

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**MARCUS HAMDEN AND
CHESTER A. SPRANKLE,
Grievants,**

v.

Docket No. 2019-1885-CONS

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
BUREAU FOR CHILDREN AND FAMILIES,
Respondent.**

DECISION

Grievants, Marcus Hamden and Chester Sprankle, are employed by Respondent, Department of Health and Human Resources/Bureau of Children and Families (DHHR/BCF). Each filed a separate grievance on June 25, 2019, stating, "Non posting and nonselection for any senior positions on crisis teams." They request as relief, "To be made whole in every way including postings for CPS seniors for crisis teams." The matters were consolidated under the current docket number prior to the level one hearing.

A level one hearing was held on October 3, 2019, and a decision denying the grievances was issued on October 24, 2019. On November 22, 2019, the parties requested to waive level two and proceed directly to level three. An order granting this request was issued on January 22, 2020. A level three hearing was held before the undersigned via an online platform on December 8, 2020. Grievants appeared and were represented by Grievant Sprankle. Respondent appeared by Melanie Urquhart, Director of Social Services, and was represented by Jake Wegman, Assistant Attorney General. Each party submitted Proposed Findings of Fact and Conclusions of Law. This matter became mature for decision on January 14, 2021.

Synopsis

Grievants are employed by the Department of Health and Human Resources/Bureau for Children and Families (DHHR/BCF) as Child Protective Services (CPS) Workers with the North Crisis Team. While regular CPS Workers are assigned to a particular county office, CPS Crisis Team workers travel as needed to assist with CPS backlogs. The State legislature periodically allots Senior CPS Worker positions to BCF. BCF assigns these positions to its county offices to mentor regular CPS Workers. BCF has never assigned a Senior position to the Crisis Teams. Grievants contend that the North Crisis Team is entitled to a Senior position because members have few means of career advancement. While Crisis Team members have significant experience as CPS Workers, regular CPS Workers tend to be new hires in need of the guidance and assistance provided by Senior CPS Workers. Grievants failed to prove that BCF acted arbitrarily and capriciously in allotting all Senior positions to BCF county offices. Accordingly, this grievance is DENIED.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

Findings of Fact

1. Grievants are employed by Respondent, Department of Health and Human Resources/Bureau for Children and Families (DHHR/BCF), as Child Protective Services (CPS) Workers with the North Crisis Team.
2. BCF is the State agency that encompasses CPS and handles economic assistance and social services cases.
3. BCF created a North Crisis Team and a South Crisis Team to assist with

the backlog of CPS cases around the State. Members of each Crisis Team must have significant experience as CPS Workers. They are not assigned to any office but travel around the State as mandated by case backlogs in each county.

4. Each Crisis Team has six CPS Workers and one CPS Supervisor. All have high retention and low turnover rates.

5. The regular CPS Workers in county offices tend to be right out of college, with little experience and high turnover. As such, they need more support and guidance than CPS Workers assigned to Crisis Teams.

6. Over the years, the legislature allotted about 50 CPS Worker Senior positions to BCF. BCF assigned these Senior positions to its county offices to act as lead CPS Workers, train and mentor new staff, manage complex cases, assist with workloads, and act as backup supervisors.

7. BCF has not assigned any of these Senior positions to the Crisis Teams due to the significant experience of Crisis Team members.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving this grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). “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. Dep’t of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff’d*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

The State legislature periodically allots Senior Worker positions to BCF. BCF has always assigned these positions to its county offices rather than the Crisis Teams. Grievants contend that the North Crisis Team is entitled to a Senior position because Grievants otherwise have few means of career advancement. Respondent counters that Senior positions are only needed in BCF county offices because regular CPS Workers have high turnover and tend to be new hires in need of the guidance and assistance provided by Senior CPS Workers. Respondent asserts that because Crisis Team members have significant experience and longevity as CPS Workers, they have little need for the assistance provided by the Senior positions.

“It is within management's prerogative to decide what the needs of the institution are...” *Sell v. Dep’t of Health & Human Res./Hopemont Hosp.*, Docket No. 06-HHR-444 (June 26, 2007). “A grievant's belief that his supervisor'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.” *Ball v. Dep’t of Transp.*, Docket No. 96-DOH-141 (July 31, 1997); *Mickles v. Dep’t of Env’tl. Prot.*, Docket No. 06-DEP-320 (Mar. 30, 2007), *aff’d*, Fayette Cnty. Cir. Ct. Docket No. 07-AA-1 (Feb. 13, 2008). “Management decisions are to be judged by the arbitrary and capricious standard.” *Adams v. Reg’l Jail & Corr. Facility Auth.*, Docket No. 06-RJA-147 (Sept. 29, 2006); *Miller v. Kanawha County Bd. of Educ.*, Docket No. 05-20-252 (Sept. 28, 2005).

An action is recognized as arbitrary and capricious when “it is unreasonable, without consideration, and in disregard of facts and circumstances of the case.” *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996) (*citing Arlington Hosp. v.*

Schweiker, 547 F. Supp. 670 (E.D. Va. 1982)). “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), *aff’d* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998).

“[T]he “clearly wrong” and the “arbitrary and capricious” standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. Syllabus Point 3, *In re Queen*, 196 W.Va. 442, 473 S.E.2d 483 (1996).” Syl. Pt. 1, *Adkins v. W. Va. Dep’t of Educ.*, 210 W. Va. 105, 556 S.E.2d 72 (2001) (*per curiam*). “While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of [the employer].” *Trimboli v. Dep’t of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997), *aff’d* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998); *Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001), *aff’d* Kanawha Cnty. Cir. Ct. Docket No. 01-AA-161 (July 2, 2002), appeal refused, W.Va. Sup. Ct. App. Docket No. 022387 (Apr. 10, 2003).

Grievants did not cite any rule, regulation, or statute that Respondent violated in not assigning a Senior CPS Worker position to the North Crisis Team and did not allege that this effected their job performance or health and safety. Grievants did not provide

any authority for the proposition that career advancement incentives entitle the North Crisis Team to Senior positions. Conversely, Respondent gave a reasoned explanation for why it only assigned these Senior positions to the BCF county offices. Respondent pointed to the high turnover rate and inexperience of the regular CPS Workers versus the longevity and expertise of Crisis Team members. Further, there is no policy that prevents Grievants as member of the North Crisis Team from applying for and receiving a Senior CPS Worker position with county BCF offices. Grievants are free to apply for any position with DHHR or any other State agency. Grievants did not prove that Respondent acted in an arbitrary and capricious manner in assigning its Senior CPS Worker positions only to the BCF county offices.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). “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. Dep’t of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff’d*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

2. “A grievant's belief that his supervisor'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.” *Ball v. Dep’t of Transp.*, Docket No. 96-DOH-141 (July

31, 1997); *Mickles v. Dep't of Env'tl. Prot.*, Docket No. 06-DEP-320 (Mar. 30, 2007), *aff'd*, Fayette Cnty. Cir. Ct. Docket No. 07-AA-1 (Feb. 13, 2008).

3. "Management decisions are to be judged by the arbitrary and capricious standard." *Adams v. Reg'l Jail & Corr. Facility Auth.*, Docket No. 06-RJA-147 (Sept. 29, 2006); *Miller v. Kanawha County Bd. of Educ.*, Docket No. 05-20-252 (Sept. 28, 2005). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996) (*citing Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)).

4. Grievant did not prove that Respondent violated any law, rule, or policy or that it acted arbitrarily and capriciously in only assigning Senior CPS Worker positions to BCF county offices.

Accordingly, the grievance is DENIED.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. See W. VA. CODE § 6C-2-5. Neither the West Virginia Public 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 civil action number should be included so that the certified record can be properly filed with the circuit court. See also W. VA. CODE ST. R. § 156-1-6.20 (2018).

DATE: February 5, 2021

Joshua S. Fraenkel
Administrative Law Judge