

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Frymier v. Higher Education Policy Commission, 221 W. Va. 306

655 S.E.2d 52 (2007) · No. Nos. 32163, 33296 · Decided October 12, 2007

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed orders denying Amanda Frymier bumping rights under West Virginia Code § 18B-7-1 and rejecting her claim of favoritism. The court held that the statute's reduction-in-force provisions apply to layoffs, furloughs, or terminations, not merely reductions in work hours. It also held that differing treatment was based on actual job responsibilities and therefore did not constitute favoritism.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Justice Maynard; Justice Starcher; Justice Albright
JURISDICTION	West Virginia
DECIDED	October 12, 2007
DOCKET	Nos. 32163, 33296
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from two orders of the Circuit Court of Gilmer County affirming decisions of the West Virginia Education and State Employees Grievance Board concerning bumping rights under the higher-education reduction-in-force statute and an alleged favoritism claim.
STANDARD OF REVIEW	Grievance rulings receive a combination of deferential and plenary review. Factual findings and credibility determinations are reviewed deferentially and will not be disturbed unless clearly wrong or unsupported by substantial evidence; conclusions of law and application of law to the facts are reviewed de novo.
PRECEDENTIAL VALUE	Published, precedential state supreme court opinion
PARTIES	Amanda A. Frymier v. Higher Education Policy Commission, Glenville State College

TOPICS

employment law

statutory interpretation

administrative law

standard of review

appellate procedure

PRACTICE AREAS

employment law

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QUESTIONS PRESENTED

1. Whether West Virginia Code § 18B-7-1 grants bumping rights when an employee's work hours, salary, and benefits are reduced but the employee is neither laid off nor terminated.
2. Whether Glenville State College's retention of a less-senior employee in a 1.0 FTE position constituted statutory favoritism when the employees' differing job responsibilities justified different treatment.

HOLDINGS

1. West Virginia Code § 18B-7-1 does not apply when an employee remains employed in the same position but experiences only a reduction in work hours; the statute governs reductions in the number of employees through temporary furlough, layoff, or permanent termination.
2. The college did not engage in unlawful favoritism because the difference in treatment was related to the employees' actual job responsibilities.

KEY QUOTATIONS

“The language of the Legislature makes clear that a reduction in work force is a reduction in the number of employees that is effected by either a layoff or a permanent termination.” (58)

“Any difference in treatment was purely related to actual job responsibilities and the desire of the GSC to maintain its current hours of operation at the public cashier's window.” (60)

FACTUAL BACKGROUND

Amanda Frymier had worked for Glenville State College since 1980 and, as an Accounting Assistant I, had twenty-three years of seniority. In response to budget cuts, the college reduced her work schedule from 1.0 FTE to 0.87 FTE, reducing her salary and benefits, while retaining a less-senior school cashier in a 1.0 FTE position. The cashier had to be present during specific hours to operate the student cashier window, whereas Frymier's duties did not require fixed hours. The college stated that job duties, rather than seniority or performance, drove the differing reductions in hours.

PROCEDURAL HISTORY

Frymier challenged the reduction of her position from 1.0 FTE to 0.87 FTE after state-mandated budget cuts, arguing that she should have been permitted to bump a less-senior employee who retained a 1.0 FTE position. Her grievance was denied at each administrative level, and the circuit court affirmed the denial of bumping rights. Frymier later raised favoritism for the first time in the circuit court; that issue was remanded to the grievance board, which denied relief, and the circuit court again denied relief. The Supreme Court consolidated the appeals and affirmed both circuit-court orders.

DISPOSITION

affirmed

CASES CITED

- Tyler v. White, 216 W. Va. 242, 605 S.E.2d 814 (2004)
- Quinn v. West Virginia N. Community College, 197 W. Va. 313, 475 S.E.2d 405 (1996)
- Martin v. Randolph County Board of Education, 195 W. Va. 297, 465 S.E.2d 399 (1995)
- Bolyard v. Kanawha County Board of Education, 194 W. Va. 134, 459 S.E.2d 411 (1995) (per curiam)
- Maikotter v. University of West Virginia Board of Trustees, 206 W. Va. 691, 527 S.E.2d 802 (1999)
- Cahill v. Mercer County Board of Education, 208 W. Va. 177, 539 S.E.2d 437 (2000)
- Smith v. State Workmen's Compensation Commissioner, 159 W. Va. 108, 219 S.E.2d 361 (1975)
- State v. Elder, 152 W. Va. 571, 165 S.E.2d 108 (1968)
- Crockett v. Andrews, 153 W. Va. 714, 172 S.E.2d 384 (1970)
- State v. General Daniel Morgan Post No. 548, Veterans of Foreign Wars, 144 W. Va. 137, 107 S.E.2d 353 (1959)
- State v. Epperly, 135 W. Va. 877, 65 S.E.2d 488 (1951)
- Miners in General Group v. Hix, 123 W. Va. 637, 17 S.E.2d 810 (1941)
- Lee-Norse Co. v. Rutledge, 170 W. Va. 162, 291 S.E.2d 477 (1982)
- Lucion v. McDowell County Board of Education, 191 W. Va. 399, 446 S.E.2d 487 (1994) (per curiam)
- Harrison County Board of Education v. Carson-Leggett, 195 W. Va. 596, 466 S.E.2d 447 (1995) (per curiam)
- State v. Richards, 206 W. Va. 573, 526 S.E.2d 539 (1999)
- Bednar v. Westwood Board of Education, 221 N.J. Super. 239, 534 A.2d 93 (1987)
- Klinger v. Cranbury Township Board of Education, 190 N.J. Super. 354, 463 A.2d 948 (1982)
- Valdez v. Cantor, 994 P.2d 483 (Colo. App. 1999)
- Ritter v. Strauss, 261 F.2d 767 (D.C. Cir. 1958)