



REPLY TO:
111 - 19th Street
Wheeling, WV 26003
Telephone. 238-1040

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

SYLVIA DUNFEE

v.

Docket No. 89-DHS-121

WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES

DECISION

Grievant Sylvia Dunfee is employed by respondent West Virginia Department of Human Services (DHS) and presently classified as a Social Service Worker I in the Work and Training Unit (Unit) at DHS' Wheeling Area I. On May 4, 1989, she advanced the following complaint to level four:¹

Erratic and Erroneous Issuances of WVDHS PO-32'S [professional service rating form] as dictated by Area Administrator and required by W.V. Civil Service Commission[.] Relief Sought - 1988 PO-32 redone based on criteria prior to Administrator influencing line supervisor[ls to lower ratings. The removal of the requirement to issue PO-32's or a more just method of implementation which is agreed upon by the grievant and her representative.

¹The level four appeal was originally filed in late March 1989, but remanded to level three for procedural deficiency.

The filing form indicates decisions adverse to grievant at levels one through three February 23, March 6 and April 25, 1989, respectively. A level four hearing scheduled for June 6, 1989,² was continued to July 14, 1989, by agreement of the parties. DHS and grievant completed submissions of fact/law proposals September 13, 1989.

Grievant established that with the exception of one year, 1987, there had been a decline in the overall numerical rating of her performance evaluations after she started work in the Unit in mid-1985 despite an increasing case load and her efforts to assist with training new personnel. The essence of her complaint is that Area Administrator Ron Pattison wrongfully and arbitrarily ordered line supervisor Mary Jo Dombrowski, who performs the evaluations, to lower her, grievant's, performance rating. Grievant contends that the reduced rating on her December 31, 1988, PO-32 was not supported by documentation or disciplinary action and suggests that it was not in conformance with the opinion of the line supervisor, who is knowledgeable and trained to perform the evaluation. Grievant did not take exception to Ms. Dombrowski's written commentaries on the evaluation when the document was issued or at any time thereafter.

²A brief proceeding was conducted on June 6 to take the testimony of grievant's witness Julie Ann Klug who would not be available at a later date.

Grievant variously listed as proposed conclusions of law that an employee's service rating should reflect a "fair evaluation of the quantity and quality" of the performance, biased evaluations "may be expunged" from the employee's record, protective personnel laws must be strictly construed in favor of the employee and an administrative body is bound by its remedies and procedures.

DHS did not dispute grievant's assertions that she had been assigned an increased workload and had assisted with training new personnel. However, DHS maintained that ratings in the past had been inflated and it now had to comply with directives that numerical performance ratings be consistent with established evaluative standards.

The PO-32 form in use at all times relevant to this grievance sets forth six evaluative categories in the following manner:

1. Dependability -- Trustworthy and reliable in completing assignments; observes policy; meets commitments in spite of difficulties.
2. Quality of Work -- High quality is maintained under pressure. Does all parts of job, even new tasks, to high standards; work is neat and orderly.
3. Cooperation -- Able to get along with and work harmoniously with fellow employees; establishes rapport with all people with whom there is contact. Able to work with supervisor in order to develop as a better employee.
4. Communication Ability -- Able to describe and explain problems; content and logic is organized. Able to listen; persistent in trying to understand others; expresses self in clear terms.
5. Judgment -- Decisions are always sound in keeping with agency policy. Able to react in a crisis and arrive at solutions. Consistent in taking correct action.

6. Favorable Job Attitude -- Looks for, finds and follows methods for self-improvement. Consistently promotes the agency; is a self-starter; frequently finds improved ways of doing job.

It would appear that the written standards for each category comprise some minimum threshold of performance expected of all employees. The form directs the evaluator to numerically rate an employee's performance from 1 through 10 for each performance standard and enter "narrative clarifications" to those ratings in the space provided for Remarks. The evaluator is further directed to observe the listed rating standards for awarding points, such as, 1-2, Unsatisfactory; 3-4, Fair; 5-6, Satisfactory; 7-8, Very Good; and 9-10, Excellent. Scores from each category are totaled and averaged for the employee's overall service rating each year.

A review of the grievant's past service ratings is necessary. She was classified as a Clerk I and served as a receptionist from January 1, 1985, through August 15, 1985. Wanda Clark evaluated grievant this period, according to the signature on the evaluation. Each performance category was rated 8 for an overall average of 8, the high-end of Very Good. The written commentary was as follows:

1. Always dependable. Observed Policy.
2. Produced quality work. Knew job well.
3. Got along well with co-workers and supervisors.
4. Has good communication skills.
5. Used good judgment in dealing with clients in reception area.
6. Displayed favorable job attitude.

A further commentary for "Degree Past Goals Have Been Achieved" notes "Achieved all that was expected of her." Perhaps categories 1 and 2 were properly assessed; however, the written commentaries for categories 3-6 do not appear to justify an 8 rating.

The grievant began a new assignment in August 1985 as an Employment Interviewer I in the Work and Training Unit, and Ms. Dombrowski evaluated her thereafter. The August 16, 1985, through December 31, 1985, evaluation accorded grievant an overall rating of 7.33 for that period and was decidedly inflated in relation to the written commentary. For example:

1. Maintains an average workflow. [7]
2. Completes all tasks but error rate could improve. [7]
3. Works well with clients and staff. Accepts assignments when given. [8]
4. Good communication skills. [7]
5. Still learning and becoming familiar with program policy. [7]
6. Favorable job attitude. [8]

The numerical ratings clearly exceeded the written justifications. The two 1985 evaluations resulted in an adjusted 7.74 overall service rating for that year.

The overall service rating of 6 in 1986 also appeared inflated. Categories 4 and 5 were each rated 7, but the remarks did not support either assessment. In category 4, Ms. Dombrowski noted: "Good communication skills. Conducts a good FSJS group." Assuming the descriptor "good" correlates with the high-end Satisfactory rating, grievant was perhaps not deserving of the low-end Very Good rating of 7. Category 5 was

supported with: "Knows the policy and explains it appropriately." Here again, no justification is given for a Very Good rating of 7. Needless to say, employees should at a minimum satisfactorily meet the threshold skill of knowing and explaining policies appropriately. Category 5 invites comment on handling crisis situations and consistently taking correct action, but these matters were not addressed.

In 1987 grievant received an overall rating of 6.5; again, the rating appeared to be inflated. She received scores of 7 in categories 3 through 6, but no descriptors beyond "works well" or "good" were written to justify the numerical ratings.

The grievant received an overall service rating of 5.66 in 1988. Notably, the written remarks in all categories had remained fairly constant since since 1985. The 1988 ratings and remarks are as follows:

1. Striving to keep work more current despite increased workload. [5]
2. Satisfactory. [5]
3. Maintaining a good working relationship with others in the agency. Works well with other agency representatives. [6]
4. Good communications skill. [6]
5. Good knowledge of agency policy and application of policy. [6]
6. Has a good attitude despite increased workload due to decreased staff. [6]

Ms. Dombrowski noted with emphasis: "This lower rating is based upon following administrative guidelines, and is not a reflection of reduced job performance." The comment is well-taken; however, the numerical ratings on grievant's 1988 PO-32 were

more consistent with the written descriptions in each performance category than in past years.

In summary, the record is replete with evidence that grievant is a competent, willing worker whose performance exceeds the low-end satisfactory overall rating to some degree. Whether grievant is deserving of ratings beyond satisfactory and good, i.e., very good or excellent, and whether Ms. Dombrowski believes grievant to be deserving of those higher ratings was not reflected in her written justifications even before the mandate to be mindful of the numerical rating criteria. In other words, grievant did not meet her burden of proof that her service rating for 1988 was the result of any impropriety on DHS's part. Moreover, grievant presented no evidence, policy or law to support findings or conclusions that her 1988 PO-32 should be expunged from her file or redone or that the presently-implemented evaluation method via a PO-32 should be removed or altered.

In addition to the foregoing determinations, the remainder of this decision will be set forth as formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant is an employee in the classified service and subject to annual professional service ratings of her performance by her immediate supervisor, Mary Jo Dombrowski.

2. Due to a perception that ratings were inflated, Ron Pattison, Area Administrator, was instructed in 1987 and 1988 to comply with the West Virginia Division of Personnel's evaluation criteria, and he forwarded the mandate to Ms. Dombrowski.

3. Grievant's overall service ratings declined from 1985 until 1988; however, former years' ratings disclosed numerical scores over 5-6 which were not justified by written commentary of other than satisfactory/average or good performance.

4. The 1988 service rating noted that the lower rating was due to following guidelines and did not reflect reduced job performance on grievant's part.

CONCLUSIONS OF LAW

1. A grievant must prove each and every allegation of his or her grievance complaint by a preponderance of the evidence. Bucklew v. West Virginia University, Docket No. 89-BOR-551 (Dec. 29, 1989).

2. Grievant has not shown a violation or misapplication of policy nor cited any prevailing policy, regulation or law upon which to award the relief she seeks. Bucklew.

Accordingly, the grievance is **DENIED** in its entirety.

Either party or the West Virginia Civil Service Commission may appeal this decision to the Circuit Court of Ohio County 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 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:

March 21, 1990



NEDRA KOVAL
Hearing Examiner