursue rights through the grievance procedure received the benefit thereof, while others who also did not litigate, did not. In short, Mr. Adkins was not paid because this Grievance Board ordered it but because Respondent considered him similarly-situated to at least one of the successful grievants in Phillips since he had a contract for summer employment and because his program was extant in Summer 1988.[17]

Grievants argue lack of uniformity, discrimination and favoritism in this scenario. The lack of uniformity argument, i.e., Mr. Adkins' reimbursement versus their

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[17] Appearances are that Mr. Adkins, had he been party to Phillips, would have prevailed due to his contract alone.

non-payment, must fail as it is posed by the service employees herein, since Mr. Adkins is a professional and there is no requirement of pay or other uniformity between professional and service staff. Compare Code §§18-4-5a, 18-4-5b. The uniformity theory likewise is without merit with respect to the professional Grievants. Code §18A-4-5a requires that persons performing like duties be offered only identical salary supplements, benefits, and additional-employment increments or compensation, and as such is inapplicable to this situation.

Code §18-29-2(m) provides,

> "Discrimination" means any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees.

Grievants have the burden of proving their allegations by a preponderance of the evidence. Smith v. W.Va. School of Osteopathic Medicine, Docket No. BOR88-051-4 (Sept. 29, 1988). Generally, in discrimination cases, the movant's obligation to establish his charges may be met at least initially by a prima facie showing. See, e.g., W.Va. Inst. of Technol. v. WVHRC & Zavareei, ___ S.E.2d ___ (W.Va. June 28, 1989). Such a standard is expressly adopted herein with regard to the education employees grievance procedure, just as was recently accomplished in reprisal matters. Webb v. Mason Co. Bd. of Educ., Docket No. 89-26-56 (Sept. 29, 1989).

In Zavareei, at Syl. 1-3, the Court held:[18]

> 1. "In order to make a prima facie case of. . .discrimination under the West Virginia Human Rights Act. . .the plaintiff must offer proof of the following: (1) That the plaintiff is a member of a protected class. (2) That the employer made an adverse decision concerning the plaintiff. (3) But for the plaintiff's protected status, the adverse decision would not have been made." [Citations omitted]
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> 2. The complainant's prima facie case of. . .discrimination can be rebutted by the employer's presentation of evidence showing a legitimate. . .nondiscriminatory reason for the employment-related decision in question which is sufficient to overcome the inference of discriminatory intent.
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> 3. The complainant will still prevail in a. . .discrimination case if. . .[he or she] shows by the preponderance of the evidence that the facially legitimate reason given by the employer for the employment-related decision is merely a pretext for a discriminatory motive.

The West Virginia education employees' grievance procedure, W.Va. Code §§18-29-1 et seq., contains a significantly more expansive definition of "discrimination" than does the West Virginia Human Rights Act.[19] The Zavareei standard can nonetheless be applied to the case at bar, but not without substantial modification. A grievant's prima

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[18] Zavareei is a case involving disparate impact, due to national origin, in the workplace. Its statement of prima facie standards, however, is readily adaptable to discrimination cases in general. See Price Waterhouse v. Hopkins, 109 S.Ct. 1775, 1787, n. 9 (1989); Shepherdstown VFD v. State, 309 S.E.2d 342 (W.Va. 1983).

[19] W.Va. Code §§5-11-1 et seq.

facie showing under Code §18-29-2(m) is deemed to consist of establishing:

> (a) that he is similarly situated, in a pertinent way, to one or more other employee(s);
>
> (b) that he has, to his detriment, been treated by his employer in a manner that the other employee(s) has/have not, in a significant particular;
>
> and,
>
> (c) that such differences were unrelated to actual job responsibilities of the grievant and/or the other employee(s), and were not agreed to by the grievant in writing.

Once a grievant has successfully completed his prima facie case, the burden of production shifts to the respondent, requiring it to reveal a "legitimate, nondiscriminatory reason" for its action or to default.[20] If the respondent is successful in establishing such reason, the grievant has an opportunity to overcome the same by showing the reason given to be mere pretext. Zavareei; Frank's Shoe Store v. WVHRC, 365 S.E.2d 251 (W.Va. 1986); Webb.

In this case, Grievants have established prima facie discrimination. They have shown that they, like Mr. Adkins, had contracts covering Summer 1988 employment; that Mr. Adkins was afforded full pay for Summer 1988, while they received nothing; and that neither they nor Mr. Adkins

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[20] While the burden of production may shift, the overall burden of proof never does. See Texas Dept. of Comm. Aff. v. Burdine, 450 U.S. 248 (1981).

performed any service for Respondent whatsoever during that period.[21] However, Respondent came forward with a plausible nondiscriminatory explanation for the discrepancy, namely, its interpretation of a Grievance Board decision, Phillips, and its subsequent belief that the law required it to compensate Adkins for the summer due to the extantacy of the Governor's Summer Youth program. Unfortunately for Respondent, the requirement is that the reason be not only discriminatory but also legitimate, and to be so, it cannot be the result of a misapprehension of the law, even a good-faith one. See Pittman v. Hattiesburg Munic. Sep. School Dist., 644 F.2d 1071 (5th Cir. 1981); see also Zavareei. The undersigned can perceive an interpretation of Phillips which would at least suggest the propriety of payment to an employee in Mr. Adkins' posture, although such is an erroneous one since it excludes personnel such as Grievants. Therefore, Respondent's reliance thereon to justify its payment to Mr. Adkins cannot render it a "legitimate" reason for differentiating between him and Grievants.[22]

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

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[21] It is clear that the only written agreements in issue are Grievants' contracts, and that none of Grievants consented in any way to their Summer 1988 non-payment.

[22] "Favoritism," which "means unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees," Code §18-29-2(o), need not be addressed herein.

FINDINGS OF FACT

1. Grievants, professional and service employees of Respondent Wayne County Board of Education, held contracts for summer employment in 1988.

2. Respondent, due to financial constraints, did not provide work for Grievants and other similarly-situated employees during Summer 1988, and did not pay them therefor.

3. As a result of two grievance decisions, Respondent was ordered to pay grievants therein, pursuant to their contracts, for Summer 1988. None of the current Grievants were party to either of those cases at the time of the order. Phillips v. Wayne Co. Bd. of Educ., Docket Nos. 50-88-175/197 (Feb. 8, 1989); Marcum v. Wayne Co. Bd. of Educ., Docket No. 50-88-167 (Nov. 28, 1988).

4. Grievants filed the instant case based on at least Phillips and perhaps both of those two grievance decisions, believing themselves to be possessed of rights based thereon.

5. As a result of its interpretation of Phillips, Respondent paid another of its employees, Mr. Doug Adkins, who was not a party to any related grievance, for Summer 1988. Respondent's view that Phillips required Mr. Adkins' payment under his contract, while made in good faith, was erroneous.

6. Mr. Adkins was paid on March 8, 1989, and Grievants coincidentally filed this case at Level I shortly thereafter.

7. Respondent has raised the affirmative defense of timeliness, but only to the extent that Grievants' case is based on Phillips and/or Marcum.

CONCLUSIONS OF LAW

1. To the extent this grievance is based upon Grievants' non-payment in June 1988, it is untimely. Code §18-29-4(a). To the extent it is grounded on employee success in past grievance decisions, it is invalid. Harris & Tackett v. Lincoln Co. Bd. of Educ., Docket No. 89-22-049 (Mar. 23, 1989). To the extent it is related to Mr. Adkins' March 8, 1989, payment it is timely and states a claim worthy of consideration.

2. In West Virginia, education employees have the burden of proving their allegations by a preponderance of the evidence. Smith v. W.Va. School of Osteopathic Med., Docket No. BOR88-051-4 (Sept. 29, 1989).

3. Grievants did not demonstrate lack of uniformity. There is no requirement of uniformity between professional and service personnel. Further, among professional personnel, only certain facets of employment not relevant hereto must be uniform. W.Va. Code §§18A-4-5a, 18A-4-5b.

4. When an employee charges his employer with Code §18-29-2(m) "discrimination," his burden of proof may at least initially be met by a prima facie showing of discrimination.

5. A prima facie showing of discrimination, under the broad §18-29-2(m) definition of the term, consists of a grievant's establishment:

> (a) that he is similarly situated, in a pertinent way, to one or more other employee(s);
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> (b) that he has, to his detriment, been treated by his employer in a manner that the other employee(s) has/have not, in a significant particular;

and,

> (c) that such differences were unrelated actual job responsibilities of the grievant and/or the other employee(s), and were not agreed to by the grievant in writing.

If a grievant successfully proves a prima facie case, a presumption of discrimination exists, which the respondent can rebut by presenting a legitimate, nondiscriminatory reason for its action. However, the grievant may still prevail if he can demonstrate the reason given by the respondent was mere pretext. See W.Va. Inst. of Technology v. WVHRC & Zavareei, ___S.E.2d___ (W.Va. June 28, 1989).

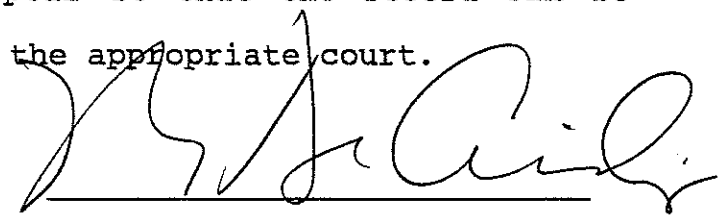
6. Grievants established a prima facie case of discrimination.

7. Respondent presented as its nondiscriminatory reason for paying Mr. Adkins its interpretation of Phillips. However, to successfully rebut the presumption of discrimination, the justification must be "legitimate" as well as

nondiscriminatory. Zavareei. Inasmuch as Respondent's view of the law in Phillips was erroneous, its reason may not be considered legitimate and cannot stand. See Pittman v. Hattiesburg Munic. Sep. School Dist., 644 F.2d 1071 (5th Cir. 1981); see also Zavareei. Accordingly, Grievants have proven discrimination.

Therefore, this grievance is **GRANTED**. Respondent is ordered to take steps forthwith to equalize Grievants' status with that of Mr. Doug Adkins, with regard to pay for Summer 1988 under their individual contracts therefor.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wayne 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.



M. DREW CRISLIP
HEARING EXAMINER

Dated: October 19, 1989