JAMES B. TITUS

v. Docket No. 93-C0RR-528

WEST VIRGINIA DIVISION OF CORRECTIONS

D E C I S I O N

This dispute concerns the reassignment of a West Virginia Penitentiary (WVP) correctional officer from one work unit to another along with altered working hours and days. Grievant essentially claims that WVP officials ignored existing direc tives in conjunction with the in-house transfer and seeks reinstatement to his former work schedule. Respondent West Virginia Division of Corrections (CORR) denies wrongdoing and contends it may reassign personnel within WVP as necessary.1

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1This case was appealed to level four in early 1994 and scheduled for hearing shortly after. However, prior to hearing the parties agreed to a record decision during a conference call among CORR's counsel, Grievant, and the undersigned. Inasmuch as the parties did not either submit an agreed-upon date for the submission of fact/law proposals nor waive their right to file, they were notified by letter dated October 19, 1994 that any such proposals had to be submitted by Friday, November 4, 1994. Neither party responded.

Some background information is necessary.2 Throughout 1993, WVP Warden George Trent and other WVP administrators had been preparing for the eventual transfer of WVP to a new site and the establishment of a new regional jail. Hence, they were concerned with reorganizational matters (Unit Management con cept) and staff training for the new facilities during that

time. Apparently, "cross-training" and ninety-day rotational "field" training of personnel were methods which were being considered. Prior to that, in March 1992, WVP Warden George Trent issued a "Staff Notice" in which he announced that person nel problems within the prison were the result of staff not adhering to directives, staff notices and "post orders" and that he was providing training on the matter and expecting adherence. In a June 15, 1992 memorandum to staff, Warden Trent stated that the tradition of posting and bidding for in-house assign ments at WVP created unnecessary work, hurt feelings and a loss of morale. He advised that, in the future, true vacancies were the only positions which would be posted. Warden Trent informed workers that the Chief Correctional Officer or designee would staff newly-created (in-house) security and security support posts via assignment and not by posting and bidding. Finally, he expressed the hope that WVP workers would be as happy as possible with their jobs and encouraged them to contact their

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2The record consists of Grievant's pleadings, including a three-page written statement/addendum, the written decisions rendered at levels one through three on September 17, October 6, and November 16, 1993, respectively, and the transcript and exhibits of the November 10, 1993, level three hearing.

immediate supervisor to work out job-related problems such as any perceived unfairness in placement or on-the-job treatment. In a three-page June 1993 staff notice, Warden Trent reminded WVP workers of his June 1992 memo that only vacant positions would be posted. He went on to advise staff that their future employment opportunities in the new prisons would

depend upon good standing via attendance, evaluation and the completion of requirements for formal certification as a correc tional officer. He called on employees to minimize absences, enroll in training, volunteer for inmate programs, strive for better evaluations and foster a good job attitude and indicated that a possible reward could be special assignments such as day shift jobs with weekends off. Finally, Warden Trent stated that, as a result of the recent input he had received, he would now post certain jobs for competitive bidding, including those for Transportation Officers, and that, if the posting process worked, it would be continued until the end of the fiscal year. A hiring criteria was listed as well as a notation that all workers "presently serving in those positions will be given priority."

On July 2, 1993, WVP Director of Support Services Tony LeMasters published an in-house posting which notified workers that applications were being accepted for a day-shift, weekends and holidays off ninety-day (only) position as a Transportation Officer "For the Purpose of Cross Training." At that time, Grievant, classified as a Correctional Officer I, had been assigned to work in the Transportation Department on an 8:00 a.m. - 4:00 p.m. day shift with holidays and weekends off.

On July 26, 1993, Acting Institutional Training Officer Paul Simmons issued a memorandum to division chiefs and unit managers. That memo advised that the previously-accepted cross training program "is no longer in effect," that presently-filed cross training reporting forms would not be accepted for credit toward in-service hours and that a new training program, presum ably for in-service credit, would be formulated and implemented in the near future.

A memorandum issued by Officer LeMasters on August 19, 1993 listed the reassignment of four officers, effective August 23, 1993. Basically, the four workers from four different work units, North Hall, Community Service, Medical and Transporta tion, were simply reshuffled. Grievant was transferred to the North Hall housing unit replacing a worker who went to Community Service while the worker in Medical relocated to Transportation and the former Community Service worker went to Medical.3 On September 8, 1993, Grievant instituted a grievance in protest over his reassignment.

According to Grievant's three-page written grievance statement, a unit manager showed him Officer Simmons' July 26, 1993 memo on September 5, 1993, and he became aware that his reassignment was a grievable event. Grievant then stated that

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3In the level three decision, the grievance evaluator noted that Grievant would be required to work from 6:30 a.m. to 2:30 p.m. and had lost his weekends and holidays off.

he visited Warden Trent's office to procure a copy of Warden Trent's June 15, 1992 memo. He said that before he left, Warden Trent came out of his office and spoke to him and personally assured him that, if something was contained in a report, it represented something he, Warden Trent, had said.

Grievant then theorized that Officer LeMasters "defied" not only Warden Trent's June 15, 1992 directive forbidding the practice of posting and bidding for in-house assignments but also Officer Simmons' more recent July 1993 directive abolishing cross training. Grievant claimed that because he had received good evaluations and a satisfactory attendance record during his

tenure in Transportation and had not requested a transfer to another work unit, Officer LeMasters' unwarranted removal of him from his assignment in Transportation for the purpose of cross training was unjust and capricious and an abuse of Officer LeMasters' supervisory powers.

Grievant appeared on his own behalf at the level three hearing but proffered no evidence other than the five attach ments he had previously submitted with his grievance form and three-page statement.4 On the other hand, Officer LeMasters appeared for CORR and explained the rationale behind Grievant's transfer. While Officer LeMasters did not seem certain about whether the reassignments constituted cross training which carried in-service credit, he did establish that the ninety-day

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4These documents were copies of the various notices and memos mentioned above.

rotational assignments were applied consistently among Grievant and three other officers who were obliged to change jobs from those previously held. Moreover, he testified that he did not make the decision without consulting other administrators and essentially established that he harbored no personal animosity toward Grievant.

In short, Grievant has failed to prove that his involuntary transfer and reassignment to another work unit was violative of any current policy, rule, regulation, or directive. Clearly, Warden Trent's June 1993 directive reestablishing in-house posting and bidding superseded the 1992 pronouncement against in-house posting. Circumstances had changed, and the warden was simply responding to need and the preference of workers who had

bothered to provide input on the subject of job assignments. Thus, Officer LeMasters had not ignored any current ban on posting or violated any other prevailing policies with respect to the intra-agency transfer of personnel.

Findings of Fact

1. Grievant was involuntarily transferred from one of WVP's work units to another, and his work days and work hours were altered to the extent that he had to work weekends and to report to work on an earlier-scheduled day shift than the day shift he had previously held.

2. Three other officers besides Grievant were reshuffled within four distinct work units.

3. Although Grievant was regarded as a good worker in his former work unit, the purpose of his reassignment was to provide training for some of the officers in areas not previously worked, all in furtherance of future staffing needs for new prison facilities under a new type of prison management.

Conclusions of Law

1. According to West Virginia Division of Personnel regulations, a "transfer of a permanent employee from a position in one organizational subdivision of an agency to a position in another organizational subdivision of the same or another agency may be made at any time by the appointing authorities con cerned." Goodnight v. W.Va. Dept. of Human Srvcs., Docket No. 91-DHS-111 (May 31, 1991).

2. Barring any impermissible motivation, CORR's manage ment may unilaterally transfer prison staff from one work unit and/or work shift to another, post in-house job assignments for competitive bidding and/or respond to personal requests for in-house transfers, depending on circumstances and need. See

Pell v. W.Va. Dept. of Human Srvcs., Docket No. 91-DHS-135 (Sept. 30, 1991); Crow v. W.Va. Dept. of Corrections, Docket No. 89-CORR-116 (June 30, 1989).

3. Grievant failed to prove that his involuntary in-house transfer was the result of any violation of prevailing laws, policies or regulations, non-compliance with current agency directives, or improper motivation on the part of WVP adminis trators.

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 Employ ees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appeal ing 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.

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NEDRA KOVAL

Administrative Law Judge

Date: November 22, 1994