LORRAINE CLARK, et al.,

Grievants,

v. **Docket No. 04-HHR-335**

WEST VIRGINIA DEPARTMENT OF

HEALTH AND HUMAN RESOURCES/

BUREAU for CHILDREN and FAMILIES,

Respondents.

D E C I S I O N

Grievants are employed by Health and Human Resources ("HHR" or "Agency") as Family Support Specialists in the Bureau for Children and Families ("BCF"). (See footnote 1) There were three sets of group grievances filed which related to the same issue. These grievances were from the Family Support Specialists in Region II (Cook grievance), Region IV (Clark grievance), and Region I (Ford grievance), and they were filed on August 3, 2004, July 22, 2004, and August 10, 2004, respectively.

The Cook Statement of Grievance reads, "Specifically that we no longer have time for the phased in responsibilities that were given to WV Works case managers in 04/01/03 thru 7/01/04 now that we are again responsible for the child only cases as of 08/01/04."

The relief sought by the Cook Grievants was the application of one of three "scenarios":

> 1 - We are requesting that the Family Support Unit discontinue the 45 day home visit requirement, the job retention follow-ups and the practice of requiring the WV WORKS workers to carry these cases in their caseloads forthe 180 days, the post 2nd and 3rd sanction home visits, the 55th month case staffing, 59th month exit interviews and the self-sufficiency interview at 24, 36 & 48 months.
>
> 2- OR We request compensation for these additional requirements of a 10% pay increase retroactive to 08/01/04
>
> 3 - OR to hire additional WV WORKS workers to meet the new case load standard.

> When these additional requirements were added[,] the caretakers cases were removed to allow the WV WORKS workers time for the additional duties, but now the caretakers cases have been returned and we are seeking relief from this action.

The Clark Statement of Grievance reads:

> The WV Works Revamp Committee's Final Report dated May 1, 2002 states, "The cornerstone to changes in the current WV Works program must be change in philosophy in the service delivery system. We must systematically move from the realm of determining eligibility and providing support service payments, to a case management system that focuses on issues surrounding the entire family. We must enable our Workers to make accurate family assessments, assist clients in developing realistic goals and provide case management service that assures those goals are realized in a timely manner.["]
>
> "To enable our agency to become more efficient, changes need to be made to assure that effective services are provided promptly."
>
> With non-PRC [non-Personal Responsibility Contract] cases being given back to the Family Support Specialists, they will be burdened with a situation where they will not be able to provide efficient services in a timely manner.

The Clark Grievants sought the following changes as relief: 1) assign cases that do not involve TANF [Temporary Aid to Needy Families] or Works checks to Economic Service Workers; 2) end home visits on Non-PRC [non-Personal Responsibility Contract] cases; (See footnote 2) 3) discontinue job retention follow-ups; 4) change when Self-Sufficiency AppraisalForm should be completed; 5) restore lost positions caused by giving cases to Economic Service Workers (See footnote 3); and 6) count Pin cases as part of the Family Support Specialists caseload.

The Ford Statement of Grievance notes the return of "child only" cases to the Family Support Specialists because of a recent Grievance Board decision, explains why these cases were given to the Economic Service Workers in the first place, discusses the job duties of the Family Support Specialists, and avers the tasks they engage in are time- consuming and cannot be quantitatively measured.

The relief sought by the Ford Grievants is "transfer of cases in which no check is being issued (3rd or subsequent sanctions or cases closed due to income) to Income Maintenance (ESW) caseloads for reviews and routine maintenance or additional FFS staff to assist with additional

workload."

This grievance was denied at Levels I and II for lack of authority to grant the relief sought. The three sets of Grievants appealed to Level III and were heard separately. These grievances were denied by Level III Decisions issued during September of 2004. All three groups of Grievants appealed to Level IV, and these grievances were consolidated for hearing and decision. A Level IV hearing was held on February 25, 2005, and this case became mature for decision on March 28, 2005, after receipt of the parties' proposed findings of fact and conclusions of law. (See footnote 4)

Issues and Arguments

Grievants assert they are overworked and cannot meet the expectations of their positions. The major focus of each grievance is suggestions about how these perceived problems can be corrected. All three groups believe the answer lies in two main areas: 1) giving cases to the Economic Service Workers; and 2) removing specific duties they feel are time consuming and result in little information and assistance to their clients. (See footnote 5)

Respondent maintained these matters are not grievable as no statute, policy, rule, or regulation has been violated. HHR notes that pursuant to W. Va. Code § 9-2-6(1) the commissioner is given the authority and responsibility to assign duties to meet the needs to the Department of Health and Human Resources. Respondent also maintains: 1) the issues raised by Grievants are management issues; 2) the case load standards established by HHR are advisory rather than mandatory; and 3) no Grievant had been disciplined for failure to complete the assigned work. Further, HHR noted it is taking steps to decrease Grievants' work loads, and some of their recommendations have already been adopted.

It should be noted that these grievances were filed after the Grievance Board's ruling in Bailey v. Department of Health and Human Resources, Docket No. 03-HHR-167 (June 30, 2004). In Bailey, the grievants were Economic Service Workers who filed a grievance after cases previously assigned to Family Support Specialists were assigned tothem. The Bailey grievants asserted they were overburdened by these additions to their case loads. The Level IV Bailey Decision directing HHR to remove these cases from the Economic Service Workers, followed a finding of default. The administrative law judge found it would not be "clearly wrong or contrary to law" to return these cases to the Family Support Specialists.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievants are all employed as Family Support Specialists.

2. The Family Support Specialists Classification Specification defines this classification's "Nature of Work" as:

> Under general supervision, performs work at full-performance level by providing case management services requiring development of a time limited personal responsibility contract for applicants and recipients of public assistance and employment programs provided by the Office of Family Support.
>
> Conducts personal interviews with applicants and/or recipients, recording, evaluating and verifying social and financial information, determining services needed to enable fulfillment of personal responsibility contract goals, analyzing and interpreting aptitude and interest test results to direct the development of employment goals for applicants/recipients, coordinates with other social service and community organizations when appropriate to ensure completion of personal responsibility contract and conducting case management activities related to continuing eligibility for services.
>
> Employee must possess a valid driver's license and must have access to transportation for required travel. Performs related work as required.

3. The class specification lists the Family Support Specialists's "Examples of Work" as:

> Negotiates a Personal Responsibility Contract with clients to outline goals, and a plan of action.
>
> Provides or arrange for delivery of needed services and monitor the progress of the plan.
>
> Develops employability plans to assist client in attaining employment goals, and provide/arrange services that may be necessary.
>
> Arranges needed testing to determine general functional levels, aptitude and interest for vocational planning.
>
> Counsels client/families in achieving employment goals, and fulfilling Personal Responsibility Contract.
>
> Conducts job development with community employers by interacting with a variety of professionals, elected officials, agency directors and community leaders to assess employment needs of the community and to refer clients to the appropriate agency.

Develops and monitor contracts with work sites for subsidized employment, work experience activities and community volunteer programs.

Conducts job search instruction when appropriate and direct clients in job search activities through utilization of job seeking skills and group or individual employment counseling.

Assesses the need for social service intervention, and direct the client to community resources when appropriate.

Explains the policies, rules, regulations and goals of the program to clarify requirements for the client and identify the agency.

Determines the level of services needed by using the appropriate guidelines and manuals.

Conducts interviews and process applications for services and evaluate the applicant/recipient needs by interviewing the client initially to gain an overview of the client's financial resources and social circumstances pertinent to eligibility for services.

Updates the case files by scheduling periodic home or office visits with the clients, recording progress reports and by communicating with the client bytelephone to assist in monitoring the client's progress in achieving the goals of the Personal Responsibility Contract.

4. HHR Commissioner Fred Boothe issued a directive on March 1, 2003, stating Economic Service Workers would begin completing reviews and general case maintenance on "child only" cases, a task that had been previously assigned to Family Support Specialists.

5. In "child only" cases a child receives a cash assistance check, but no Personal Responsibility Contract is required because no adult in the household is included in the assistance. These cases do not have the usual Temporary Aid to Needy Families (TANF) 60-month limitation.

6. These tasks Commissioner Boothe reassigned to the Economic Service Workers are within the duties of the class specifications of both Family Support Specialists and Economic Service Workers.

7. After these cases were assigned to the Economic Service Workers, the Family Support Specialists were then assigned additional duties within their classification to insure the goals of the program were met.

8. On June 30, 2004, this Grievance Board granted Bailey, which returned the child only cases to the Family Support Specialists that had been given to the Economic Service Workers.

9. HHR has no formal caseload standards. A case load standard review is currently underway, but has not yet been completed. The data from a recent caseload review was discarded by the

statisticians as unuseable. 10. The overall number of Personal Responsibility Contract cases assigned to Family Support Specialists has decreased. In February 2003, the average number of Personal Responsibility Contract cases was 35 per Family Support Specialists, and in January 2005 the average number of Personal Responsibility Contract cases was 25 per Family Support Specialist. Resp. No. 1 at Level IV. The major focus of a Family Support Specialist is the work with clients with a Personal Responsibility Contract.

11. The reassigned cases represent approximately a 7.7% percentage of increased time to the Grievants' overall caseloads. This estimate of the increase was liberal, as many of these cases would not require all the actions considered in the estimated time. Test. Exline & Lewis, Level IV Hearing. Resp. Nos. 1 & 3 at Level IV.

12. Grievants have not conducted any studies or time-use analysis to evaluate the impact of the additional cases on their work.

13. Due to the default presumption that the grievants had prevailed on the merits of their claim, the administrative law judge in Bailey found the Economic Service Workers had been overburdened by the addition of the child only cases.

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 § 4.21 (2004); Howell v. W. Va. Dep't of Health & Human Res., Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6. See also Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug.19, 1988). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health & Human Res., Docket No. 92-HHR-486 (May 17, 1993).

I. Impact of the returned cases

Grievants assert the returned cases have had such a negative impact that they can no longer get their work done. Other than self-serving testimony, they had no data to support this contention. While the undersigned Administrative Law Judge believes Grievants are busy, it appears for the testimony of all parties that they were busy before the reassignment and are busy now. The evidence

presented by HHR shows the impact to be minimal, representing, at most, a 7.7% increase in the time required to complete their job duties. Additionally, some of the time-saving suggestions made by Grievants have already been implemented, and other are close to implementation.

II. Management Decisions

The majority of Grievants' testimony dealt with how they wished to have their work load changed, and who they wanted to be assigned certain types of cases. These issues are management decisions.

W. Va. Code §9-2-6 discusses the powers of the Commissioner of Department of Health and Human Resources. This Code Section states in pertinent part:

> [T]he commissioner . . . is authorized and empowered to:
>
> (1) Promulgate, amend, revise and rescind department rules and regulations respecting the organization and government of the department and the execution and administration of those powers, duties and responsibilitiesgranted and assigned by this chapter and elsewhere by law to the department and the commissioner.

Accordingly, the Commissioner has the authority to amend prior rulings. Here, after the Bailey ruling, the Commissioner then reassigned the child only cases to the only other classification that could be assigned these duties. This act was within her authority, necessitated by the Grievance Board Decision, and required to prevent the loss of services to HHR's clients.

The West Virginia Supreme Court of Appeals has noted this Grievance Board's jurisdiction to resolve grievances, as defined in W. Va. Code § 29-6A-2(i), does not provide authority for an Administrative Law Judge to substitute her management philosophy for that of the employer. Skaff v. Pridemore, 200 W. Va. 700, 490 S.E.2d 787 (1997); See Settle v. W. Va. Parkways Economic Dev. and Tourism Auth., Docket No. 00-PEDTA-031 (May 23, 2000); Bennett v. Dep't of Health and Human Res., Docket No. 99-HHR-517 (Apr. 26, 2000); Terry v. Dep't of Transp./ Div. of Personnel, Docket No. 99-DOH-207 (Mar. 17, 2000). "A general claim of unfairness or an employee's philosophical disagreement with a policy does not, in and of itself, constitute an injury sufficient to grant standing to grieve. See Olson v. Bd. of Trustees/Marshall Univ., Docket No. 99-BOT-513 (Apr. 5, 2000)(citing Skaff v. Pridemore, 200 W. Va. 700, 490 S.E.2d 787 (1997))." Vance v. Jefferson County Bd. of Educ., Docket No. 02-19-030R (Nov. 20, 2002).

This Grievance Board has frequently ruled that, "[a] [g]rievant's belief that his supervisor's

management decisions are incorrect is not a grievable event unless these decisions violate some rule, regulation, or statute, or constitute a substantial detriment to or interference with his effective job performance or health and safety." Ball v. Dep't ofHighways, Docket No. 96-DOH-141 (July 31, 1997). See W. Va. Code § 29-6A-2(i); Rice v. Dep't of Transp./Div. of Highways, Docket No. 96-DOH-247 (Aug. 29, 1997). Here, Grievants did not show a "substantial detriment to or interference with [their] effective job performance. Respondent presented data to demonstrate the effect of the returned cases, and this data indicated a slight impact. Grievants presented little evidence to support their contention the return of these cases had a significant impact.

Further, even if the commissioner's decision was subject to review, management decisions are to be judged by the arbitrary and capricious standard. "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. See Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); Yokum v. W. Va. Schools for the Deaf and the Blind, Docket No. 96- DOE-081 (Oct. 16, 1996)." Trimboli v. Dep't of Health and Human Res., Docket No. 93- HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. State ex rel. Eads v. Duncil, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." Eads, supra (citing Arlington Hosp. v. Schweiker, 547 F. Supp. 670 (E.D. Va. 1982)). The arbitrary and capricious standard is a high one, requiring willful and unreasonable action and disregard of known facts. No showing of arbitrary and capricious action has been made here. This case is similar to Chaddock v. Division of Corrections, Docket No. 04-CORR-278 (February 14, 2005). In Chaddock, the grievant wanted the Grievance Board to require the warden to write a policy about the selection, assignment, and placement of officers in certain positions. There as here, W. Va. Code § 25-1-11a, gives "[t]he warden . . . the responsibility for the overall management of all operations within his or her assigned institution." The Grievance Board found Corrections' decision not to write a policy was not arbitrary and capricious, and such action could not be dictated by the Grievance Board.

The same conclusion must be reached here. The undersigned Administrative Law Judge does not have the authority to make management decisions for HHR, and the decision made by the

Commissioner was not arbitrary and capricious. It should also be noted that Grievants' concerns have not fallen on deaf ears. HHR is reevaluating case load standards, changes have already been made in some of the expected duties, and additional changes are being evaluated.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievances by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); Howell v. W. Va. Dep't of Health & Human Res., Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6. See also Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug.19, 1988). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health & Human Res., Docket No. 92-HHR-486 (May 17, 1993).

2. W. Va. Code § 9-2-6 grants the commissioner the authority to assign duties as required to meet the needs of the agency.

3. This Grievance Board does not have the authority to substitute its judgement for the management philosophy of the employer. Skaff v. Pridemore, 200 W. Va. 700, 490 S.E.2d 787 (1997). See Settle v. W. Va. Parkways Economic Dev. and Tourism Auth., Docket No. 00-PEDTA-031 (May 23, 2000); Bennett v. Dep't of Health and Human Res., Docket No. 99-HHR-517 (Apr. 26, 2000); Terry v. Dep't of Transp./ Div. of Personnel, Docket No. 99-DOH-207 (Mar. 17, 2000).

4. "A general claim of unfairness or an employee's philosophical disagreement with a policy does not, in and of itself, constitute an injury sufficient to grant standing to grieve. See Olson v. Bd. of Trustees/Marshall Univ., Docket No. 99-BOT-513 (Apr. 5, 2000)(citing Skaff v. Pridemore, 200 W. Va. 700, 490 S.E.2d 787 (1997))." Vance v. Jefferson County Bd. of Educ., Docket No. 02-19-030R (Nov. 20, 2002).

5. A grievant's belief that an agency's management decisions are incorrect is not grievable unless these decisions violate some rule, regulation, or statute, or constitute a substantial detriment to, or interference with, the employee's effective job performance or health and safety. W. Va. Code § 29-6A-2(i). Management decisions are judged by thearbitrary and capricious standard. See Rice v.

Dep't of Highways, Docket No. 96-DOH-247 (Aug. 29, 1997); Ball v. Dep't of Highways, Docket No. 96-DOH-141 (July 31, 1997)

6. "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. See Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); Yokum v. W. Va. Schools for the Deaf and the Blind, Docket No. 96-DOE-081 (Oct. 16, 1996)." Trimboli v. Dep't of Health and Human Res., Docket No. 93-HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. State ex rel. Eads v. Duncil, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." Eads, supra (citing Arlington Hosp. v. Schweiker, 547 F. Supp. 670 (E.D. Va. 1982)). The arbitrary and capricious standard is a high one, requiring willful and unreasonable action and disregard of known facts.

7. Grievants did not demonstrate any statute, policy, rule, or regulation has been violated, or that their case loads were excessive.

8. Grievants have not demonstrated the actions of HHR were arbitrary and capricious.

9. Grievants have not demonstrated that the reassignment of the "child only cases: creates "substantial detriment to or interference with effective job performance . . . of the employees." See W. Va. Code § 29-6A-2(i). 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." 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 StateEmployees 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.

JANIS I. REYNOLDS

ADMINISTRATIVE LAW JUDGE

Dated: June 29, 2005

Footnote: 1

Grievants are Susan Cook, Regina Waggoner, John Harding, Mary Ford, Donna White, Joyce Wilson, Vernon Eikenberry, Dawn Forro, Nigel Maxey, Lorraine Clark, Cheryl McKinney, Tammie Cooley, Linda Kidd, Teressa Conley, Kara Bell, Louise Blaylock, Sharon Taylor, Pamela Randolph, Rennie Butcher, Pamela Brown, George Mosko, and Andrew Petitt. Grievants Jerry Hall and Nadine Masri were added at Level IV without objection by HHR.

Footnote: 2

It appears this change has already been made.

Footnote: 3

There were no Family Support Specialist positions lost as the result of giving cases to Economic Service Workers.

Footnote: 4

Grievants were represented by Grievants Harding, Clark, Maxey, and Ford, and HHR was represented by B. Allen Campbell, Senior Assistant Attorney General.

Footnote: 5

On November 18, 2004, the Clark Grievants asserted a default occurred at Level III because they believed the Level III Decision did not specifically address their complaints. These Grievants agreed all the timelines had been met by the Agency. By letter dated November 23, 2004, the undersigned Administrative Law Judge informed Grievants that default assertions related to timelines, and since the timelines were met, their request for default judgment would not be addressed further.