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**WEST VIRGINIA EDUCATION AND
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LINDA POND

v.

Docket No. 89-CORR-686

WEST VIRGINIA
DEPARTMENT OF CORRECTIONS

D E C I S I O N

Grievant Linda Pond is employed by respondent Department of Corrections (CORR) as a Correctional Officer I (CO I) at the West Virginia Penitentiary in Moundsville. She filed a level four grievance in late November 1989 requesting a hearing¹ which was conducted January 22, 1990. CORR filed fact/law proposals in mid-February 1990. Since grievant did not file by the agreed-upon time, it is presumed she has waived her right to do so.

¹Attachments to grievant's filing statement show the grievance was denied at levels one through three October 24, October 27, and November 22, 1989, respectively.

Grievant did not submit her complaint on an approved Grievance Board form and did not state the nature of her claim or list the procedural history of the grievance in a readily discernible manner. Grievants and employers are encouraged to use the proper form for filing a grievance at level four.

Grievant contends Warden Legursky discriminated against her and abused his authority when he transferred her from the Day Watch to the Afternoon Watch, generally 3:00 to 11:00 p.m. She asks as relief that she be reassigned to Day Watch. CORR asserts it has the authority to direct the work force at the Penitentiary, and its reassignment of grievant was not a discriminatory action within the meaning of W.Va. Code §29-6A-2(d).² The transfer to Afternoon Watch undoubtedly caused grievant some hardship since she then had limited weekday hours to spend with her son. However, she failed to meet her burden of proof that CORR acted improperly when it acted on personnel matters in a manner contrary to her beliefs.

The underlying facts in this matter are not in dispute. Grievant was initially hired by CORR in 1981; she resigned in 1985 and left the State. She subsequently returned to the area and was reinstated by CORR to her former step and grade at the Penitentiary on May 25, 1989. She was assigned to Day Watch at that time and was reassigned to Afternoon Watch approximately five months later, October 16, 1989.

Grievant essentially testified that she was a single parent of a twelve-year-old son, and her transfer to afternoon shift

²The term "discrimination" is defined in W.Va. Code §29-6A-2(d) as "...any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees."

deprived her son of needed care.³ She related that she had an overall service time and longevity with CORR in excess of four years, and officers with just a few years' continuous service had priority over her for daytime assignments. She expressed a belief that, while she did not contest Warden Legursky's authority to direct the work force, longevity in the job rather than continuous service should dictate who should receive the daytime assignments. She also felt that Warden Legursky should have considered her need for a daytime assignment to care for her son and to take such matters into consideration as had been done in the past at the prison, according to her. She characterized the warden's actions as arbitrary and capricious.

Warden Legursky testified at length about his policy regarding daytime assignments.⁴ He said it was his personal philosophy that employees with continuous service should be given priority for the coveted Day Watch, and he had directed his subordinates to implement the policy. He said he issued verbal orders prior to May 25, 1989, that new hires and reinstated employees should not initially be assigned to Day Watch. When daytime assignments became available, he gave preference to afternoon and night-shift employees with the greatest continuous

³On November 1, 1989, grievant formally requested a transfer back to Day Watch, Gr. Ex. 7, in which she stated her personal need for day work because of her son. Her request was approved by her superiors, two Watch Commanders, but denied by the Warden's Office.

⁴The parties agreed that daytime work was the preferred assignment, for the most part, at the prison.

service because he felt their loyalty to the job should be rewarded.

The warden said, in effect, that, due to some miscommunication with him and his subordinates who approved transfer requests, the policy was not initially applied consistently. When he became aware of that fact, he clarified his position and policy with those responsible for monitoring the situation, implemented written and other measures to ensure compliance and caused transfers from Day Watch of those persons improperly assigned thereto. This testimony was generally corroborated by Major Richard Lohr and even the officers called by grievant to testify.

In the course of the level four proceeding, the parties expressed a general belief that favoritism had influenced personnel assignments at the prison in the past. That perception and practice contributed largely to employee discontent and low morale. Warden Legursky's efforts to institute an objective means for prioritizing assignments to daytime work must be deemed appropriate for the larger good of the prison's staff. While it is true that the warden's policy was not applied properly initially, and he made occasional exceptions on daytime assignments for institutional need, see CORR's Proposed Fact 11, the evidence as a whole demonstrates that the policy was implemented consistently among all staff. The evidence herein does not support grievant's allegation that Warden Legursky discriminated against her or otherwise abused his discretion to direct personnel assignments in the manner he did. Absent a showing of

misconduct on CORR's part in making assignments, grievant cannot prevail in this dispute. See Crow v. W.Va. Dept. of Corrections, Docket No. 89-CORR-116 (June 30, 1989). Although grievant is to be commended for her effort as a single parent and her desire to have more "quality time" to spend with her son, she established no basis that her personal need should place her in a preferred position for Day Watch or any other assignment.

In addition to the foregoing determinations, it is appropriate to make the following specific Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Grievant, a CO I, had been reinstated to her position by respondent CORR in May 1989, but had attained four years of overall longevity at the Penitentiary in Moundsville from a prior employment with respondent. She was initially assigned to Day Watch in May 1989.

2. In October 1989 grievant was transferred from Day Watch to Afternoon Watch pursuant to the present warden's policy of reserving daytime assignments for employees with personal need and greater continuous service in order to reward their loyalty to the job. Her reassignment was ordered when the warden discovered his policy was not being implemented as he had previously directed.

3. The parties conceded that the practice of favoritism dictated assignments under prior administrators; therefore, it is accepted as fact. Warden Legursky attempted to end favoritism by establishing a means to objectively effect assignments, especially Day Watch.

4. Grievant did not dispute Warden Legursky's authority to make work assignments but believed longevity and personal need should dictate the placement of staff to coveted daytime assignments.

5. Warden Legursky's goal to eliminate the practice of favoritism in making assignments was accomplished when he established one objective standard for determining shift assignments, the length of the officer's continuous service, and implemented the necessary measures to consistently apply the assignment policy on that basis.

CONCLUSIONS OF LAW

1. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. Bonnett v. W.Va. Dept. of Highways, Docket No. 89-DOH-043 (March 29, 1989).

2. The grievant has not demonstrated a violation of department policy or statutory provision governing her employment with respect to management's prerogative to assign correctional officers to specific work hours and duties within the

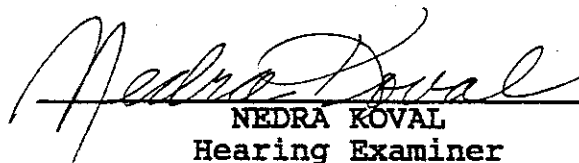
prison. See Crow v. W.Va. Dept. of Corrections, Docket No. 89-CORR-116 (June 30, 1989).

3. The grievant has failed to prove that she was denied a Day Watch assignment as a result of discrimination as defined in W.Va. Code §29-6a-2(d) or that respondent acted arbitrarily or capriciously in this matter. See Crow.

Accordingly, the grievance is **DENIED**.

Either party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Marshall County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

DATED: April 27, 1990


NEDRA KOVAL
Hearing Examiner