MARK D. REYNOLDS, et al.

Grievants,

v. **Docket No. 99-CORR-006**

WEST VIRGINIA DIVISION OF CORRECTIONS,

Respondent.

DECISION

Grievants, Mark Reynolds, Paul Blankenship, William Hamons and Mark Wiley, are employed as Correctional Officers at the Denmar Correctional Center. They allege that they are entitled to back pay from the date they completed the Apprenticeship Training Program, at which time they were qualified for promotion to the position of Correctional Officer II. The lower level record contains no information regarding proceedings at levels one and two of the grievance procedure. A level three hearing was held on December 16, 1998, and the grievance was denied in a written level three decision dated December 18, 1998. Grievants appealed to level four on January 4, 1999. A level four hearing was held in the Grievance Board's office in Elkins, West Virginia, on February 11, 1999. The parties elected not to file post-hearing arguments, so this matter became mature for consideration at the conclusion of the level four hearing. (See footnote 1)

The following findings of fact are made from a preponderance of the evidence of record.

Findings of Fact

1. Since 1994, all Correctional Officer Is employed by the Division of Corrections (DOC) have been required to complete an Apprenticeship Training Program (ATP), which consists of two years (4,000 hours) of on-the-job training and 400 hours of related studies.

2. Effective April 1, 1998, DOC adopted Policy Directive 442, which establishes procedures for the administration and management of the ATP.

3. Policy Directive 442 provides, in Section 2.02, as follows:

> 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.**

(Emphasis added.)

4. Grievant Reynolds completed all of the requirements of the ATP on July 18, 1998. The other grievants completed the program in August of 1998.

5. Grievants did not receive certificates of completion of the ATP from the U.S. Department of Labor until December 16, 1998.

6. Grievants were promoted and began receiving compensation as Correctional Officer IIs on January 16, 1999.

Discussion

In a non-disciplinary matter, Grievants must prove the allegations of their complaint by a preponderance of the evidence. Lilly v. W. Va. Dept. of Tax and Revenue, Docket No. 95-T&R-576 (Apr. 5, 1996). Grievants contend their promotions and salary increases should have been effective on the dates they completed the ATP, and that they should not be penalized for DOC's negligent processing of the necessary paperwork. DOC argues that it has fully complied with the provisions of Policy Directive 442, and, because of the several agencies and offices involved in the process, the

delay was unavoidable.

The provisions of Policy Directive 442, along with the testimony of DOC officials at levels three and four of this grievance, explain the process by which an officer who has completed the ATP receives a promotion and salary increase. First, the officer advises the Institutional Training Officer (ITO) that he has completed the ATP. The ITO 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, DOC 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, DOC completes a WV-11, which is the official form for implementing all personnel actions of West Virginia agencies. Only after the WV-11 has been completed and processed does the salary change become effective. Obviously, this process can take a significant amount of time.

Grievants have asserted several allegations regarding the impropriety of DOC'spolicy directive. First, they allege that, because they were already involved in the ATP before Policy Directive 442 was adopted, it should not apply to them. This argument is without merit. Grievants did not complete the apprenticeship program until after April 1, 1998, the effective date of the policy. Accordingly, the provisions of the policy regarding pay raises and promotion upon completion of the program clearly apply to officers who completed the program after the policy became effective.

Second, Grievants allege that Policy Directive 442 conflicts with standards promulgated by the U.S. Department of Labor regarding apprenticeship programs. Grievants introduced at level four a document entitled “Standards of Apprenticeship, ” which contains a statement that the standards set forth in the document cannot be modified in a manner which would alter existing apprenticeship agreements. Level IV, Gr. Ex. 2. (See footnote 2) The U.S. Department of Labor requires that an apprenticeship agreement be completed for every officer who is enrolled in the program. Level IV, Resp. Ex. 1. However, there is no mention of pay raises or promotion upon completion of the program in those agreements. Therefore, DOC did not modify Grievants' apprenticeship agreements by adopting Policy Directive 442.

Grievants' representative asserted at level four that he had spoken with an official of the U.S.

Department of Labor in Clarksburg in a telephone conversation prior to the level four hearing. He alleged that the official had informed him that officers must receive a pay raise upon completion of the apprenticeship program, and that DOC's delay in processing Grievants' promotions was improper. However, Grievants' representative was not swornas a witness, and this information is not verified by any witness or evidence. This official was not subject to cross examination, so it is unknown whether the U.S. Department of Labor has considered the processes which each state must follow in order to effect pay raises and promotions under various state laws and regulations. Accordingly, Grievants' representative's statements cannot be considered evidence in this grievance.

It is well-settled that "[a]n administrative body must abide by the remedies and procedures it properly establishes to conduct its affairs." Syl. Pt. 1, Powell v. Brown, 160 W. Va. 723, 238 S.E.2d 220 (1977); Edwards v. W. Va. Parkways Economic Dev. & Tourism Auth., Docket No. 97-PEDTA-426 (May 7, 1998); Graham v. W. Va. Parkways Economic Dev. & Tourism Auth., Docket No. 94-PEDTA-448 (Mar. 31, 1995). DOC has adopted Policy Directive 442 to deal with the specific issues involved in the management and administration of its ATP, including the process for promotion and pay raises upon completion of the program. Quite reasonably, the policy does not place a time limitation on this process, which is understandable, in light of the several offices and agencies which are involved in the process. Policy Directive 442 is a lawfully adopted policy of DOC, which it appropriately followed in this case. While the undersigned agrees with Grievants that a five to six month delay in processing their salary increases was excessive and understandably frustrating, the undersigned is without authority to place an arbitrary time frame upon DOC and the other agencies involved in this matter. DOC does not control these other entities, so it would be unreasonable, and possibly futile, to require them to complete the process within a specified amount of time.

In accordance with the foregoing findings and discussion, the following conclusions of law are made.

Conclusions of Law

1. In a non-disciplinary matter, Grievants must prove the allegations of their complaint by a preponderance of the evidence. Lilly v. W. Va. Dept. of Tax and Revenue, Docket No. 95-T&R-576 (Apr. 5, 1996).

2. "An administrative body must abide by the remedies and procedures it properly establishes

to conduct its affairs." Syl. Pt. 1, Powell v. Brown, 160 W. Va. 723, 238 S.E.2d 220 (1977); Edwards v. W. Va. Parkways Economic Dev. & Tourism Auth., Docket No. 97-PEDTA-426 (May 7, 1998); Graham v. W. Va. Parkways Economic Dev. & Tourism Auth., Docket No. 94-PEDTA-448 (Mar. 31, 1995).

3. Grievants have not proven by a preponderance of the evidence that DOC violated any law, policy, regulation, or written agreement with regard to their promotions and pay raises to Correctional Officer II.

Accordingly, this grievance is **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Kanawha County or 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 (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. 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 andtransmitted to the appropriate court.

Date: February 22, 1999 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Grievants were represented by Jack Ferrell of the Communications Workers of America, and Respondent was represented by counsel, Leslie Tyree.

Footnote: 2

It appears that this document was created by DOC, but it is undated and no DOC personnel were asked to explain it at the hearing.