GLENN & KAREN HIGHLEY,

Grievants,

v v.

Docket No. 99-CORR-154

DIVISION OF CORRECTIONS,

Respondent.

D E C I S I O N

Grievants, Glenn and Karen Highley, employed by the Division of Corrections (Respondent) as Correctional Officers at the Northern Regional Jail & Correctional Facility, filed a level one grievance on March 11, 1999, in which they complained that they had completed the Apprenticeship Training Program (ATP) on July 1, 1998, but did not receive the five percent pay increase until February 1, 1999. Grievants requested reimbursement for the increase from July 1998 through January 1999. Grievants' immediate supervisor lacked authority to grant the requested relief at level one. Following denials at levels two and three, Grievants advanced their claim to level four on April 23, 1999. A level four hearing was conducted in the Grievance Board's Wheeling office on June 7, 1999, at which time Grievants were represented by Captain Barry Milbert, and Respondent was represented by Charles Houdyschell, Jr., Assistant Attorney General. The grievance became mature for decision with the submission of proposed findings of fact and conclusions of law by both parties on or before June 16, 1999.

The facts of this matter are undisputed and may be set forth as the following formal findings of fact.

Findings of Fact

1. Grievants are employed by Respondent as Correctional Officers at the Northern Regional Jail & Correctional Facility. 2. Since 1994, all Correctional Officer I's have been required to complete the ATP, which consists of two years (4,000 hours) of on-the-job training 400 and hours of related studies.

3. Effective April 1, 1998, Respondent implemented Policy Directive 442, establishing the procedures for the administration and management of the ATP.

4. Section 2.02 of Policy Directive 442 provides, in pertinent part:

The Director of the Academy shall request a Certificate of Completion of Apprenticeship from the [U.S. Department of Labor] upon the officers['] completion of the program. This certificate shall be the basis for initiating a process to reallocate the journeyman Correctional Officer I to the classification of Correctional Officer II . . . .

Additional pay or promotion shall not be effective until compliance with the following:

1. Proof of completion of Apprenticeship Program (Certificate)

2. Submission and final approval of a West Virginia Personnel Action Form WV-11.

5. Grievants completed the Officer Apprenticeship Program on July 1, 1998.

6. Grievants were promoted to Correctional Officer II, and awarded a five percent salary increase, effective February 1, 1999.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd., 156 C.S.R. 1 §4.19 (1996), Payne v. W.Va. Dept. of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988); Lilly v. W. Va. Dept. of Tax and Revenue, Docket No. 95-T&R-576 (Apr. 5, 1996). See W. Va. Code §29-6A-6. Grievants argue that Policy 442 should not apply to them, but only to officers who enrolled in the ATP on or after the effective date of the policy. Grievants also assert that the period from July 1, 1998, to February 1, 1999, does not constitute a reasonable time to process their pay raises, and because the delay in processing was due to no fault of their own, they are entitled to the salary adjustment effective July 1, 1998, based upon the holding in Whorton v. W. Va. Div. of Corrections, Docket No. 96-CORR-78 (June 25, 1996). Respondent argues that Policy 442 is applicable to Grievants, and that the promotions and salary increases were implemented consistent with that policy, upon completion of the WV- 11 forms.

Grievants correctly argue that a number of correctional officers in Whorton , supra, were

awarded the five percent increase for completion of the ATP, effective the date of their completion of the program, based upon a claim of discrimination. However, that decision is not applicable in this matter because it was issued prior to Respondent's adoption of Policy Directive 442, which establishes administrative procedures for the ATP. The Grievance Board has previously ruled in Reynolds v. W. Va. Div. of Corrections, Docket No. 99-CORR-006 (Feb. 22, 1999), that Policy Directive 442 applies to those officers who complete the program after the effective date of the policy, April 1, 1998. Because Grievants did not complete the program until July 1, 1998, three months after Policy Directive 442 became effective, they are subject to all its provisions.

Unlike promotions granted in other situations, a multi-step process must be followedwhen correctional officers complete the ATP. First, the officer advises the Institutional Training Officer that he has completed the ATP. The Training Officer verifies the officer's completion of all requirements, fills out a form, and sends the form to the Corrections Academy for verification and approval. Once the Academy has approved the officer, all documentation of the officer's completion of the ATP is sent to the U.S. Department of Labor. The Department of Labor verifies that all requirements have been met, then issues a “Certificate of Completion of Apprenticeship”. Upon receipt of this certificate, Respondent requests that the Division of Personnel reallocate the officer from Correctional Officer I to Correctional Officer II. After approval for reallocation is granted by the Division of Personnel, Respondent completes a WV-11, the official form for implementing all personnel actions of West Virginia agencies. Only after the WV-11 form has been completed, and approved, does the salary change become effective. See Reynolds supra. While a delay of seven months in the processing of Grievants' promotions appears excessive, Policy Directive 442 does not place a time limit on the process. It is not clear from the record where the delay occurred; however, as noted previously, the paperwork must be approved by several agencies. Because Respondent cannot control the work process of other agencies, it cannot be required to complete the promotion within a specified period of time.

In addition to the foregoing findings of fact and discussion, it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievants have theburden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd., 156 C.S.R. 1 §4.19 (1996), Payne v. W. Va. Dept. of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988); Lilly v. W. Va. Dept. of Tax and Revenue, Docket No. 95-T&R-576 (Apr. 5, 1996). See W. Va. Code §29-6A-6.

2. Respondent's Policy Directive 442, which establishes procedures for the administration and management of the ATP, applies to those officers who complete the program after the effective date of the policy, April 1, 1998. Reynolds v. W. Va. Div. of Corrections, Docket No. 99-CORR-006 (Feb. 22, 1999).

3. Grievants have not proven by a preponderance of the evidence that Respondent violated any law, policy, regulation, or written agreement with regard to their promotion and pay raise.

Accordingly the grievance is DENIED.

Any party or the West Virginia Division of Personnel may appeal this decision to theCircuit Court of Kanawha County or to the circuit court of the county in which the grievance occurred. Any such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §29-6A-7 (1998). 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. However, the appealing party is required by W. Va. Code §29A- 5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: July 12, 1999

Sue Keller Senior Administrative Law Judge