

BABETTE L. MYER

v. Docket No. 95-RC-290

WEST VIRGINIA RACING COMMISSION

DECISION

Grievant was employed by Respondent West Virginia Racing Commission (WVRC) as a State Veterinarian at Wheeling Downs in Wheeling, West Virginia, for approximately one and one-half years, from January 1994 until terminated, effective June 31, 1995. She essentially claims her at-will employment was altered by an appointment letter guaranteeing a year's employment in 1995, and that she detrimentally relied on the letter and other representations to refrain from seeking other employment and to incur a mortgage debt. She seeks back wages from July 1, 1995 through December 31, 1995. A level four hearing was conducted on November 16, 1995. The case became mature for decision on April 26, 1996, the agreed-upon final day for the submission of written fact/law proposals and rebuttal. Unquestionably, under W.Va. Code §19-23-5(d), [\(See footnote 1\)](#) Grievant was a statutory at-will employee whose employment could be terminated with or without cause at any time. Williams v. Brown, 427 S.E.2d 775 (W.Va. 1993); Samples v. Glenville State College, Docket No. 94-BOD-564 (July 28, 1995); Parker v. W.Va. Health Care Cost Review Auth., Docket No. 91-HHR-400 (June 30, 1992). That WVRC Executive Secretary Lois Graham sent a letter in December 1994 advising Grievant she (Grievant) would be "representing the Racing Commission for the period of January 1, 1995 through December 31, 1995" did not alter Grievant's at-will employment status.

WVRC's Executive Secretary, an at-will employee, may not offer year-long, WVRC appointments. While W.Va. Code §19-23-4(a) permits WVRC generally to enter into contracts, Code §19-23-5(d) does not authorize the employment of any racing

commission employee for a fixed period. Tellingly, the parties did not enter into any contract with respect to Grievant's position as a veterinarian. Moreover, the West Virginia Supreme Court of Appeals does not "recognize an implied contract of continued employment in the public employment sector." Williams, supra, at 780. However, Grievant also alleges WVRC had some ulterior motivation with respect to the employment of a replacement veterinarian at Wheeling Downs in July 1995. Grievant claims WVRC kept her on the job at Wheeling Downs only until her replacement became licensed as a veterinarian in West Virginia. Grievant maintains she relied on alleged verbal statements and the December 1994 letter as assurances her job would remain intact, and that she, therefore, refrained from seeking other employment and incurred a mortgage debt for a home in the area. Because WVRC "induced" her to alter her financial position to her detriment while all the time it intended to hire another veterinarian, Grievant argues, WVRC should be equitably "estopped" from "asserting any privilege to discharge" her during the period of "guaranteed employment" from January 1, 1995 through December 31, 1995. See Grievant's Brief at 8.

Even if Grievant's allegations are true, her "fairness" argument must fail. In Parker v. Summers County Bd. of Educ., 406 S.E.2d 744, 748 (W.Va. 1991), the Court reiterated that unlawful promises are not binding when made by public officials functioning in their governmental capacity. Grievant's reliance on purported promises of continued employment was misplaced because WVRC had no authority to employ a veterinarian for a fixed term. Moreover, currently, a duty of good faith and fair dealing is not owed to an at-will appointee in the public sector. Williams, supra, at 781. Finally, because Grievant claims only one year's "guaranteed" employment at most, it appears obvious that her decision to purchase a home in the area rather than to rent was purely a personal decision irrespective of any belief or understanding that her veterinarian's position at Wheeling Downs would continue throughout the mortgage period.

Simply put, Grievant has not established that she had a one year's appointment as a

veterinarian during 1995, so as to alter her at-will status. Moreover, she has failed to establish any wrongdoing on WVRC's part such as to compel a finding and conclusion that she is entitled to six months' back wages as a matter of law.

In addition to the foregoing, the following conclusions of law are made.

Conclusions of Law

1. Pursuant to W. Va. Code §19-23-5(d), Grievant, as a statutory, at-will employee, did not have a property interest in her continued employment as a State Veterinarian. See Williams v. Brown, 427 S.E.2d 775 (W.Va. 1993).
2. At-will public employees are not owed a duty of good faith and fair dealing. Imposing such a duty would be contrary to the long standing principle that grants the appointing authority an unfettered right to terminate an at-will employee. Id. at 781.
3. Because Grievant did not allege a substantial contravention of public policy, such as exercising certain constitutional rights, and because no substantial contravention of public policy regarding Grievant's termination is apparent from the record, her termination cannot be challenged through the grievance process. See Samples v. Glenville State College, Docket No. 94-BOD-564 (July 28, 1995); Parker v. W.Va. Health Care Cost Review Auth., Docket No. 91-HHR-400 (June 30, 1992).

Accordingly, the grievance is **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

NEDRA KOVAL

Administrative Law Judge

Date: May 3, 1996

[Footnote: 1](#)

Code §19-23-5(d) states in pertinent part, that "[t]he racing secretary and all other employees of the racing commission shall serve at the will and pleasure of the racing commission." Under §19-23-5(b), the statute provides the following::

In addition to the employees referred to above [racing secretary, assistant racing secretary, stenographers, clerks and other office personnel], the racing commission shall employ, direct and define the duties of a chief clerk, director of security, director of audit, chief chemist, stewards to represent the racing commission, supervisors of the pari-mutual wagering conducted under the provisions of this article, veterinarians, inspectors, accountants, guards, and all other employees deemed by the racing commission to be essential in connection with any horse or dog race meeting. The director of audit shall be a certified public accountant or experienced public accountant.