YVONNE CHASE

v. Docket No. 94-BOT-053

WEST VIRGINIA BOARD OF TRUSTEES/
WEST VIRGINIA UNIVERSITY

DECISION

Grievant, Yvonne Chase, employed by West Virginia University (WVU or Respondent) as a Contract Accountant, filed a complaint at level one on December 8, 1993, in which she alleged
The grievant has in the past and is prospectively being unfairly and improperly required to perform an extensive amount of 'after hours' work that is not part of her job. She is not being compensated for this additional work.
Grievant requested that she be compensated at 1 1/2 times her regular rate of pay for the additional hours worked on projects which were not part of her normal duties or that she be compensated at a higher wage for the work which would have been properly completed by her immediate supervisor.

The grievance was denied at levels one and two, the Board of Trustees waived consideration at level three and appeal was made to level four on February 14, 1994. An evidentiary hearing was convened on May 11 and concluded on July 15, 1994. Grievantsubmitted proposed findings and conclusions on August 23, 1994, no proposals were filed on Respondent's behalf.

I.

The following facts are undisputed.

1. Grievant has been employed by WVU nine years and is presently classified as a Contract Accountant with the External Funds Accounting Department.

2. Grievant's primary duties involve the management of contracts held at the Concurrent Engineering Research Center (CERC). The job description for Contract Accountant does not include training or supervision of other employees.

3. In late August 1993 Grievant was assigned a project to develop and implement a program for

the university-wide training of employees with regard to grants. The presentation of this training session was scheduled for October 28, 1993.

4. Grievant developed the entire program for presentation. She conducted the necessary research, organized the material and produced visual aides. Grievant presented the package at a training session held on December 1, 1993. (See footnote 1)

5. The development of the training package required approximately 45 hours to complete. Because Grievant was also required to complete her regular duties and was involved with a special, contract-related project for the Federal Bureau ofInvestigation, she was required to expend approximately 20 hours of overtime in order to complete the project on time.

6. Grievant has been denied either compensatory time off or overtime compensation for the hours worked beyond her regular schedule.

7. Prior to this time Grievant had not been required to develop and/or present training sessions, said training had been the responsibility of Grievant's supervisor.

8. Prior to this time Respondent had granted Grievant compensatory time off, to some extent, for work beyond her regular schedule. There is no allegation that Grievant was ever monetarily reimbursed for work completed after the regular work day.

II.

It is WVU's position that Grievant is an exempt employee under the Fair Labor Standards Act and is not eligible for overtime compensation. Although WVU does not refute Grievant's claim that she had been granted compensatory time off in the past, it now argues that Grievant is not entitled to additional compensation or compensatory time off for the hours worked beyond her regular schedule. WVU further asserts that the development and presentation of a training program was reasonably related to Grievant's functional responsibilities and did not constitute an interim promotion.

Grievant acknowledges that the FLSA generally requires employers to pay employees at least 1 1/2 times their regular rateof pay for hours worked beyond 40 per week, but that employees classified in a bona fide executive, administrative, or professional capacity are exempt from the overtime compensation. However, Grievant asserts that to attain professional status an employee must meet both salary basis and duties tests. She argues that WVU treats her like an hourly worker in that she is required to work 7.5 hours per day, 5 days a week and she must account for absences of less than

one day as sick leave, annual leave, or as a dock in pay. Additionally, WVU has previously awarded her compensatory time off. Based upon the foregoing policies and practices Grievant argues that she may not correctly be considered "salaried" and WVU may not invoke the bona fide professional exemption to deny her overtime compensation.

Grievant also contends that she is entitled to be paid for the entire 45 hours of work at the higher, Manager-External Funds Accounting classification because the training project was outside of her job classification. (See footnote 2) Grievant notes that while the position description for Contracts Accountant does not list the development and presentation of instructional seminars as a responsibility, a posted notice for the position of Manager-External Funds Accounting does include "training" within the job description.

To further bolster her claim for compensation at a higher pay grade, Grievant notes that Respondent has paid additional compensation to employees who have worked out of classification foras little as one day. Finally, the request for compensation at the higher rate is consistent, Grievant asserts, with Respondent's policy that like salaries shall be paid for comparable duties and responsibilities. (See footnote 3)

In consideration of the two foregoing arguments, Grievant requests that she be paid the higher of (1) 1 1/2 times her regular hourly rate of pay for 20 hours OR (2) the differential between the Contract Accountant wage rate and the Manager-External Funds wage rate for 25 1/2 hours which she worked on the project during regular work hours plus 20 hours at the Manager's wage rate for the overtime hours worked out of classification. Grievant additionally requests interest as allowable by law.

III.

The Grievance Board has previously determined that it lacks jurisdiction to hear and determine federal or state wage and hour law claims. Campbell v. W.Va. Dept. of Commerce, Docket No. 90-DNR-081 (Aug. 30, 1991). The basis for this determination, more fully discussed in Campbell, is primarily that, notwithstanding the broad definition of grievance contained in W.Va. Code §29-6A-2(i), the Legislature never intended the grievance procedure statute to be utilized as an additional mechanism for adjudication of theseclaims when federal and state agencies already exist to enforce these laws and because civil actions may be instituted in federal and state courts. (See footnote 4) Given the availability of these administrative and civil remedies and the absence of a specific,

unmistakable grant of authority to this agency to hear wage and hour issues, the Grievance Board cannot assume jurisdiction over this claim.

The Grievance Board is vested with the authority to review Grievant's claim that the assignment was beyond the duties of her position. A review of the position description for Contract Accountant establishes that the development and presentation of instructional workshops is not specifically listed as a job duty. The description does indicate that the incumbent is responsible for the full spectrum accounting duties, primarily in reference to contracts. However, the position description contains the all encompassing "other duties as assigned by the incumbent's immediate supervisor as workload and time dictates." Grievant's familiarity with finances relating to contracts, and to a lesser extent, grants, qualified her to fulfill the purpose of the training session, i.e. provide WVU employees with a basic understanding of the grant process with emphasis on the interaction between External Funds Accounting and the Department. Although this assignment was not routine for Grievant, it cannot be determined to be outside the scope of her employment as a Contract Accountant.

In addition to the foregoing the following conclusions of law are appropriate.

CONCLUSIONS OF LAW

1. The Grievance Board has no jurisdiction to adjudicate claims based upon alleged violation of FLSA and, at least as a general rule, it has no power to rule on state wage and hour law claims. Campbell v. W.Va. Dept. of Commerce, Docket No. 90-DNR-081 (Aug. 30, 1991).

2. The development and presentation of a Grants Training Workshop was not outside the general scope of Grievant's employment as a Contract Accountant.

Accordingly, the grievance is DENIED.

November 30, 1994 Sue Keller, Senior Admn. Law Judge

Footnote: 1The session was rescheduled due to Grievant's illness on October 28.

Footnote: 2Contract Accountant is classified at pay grade 14, Manager of External Funds, Accounting, is compensated at pay grade 17.

Footnote: 3Grievant additionally asserts that because the development and presentation of training seminars is not an

element of her articulated responsibilities, the assignment was in violation of the Americans with Disabilities Act (ADA) which requires that all essential job functions be specifically set forth in the job description. Grievant does not claim to be disabled.

Footnote: 4In Campbell the Administrative Law Judge noted that the issue of whether grievants' were exempt from overtime compensation because they held bona fide professional positions "appears to be the type of question determined routinely by federal and state enforcement authorities."