SCOTTY HYPES, et al.,

Grievants,

v.

DOCKET NO. 01-CORR-009

WEST VIRGINIA DIVISION OF CORRECTIONS/

MT. OLIVE CORRECTIONAL COMPLEX,

Respondent.

D E C I S I O N

Grievants, Scotty Hypes, Like Brammer, and Brian Short, filed separate grievances against their employer, the West Virginia Division of Corrections ("Corrections") on or about October 19, 2000, as follows:

> Pursuant of Policy Directive 145.00 my apprenticeship was not submitted for the request of certificate within the allotted five (5) days of receipt. Nor does my certificate reflect the correct date of completion.
>
> Relief sought: Back pay from date of completion and new certificate with correct dates of completion and or otherwise made whole.

The grievances were denied at level one by Grievants' supervisor, Captain Joseph Wood, by written decisions dated October 21, 2000. The grievances were granted in part at level two by Cheryl Chandler, by decisions dated October 27, 2000, in which she agreed the dates of their certificates should be corrected. The grievances were consolidated at level three, and a level three hearing was held on December 20, 2000, and the grievance was denied by Hearing Evaluator Tony LeMasters on December 28, 2000. Grievants appealedto level four on January 10, 2001, and a hearing was scheduled in the Grievance Board's Charleston, West Virginia, office on February 22, 2001. A snow storm enveloped large portions of the State on February 22, 2001, and Corrections' counsel, Leslie

Tyree, was unable to attend the hearing. Grievants appeared for the hearing pro se, and after a review of the lower level record, the undersigned offered Grievants the opportunity to go on record with their statements, and submit documentation, all of which was already entered at the level three hearing. The grievance was essentially submitted on the lower level record, and Ms. Tyree offered no objection after being furnished with copies of the tape of the hearing, and all exhibits. Thereafter, this grievance became mature for decision on March 9, 2001.

SUMMARY OF EVIDENCE

Grievants' Exhibits

Ex. 1 -

December 18, 2000 memorandum from Randy Perdue to Leslie Tyree.

Ex. 2 -

Level III decision, dated December 28, 2000.

Ex. 3 -

Grievance documents; October 18, 2000 memorandum from Randy Perdue to Brian Short with attached Certificate of Completion; October 18, 2000 memorandum from Randy Perdue to Scotty Hypes with attached Certificate of Completion; Certificate of Completion for Luke Brammer; Records of Completion for Brian Short, Scotty Hypes, and Luke Brammer, dated June 7, 2000.

Corrections' Exhibits

None.

Testimony

Grievants testified in their own behalf. Corrections presented no additional witnesses.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts:

1. Grievants are all employed by Corrections as Correctional Officer Is at the Mt. Olive Correctional Complex.

2. Grievant Hypes successfully completed the required West Virginia Corrections Academy Apprenticeship Program, or OAP, on June 7, 2000. G. Ex. 3.

3. Grievant Short successfully completed the OAP on June 25, 2000. G. Ex. 3.

4. Grievant Brammer successfully completed the OAP on June 29, 2000. G. Ex. 3.

5. Grievants received their Certificates of Completion on or about October 18, 2000. The Certificates erroneously indicate their date of completion of the program was September 1, 2000. G. Ex. 3.

6. Due to an administrative oversight on the date of completion, and a transition of employees at the Academy, the Grievants' apprenticeship completion package was delayed for submission, thus resulting in the delay in processing. G. Ex. 1.

7. Officers are entitled to a 5% salary increase upon completing the Apprenticeship Program. G. Ex. 1.

DISCUSSION

Grievants bear the burden of proving their allegations by a preponderance of the evidence. W. Va. Code § 29-6A-6; Mowery v. W. Va. Dept. of Natural Resources, Docket No. 96-DNR-218 (May 30, 1997). The resolution of this grievance is governed by this Grievance Board's decision in Thornhill v. West Virginia Division of Corrections, Docket No. 99-CORR-215 (Aug. 9, 1999). As discussed in Thornhill, Corrections adopted a Policy governing the procedure after completion of the OAP, effective April 1, 1998. That Policy, 442, provides with regard to additional pay upon completion of the OAP:

> The Director of the Academy shall request a Certificate of Completion of Apprenticeship from the Bureau of Apprenticeship and Training 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 in accordance with Section 4.07 of the West Virginia Division of Personnel Administrative Rule, and each incumbent shall be compensated as specified in Section 5.05 of such rule.
>
> 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.

Thornhill, supra.

This Grievance Board has found in other cases relating to the OAP:

> DOC has adopted Policy Directive 442 to deal with the specific issues involved in the management and administration of its [OAP], 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.

Thornhill, supra, citing Reynolds, et al., v. W. Va. Div. of Corrections, Docket No. 99-CORR-006 (Feb. 22, 1999).

There is no dispute in this grievance that Corrections was in control of initiating the process for Grievants to receive their pay increases, and due to erroneous information in the original OAP packages, the process was not completed until September 2000, when it should have been initiated in June 2000, and thus, their pay increases were unnecessarily delayed. Corrections argued only that Policy 442 governs when the pay increase is effective, and the pay increase cannot take effect until the two Policy 442 conditions are met. Corrections did not dispute that Grievants had completed all the requirements of the OAP in June 2000.

"An administrative body must abide by the remedies and procedures it properly establishes to conduct its affairs." Powell v. Brown, 160 W. Va. 723, 238 S.E.2d 220 (1977). In addition to Policy 442 setting forth the conditions for implementation of the OAP pay increase, it also directs the Director of the Academy to initiate the process upon completion of the program. This did not occur. The Director did not initiate the process until three months after Grievants had completed the OAP. As in Thornhill, it appears that the two Policy 442 conditions were met on the respective June, 2000, dates. At level two, Grievance Evaluator Chandler agreed the Certificates should be corrected to reflect the correct completion dates, but as of the level four hearing, that had not occurred.

Grievants have proven Corrections did not comply with Policy 442. As their pay increases were unnecessarily delayed from June 2000, to September 2000, it is appropriate to award them back pay

for the same number of days as the delay, which is87 days for Grievant Hypes, 69 days for Grievant Short, and 66 days for Grievant Brammer. G. Ex. 1.

The following Conclusions of Law support the Decision reached.

CONCLUSIONS OF LAW

1. Grievants bear the burden of proving their allegations by a preponderance of the evidence. W. Va. Code § 29-6A-6; Mowery v. W. Va. Dept. of Natural Resources, Docket No. 96-DNR-218 (May 30, 1997).

2. "An administrative body must abide by the remedies and procedures it properly establishes to conduct its affairs." Powell v. Brown, 160 W. Va. 723, 238 S.E.2d 220 (1977).

3. Corrections' Policy 442 provides:

> The Director of the Academy shall request a Certificate of Completion of Apprenticeship from the Bureau of Apprenticeship and Training 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 in accordance with Section 4.07 of the West Virginia Division of Personnel Administrative Rule, and each incumbent shall be compensated as specified in Section 5.05 of such rule.
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> Additional pay or promotion shall not be effective until compliance with the following:
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> 2. Submission and final approval of a West Virginia Personnel Action Form WV-11.

Thornhill v. W. Va. Division of Corrections, Docket No. 99-CORR-215 (Aug. 9, 1999).

4. Grievants proved Corrections did not follow Policy 442 when it delayed requesting their Certificates of Completion from June 2000, when they completed the OAP, untilSeptember 2000, due to erroneous information provided in Grievants' original OAP packages.

Accordingly, this grievance is **GRANTED**. Respondent is **ORDERED** to pay Grievants back pay in the amount of the difference, if any, between their pay as Correctional Officer Is and as Correctional Officer IIs, specifically, 87 days for Grievant Hypes, 69 days for Grievant Short, and 66 days for

Grievant Brammer, to be computed in accordance with West Virginia Division of Personnel Rule § 5.05, plus interest. In addition, Respondent is **ORDERED** to correct the dates of Grievants' certificates of completion as set forth in Findings of Fact Nos. 2-4.

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. 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.

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MARY JO SWARTZ

Administrative Law Judge

Dated: March 28, 2001