LORI TOLBERT and JACK STILL

v. Docket No. 97-PEDTA-173

WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT,
and TOURISM AUTHORITY

DECISION

The grievants, Lori Tolbert and Jack Still, are employed by the West Virginia Parkways, Economic Development and Tourism Authority (PEDTA) at the agency's “Tamarack” facility near Beckley. They filed grievances at Level I, on March 17, 1997, alleging that PEDTA had created a “hostile work environment” by refusing to take action against an employee of another agency who allegedly made false, defamatory statements about them. Procedural problems and/or jurisdictional issues at the lower levels caused the grievant to appeal the matter to Level IV, on April 4, 1997. The agency subsequently agreed that a remand for compliance with W.Va. Code §29-6A-4 was not necessary, and moved that the grievance be dismissed or denied for several reasons, including that the relief sought, i.e., disciplinary action against the targeted employee, was unavailable from the Education and State employees Grievance Board. During a May 5, 1997 telephone conference call, counsel for PEDTA and the grievants' union representative entered into certain fact stipulations, and presented legal argument. At the conclusion of the conference, the undersigned, for the reasons discussed below, granted the motion.

Background

The parties agree that Irena Baxter is an employee of the Wyoming County Workshop(WCW), and that pursuant to a contract with PEDTA, she is assigned to perform certain duties at Tamarack. They also agree that PEDTA has no authority to discipline her, but has a duty, if only an implicit one under W.Va. Code §29-6A-2(i), (See footnote 1) to see that WCW employees do not create an adverse or “hostile” working environment for PEDTA employees. The agency could make demands of WCW officials, and perhaps even initiate a contract-based legal action, if Ms. Baxter's conduct at the facility was not satisfactory.

While PEDTA does not agree to any representations regarding the substance of their conversation, it does not dispute that Ms. Baxter talked to Grievant Tolbert during off-duty hours, and Grievant Tolbert later advised Grievant Still that Ms. Baxter had referred to him as a sexist and a racist. The agency also does not take issue with the grievants' representation that when Grievant Still confronted Ms. Baxter, she accused Grievant Tolbert of fabrication. Through their representative, the grievants conceded that PEDTA had forwarded their complaint over the incident to WCW officials. They also conceded that there had been no prior conflicts with Ms. Baxter, and that their testimony that she made the remarks attributed to her would be their only evidence of wrongdoing on her part.

Attached to the Level IV appeal was a March 27, 1997 letter to the grievants from PEDTA Deputy General Manager Lawrence Cousins which confirms that WCW Personnel Director Steve Bishop was informed of the grievants' complaint, and was expecting them to contact his office to provide more particularized statements. It appears from their representative's legal argument that the grievants did not pursue a complaint with Mr. Bishop because they did not feel that they werelegally obligated to do so.

Argument

The grievants assert that PEDTA's response to their complaint was inadequate and tantamount to condoning Ms. Baxter's conduct. They apparently contend that any response which did not entail her suspension and/or dismissal would be insufficient. PEDTA essentially argues that, under the circumstances, any duty it owed the grievants was satisfied when WCW officials were informed of their complaint.

Findings and Conclusions

The grievants' claims are frivolous and warrant little discussion. Assuming that Ms. Baxter made the comments attributed to her, and that they were false, it is specious to claim that her conduct was so injurious that the grievants' work environment was suddenly hostile. It is even more untenable to say that PEDTA contributed to the environment by failing to take some undefined action to see that Ms. Baxter was disciplined by her WCW superiors.

Moreover, the grievants' refusal to report their concerns to Mr. Bishop supports that they were not

acting in good faith. It can be inferred from their explanation for not discussing their concerns with WCW officials, and their insistence that PEDTA address the matter, that they were not inclined to cooperate in a reasonable, informal approach to resolving the dispute. Simply stated, the grievants have neither advanced nor substantiated any legal theory whereby PEDTA was required to do more than it did.

Accordingly, the grievance is **DENIED**.

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JERRY A. WRIGHT

ADMINISTRATIVE LAW JUDGE

Any party may appeal this decision to the Circuit Court of Raleigh County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

Dated: October 8, 1997

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JERRY A. WRIGHT

ADMINISTRATIVE LAW JUDGE

Footnote: 1 *The definition of grievance encompasses "any action, policy or practice constituting a substantial detriment to or interference with effective job performance or the health and safety of the employees."*