THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

JOHN ROBINSON,

Grievant,

v. **DOCKET NO. 06-CORR-385**

DIVISION OF CORRECTIONS/

ANTHONY CORRECTIONAL CENTER,

Respondent.

DECISION

Grievant, John Robinson, filed this grievance on February 24, 2006, stating:

I feel that I have been unjustly treated when Anthony Correctional Center failed to follow the Policy on promotions during the Promotion Board for Correctional Officer V on 10 February 2006 when they changed the questions for the Promotion Board sent by the Academy.

His stated relief sought is “To be promoted to Correctional Officer V with all seniority, back pay and privileges, or to have the promotion Board redone with no involvement by Anthony Correctional Center.”

A level four hearing was held in the Grievance Board's Beckley office on December 20, 2006. Grievant appeared *pro se*, and Respondent was represented by Charles Houdyschell, Jr., Senior Assistant Attorney General. The matter became mature for decision at the conclusion of the hearing, the parties having declined the opportunity to file proposed findings of fact and conclusions of law.

Synopsis

Grievant asserts Respondent violated WV DOC Policy Directive 132.02 when it transmitted interview questions via e-mail, instead of in a sealed envelope as specified by the Directive. Respondent avers Grievant has failed to present any evidence of harm. Respondent

argues the integrity of the process was maintained, even though the questions were e-mailed.

Based on a preponderance of the evidence, I find the following material facts have been proven:

Findings of Fact

1. Grievant is employed as a Correctional Officer at Anthony Correctional Center.

2. Grievant applied for a promotion to Correctional Officer V. He, along with other applicants were interviewed for the promotion. Grievant was not awarded the promotion.

3. The Promotion Board was comprised of Scott Patterson, Warden; Steve Balducci, Commissioner's Representative; and George Janus, Academy Representative. Warden Patterson was the Chairperson of the Promotion Board.

4. Interview questions were sent via e-mail from Col. Randy Perdue, Director of Training at the Corrections Academy, to Wayne White, an employee who was not involved with the Promotion Board.

5. Mr. White brought this to Warden Patterson's attention, and Warden Patterson contacted Col. Perdue requesting new questions be sent to him via e-mail to preserve the interview process.

6. Col. Perdue then sent a different set of interview questions to Warden Patterson's e-mail. 7. Each applicant for the Correctional Officer V position was asked the same set of questions.

8. WV DOC Policy Directive 132.02(G)(1)(a) specifies interview questions will be hand delivered in a sealed envelope to the Chairperson of the Interview Board, along with the correct answers.

Discussion

Since this grievance is not about discipline, Grievant must prove all of his claims by a preponderance of the evidence, which means he must provide enough evidence for the undersigned Administrative Law Judge to decide that his 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 Grievant has not met his burden. *Id.*

Grievant's argument is that Respondent violated WV DOC Policy Directive 132.02, when the

interview questions were e-mailed to the Chairperson of the Interview Board, as the policy specifically states the questions and answers are to hand delivered in a sealed envelope.

Clearly, the purpose of this provision is to protect the integrity of the interview process and of the interview questions. When the questions were e-mailed inadvertently, Warden Patterson who was Chairperson of the Board requested new questions be sent to him directly, as he was concerned the process had been compromised. This was corrected with the new questions being sent to his e-mail. The specific method by which the questions were transmitted is irrelevant because Grievant was not able to show howhaving the questions sent via e-mail as opposed to in a sealed envelope were prejudicial to him.

This Grievance Board has continuously refused to deal with issues when the relief sought is “speculative or premature, or otherwise legally insufficient.” *Dooley v. Dept. of Trans./Div. of Highways*, Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd. of Educ.*, Docket No. 91-35-229/239 (Nov. 27, 1991). Typically, a Grievant must show “an injury-in-fact, economic or otherwise” to have what “constitutes a matter cognizable under the grievance statute.” *Lyons v. Wood County Bd. of Educ.*, Docket No. 89-54-601 (Feb. 28, 1990); *Dunleavy v. Kanawha County Bd. of Educ.*, Docket No. 20-87- 102-1 (June 30, 1987). "Relief which entails declarations that one party or the other was right or wrong, but provides no substantive, practical consequences for either party, is illusory, and unavailable from the [Grievance Board]. *Miraglia v. Ohio County Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993).

Because Grievant offered no evidence to prove he has suffered an injury-in-fact and only offered mere speculation, this grievance must be denied.

The following conclusions of law support this discussion:

Conclusions of Law

1. Since this grievance is not about discipline, Grievant must prove all of his claims by a preponderance of the evidence, which means he must provide enough evidence for the undersigned Administrative Law Judge to decide that his 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 Grievant has not met his burden. *Id.*

2. This Grievance Board has continuously refused to deal with issues when the relief sought is "speculative or premature, or otherwise legally insufficient." *Dooley v. Dept. of Trans./Div. of Highways*, Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd. of Educ.*, Docket No. 91-35-229/239 (Nov. 27, 1991). Typically, a Grievant must show "an injury-in-fact, economic or otherwise" to have what "constitutes a matter cognizable under the grievance statute." *Lyons v. Wood County Bd. of Educ.*, Docket No. 89-54-601 (Feb. 28, 1990); *Dunleavy v. Kanawha County Bd. of Educ.*, Docket No. 20-87-102-1 (June 30, 1987).

3. "Relief which entails declarations that one party or the other was right or wrong, but provides no substantive, practical consequences for either party, is illusory, and unavailable from the [Grievance Board]. *Miraglia v. Ohio County Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993).

For the foregoing reasons, this grievance is **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 withthe civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

March 5, 2007

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Wendy A. Campbell

Administrative Law Judge