THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

JOHN ROBINSON, et. al,

Grievants

v. **Docket No. 06-CORR-057**

DIVISION OF CORRECTIONS/
ANTHONY CORRECTIONAL CENTER,

Respondent.

DECISION

Grievants (See footnote 1) filed this grievance on December 19, 2005, alleging:
We feel that Anthony Correctional Center's practice of scheduling the bare minimum of nine (9) correctional officers on each shift has created an unsafe workplace for the staff and offenders. By scheduling only nine (9) officers on each shift, we are unable to achieve the West Virginia Division of Corrections Mission Statement because we can not provide a SAFE and SECURE correctional facility for the STAFF and Offenders.

RELIEF SOUGHT: To receive additional correctional officer positions to provide for fifteen (15) officers on each shift with a minimum of twelve (12) officers scheduled 24/7/365 and additional programs staff to meet the required number of non-uniformed staff stated in Operational Procedure #124.01 Personnel Assignment, dated 01 February 2005, Section II, paragraph C.

This grievance was denied at the lower levels. A Level IV hearing was held on April 24, 2006, at the

Grievance Board's Beckley office. Grievants were represented by Dennis Brackman, and Respondent was represented by John Boothroyd, Assistant AttorneyGeneral. This case became mature on May 24, 2006, upon the parties' submissions of proposed findings of fact and conclusions of law.

Issues and Arguments

Grievants assert the Commissioner of Corrections has the authority to create additional correctional officer positions and take back the six correctional officer positions that were given to Huttonsville Correctional Center. Grievants also argue that legislative intent is being abused so as to provide manpower at correctional facilities other than Anthony Correctional Center ("ACC").

Respondents counter by arguing ACC cannot increase its overall manpower because funding is controlled by the state legislature. Based on a preponderance of the evidence, I find the following material facts have been proven:

Findings of Fact

1. Grievants are employed by Respondent at ACC.
2. Currently ACC houses approximately 210 juvenile offenders from throughout the state.
3. Operational Procedure 124.01 provides for 9 correctional officer posts to be filled 24 hours a day, 7 days a week.
4. Operational Procedure 124.01 strongly discourages only the minimum number of staff to cover an area, shift or department.
5. Currently, ACC is staffing the minimum nine correctional officers posts. In order to meet this minimum requirement often one or two officers have to perform mandatory overtime or come in on their regularly scheduled days off. Sometimes there arestill not enough corrections officers to meet the minimum requirement and a correctional counselor, substance abuse therapist, recreation specialist, or other non-uniformed staff member must cover one of these nine posts.
6. Because of staffing issues, there are times when correctional officers may not get breaks because there is no one to cover their post while they are away.
7. Positions at ACC are funded by the state legislature. Currently the state legislature has funded 101.25 positions. Twelve of these positions are currently vacant. The vacancies are the result of employees on medical absences, personal leave, and turnover.
8. Warden Scott Patterson routinely requests more funding from the legislature to add needed positions at ACC. These requests have not been granted.

9. Approximately five years ago, the Commissioner of Corrections decided to transfer 6 positions from ACC to Huttonsville Correctional Center due to staffing shortage at that facility. Those 6 positions have not been returned to ACC.

10. Correctional officers at ACC participate in Corrections Emergency Response Teams (C.E.R.T.) training. This training permits ACC to employ staff able to respond to emergencies such as riots or hostage taking.

11. ACC is also accredited by American Correctional Association (A.C.A.). This accreditation certifies the facility has met the standards set by the A.C.A. regarding all aspects of operating a penal institution.

12. One person is assigned to complete the accreditation paperwork.

13. The funding for accreditation is taken from the portion of the budget for operational expenses. Employees are paid from a portion of the budget allotted forpersonnel expenses. Warden Patterson cannot reallocate money from one section to another section.

Discussion

Since this grievance is not about discipline, Grievants must prove all of their claims by a preponderance of the evidence, which means they must provide enough evidence for the undersigned Administrative Law Judge to decide that their claim is more likely valid than not. *See Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996); *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). If the evidence supports both sides equally, then Grievants have not met their burden. *Id.*

Grievances may address "any action, policy or practice constituting a substantial detriment to or interference with effective job performance or the health and safety of the employees. W. Va. Code § 29-6A-2(1). Grievants allege ACC fails to provide a safe and secure working environment because it schedules only the minimum amount of staff required for the shift. However, ACC's actions, policies and practices complained of here are not the result of deliberate choice. Clearly, as a matter of policy and practice, ACC would prefer to have more than nine correctional officers assigned to each shift. In fact, Operational Procedure 124.01 strongly discourages only scheduling minimum coverage. Unfortunately, ACC has no other choice at this time.

ACC's funding is determined by the legislature. Each year Warden Patterson attempts to obtain additional funding so that he can more adequately staff the facility. However, additional funds have

not been allocated to the facility. Therefore, there isnothing ACC can do to remedy the situation, and the undersigned ALJ does not have authority to create additional positions at the facility.

Short of having more funds allocated, Grievants seem to indicate ACC should reallocate existing manpower. The two potential areas of reassignments are C.E.R.T. training and A.C.A. accreditation. However, having resources devoted to those two areas does not constitute a substantial detriment to the health and safety of Grievants. First, ACC is following the minimum requirement of staffing nine correctional officers, and while it would be preferable to be able to staff in excess of nine, ACC cannot be faulted for meeting the minimum standard. Second, C.E.R.T. training is beneficial to Grievants' health and safety. The employees who have attended this training are better equipt to handle serious, dangerous emergencies, making ACC's staff highly trained and qualified. A.C.A. accreditation indicates that the facility is properly and humanely run. Grievants have not demonstrated that utilizing resources in these two areas instead of reassignments constitutes a substantial detriment to their health and safety. As a matter of fact, both C.E.R.T. training and A.C.A. accreditation are in Grievants' best interests. The following conclusions of law support this decision.

Conclusions of Law

1. Since this grievance is not about discipline, Grievants must prove all of their claims by a preponderance of the evidence, which means they must provide enough evidence for the undersigned Administrative Law Judge to decide that their claim is more likely valid than not. *See Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996); *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). If the evidence supports both sides equally, then Grievants has not mettheir burden. *Id.*

2. Grievants have not proven by a preponderance of the evidence that ACC's actions, policies or practices regarding staffing constitute a substantial detriment to Grievants' health and safety

For the foregoing reasons, this grievance is hereby **DENIED**.

Any party 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. 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: June 27, 2006

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Wendy A. Campbell

Administrative Law Judge

Footnote: 1 *The following individuals were listed as participating Grievants: John Robinson, Tim Hoover, Wanda Young, Jason McMillion, Chris Stacy, W. David Richmond, Robin Wilson, James Kelley, Kelly Fugate, Travis Barker, Dennis Brackman, Rodney White, John Jordan, James Shower, David Stallard, Estonia Howerton, Russ Bond, and Joyce Matheney.*