

1979 WL 43056 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 7, 1979

***1 Re: Harry Joe Myers**

Charles D. Barnett, Ph.D.
Department of Mental Retardation
2712 Middleburg Drive
P.O. Box 4706
Columbia, South Carolina 29240

Dear Dr. Barnett:

I have received your request dated May 30, 1979, for an opinion from this Office concerning the authority of the State Employee Grievance Committee and the Budget and Control Board to render decisions which differ from an agency's decision regarding a grievance when there is virtual agreement as to the factual occurrence which formed the basis of the respondent agency's action.

[Section 8-11-230 of the 1976 Code of Laws of South Carolina](#), provides in part:

The Budget and Control Board is authorized and directed to:

1. Establish procedures for the regulation and compensation of all State employees where not otherwise regulated directly by the General Assembly.

6. After coordination with agencies served, develop policies and programs concerning . . . grievance procedures . . . disciplinary action, separations . . . and other conditions of employment as may be needed. (Emphasis added)

Section 8-17-30 of the Code provides that the State Employee Grievance Committee is empowered to make:

. . . findings and decisions and report such findings and decisions to the State Budget and Control Board. Any decision of the Committee related to classification which is contrary to the decision rendered by the employee's department head shall be ineffective unless at least five members of the Committee concur therein. (Emphasis added)

One can infer from the preceding sentence that when the subject of a grievance is something other than classification, e.g. termination or suspension, the Committee's decision will be effective when fewer than five (5) of the seven (7) committee members concur in a decision which is contrary to the agency head's decision. (The Committee's decision will be effective unless reversed or modified by the Budget and Control Board pursuant to § 8-17-30 of the Code)

With regard to Mr. Myers, the State Employee Grievance Committee and the Budget and Control Board have not made a new rule nor overturned an old rule of the Department of Mental Retardation. During the grievance hearing and in a letter dated January 26, 1979, from Ronald C. Abbott by Ralph E. Cooper, Jr. to Lonnie A. Bowman, the reason given for Mr. Myers termination was 'Mistreatment of Individuals Whose Care is the Responsibility of the Department.' According to the Department of Mental Retardation Rules and Regulations, Section V. subsection 8-3, cited as controlling the termination by the State Employee Grievance Committee, an employee who mistreats a patient

may be suspended from employment or terminated. In ordering the suspension of Mr. Myers the Committee conformed with your agency's rule.

Moreover, several employees of your staff have expressed recommendations of leniency or a belief that no cause for discipline exists. In a December 15, 1978, memo from Curtis Murph, who investigated the charge against Mr. Myers, to Dr. Abbott, Mr. Murph recommended that Mr. Myers be allowed to retire or be terminated. Additionally, a December 22, 1978, memo from Mrs. Jeanne Uhling, Chairperson of the Review Committee to Dr. Abbott, Mrs. Uhling reported that three (3) members of the Review Committee (the majority) recommended that Mr. Myers be reinstated and that two (2) members suggested he be allowed to retire.

*2 In conclusion, the State Employee Grievance Committee may make recommendations to the State Budget and Control Board which differ from the agency head's decision although there is substantial agreement between the Committee and the agency as to the prohibited or negative conduct of the grievant.

Sincerely,

Barbara J. Hamilton
State Attorney

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