FERRELL NICHOLS and .

BILLY JOE RATLIFF, JR., .

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Grievants, .

.

.

v. . Docket No. 94-RJA-214

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WEST VIRGINIA REGIONAL JAIL AND .

CORRECTIONAL FACILITY AUTHORITY, .

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Employer. .

D E C I S I O N

Ferrell Nichols and Billy Joe Ratliff, Jr. (hereinafter Grievants), Correctional Officers with the West Virginia Regional Jail and Correctional Facility Authority (hereinafter RJA) at the Central Regional Jail, filed separate grievances at level one of the Grievance Procedure for State Employees, West Virginia Code §§29-6A-1 et seq., alleging that the RJA had not complied with its established policy on assigning officers transportation of inmate duties. Grievants' claims were denied at levels one and two and the two claims were consolidated for hearing at level three. A level three decision denying the claim was issued by HearingExaminer Jimmy Plear on May 17, 1994 and Grievants' appeal to level four was received on May 26, 1994. A level four evidentiary hearing was held on July 7, 1994 at the offices of the Grievance Board in Charleston, West Virginia and the case became mature for decision on that date.

The following findings of fact have been properly deduced from the evidentiary record developed in the case.

Findings of Fact

1. Grievants are both classified as Correctional Officer Is and work at the RJA's Central Regional Jail.

2. The RJA requires its correctional officers to perform transportation duties for the inmates housed in its facilities. Officers who perform transportation duties are responsible for transporting inmates to and from the RJA's facilities for numerous reasons, i.e., court appointments, doctor visits, etc. Only so many correctional officers at any one facility are assigned these transportation duties.

3. Effective February 22, 1991, the RJA adopted Policy 9007 which was to be used in setting standards and minimum requirements for the assignment of transportation duties to correctional officers. Under this policy, officers were to be assigned transportation duties on a yearly, rotating basis.

4. Currently, eight officers are assigned transportation duties at the Central Regional Jail. Some of these eight officers do not currently meet the qualifications set forth in Policy 9007 to maintain the assignment of transportation duties. Also, each ofthese eight officers were assigned transportation duties under Policy 9007 but none of them were "rotated out" of this assignment at the end of the one year period as required by said Policy.

5. By memorandum dated May 3, 1994, Jack Roop, Executive Director of the RJA repealed Policy 9007. Grievants had filed their grievances on April 12, 1994.

6. Currently, correctional officers are assigned to their facility's transportation section to perform the duties of a transportation officer based solely upon the discretion of that facility's administrator.

7. Neither Grievant had been offered the opportunity to work as transportation officers.

Discussion

Grievants do not challenge the RJA'a authority to repeal Policy 9007 but they simply contend that the officers who were assigned transportation duties pursuant to said policy should now be removed from these positions. They contend that the officers currently designated as transportation officers have been in the position longer than allowed by the Policy which was in effect at the time they accepted such assignment. Therefore, under that Policy they should have been removed. In the

alternative, they contend that the officers assigned transportation duties should have those duties removed because the Policy under which those duties were assigned has since been repealed. The RJA contends that Grievants' claim is moot based upon the fact that Policy 9007 was repealed. In the alternative, it contends that it had thediscretion to make the transportation assignments either consistent with Policy 9007 or under its general discretionary authority depending on the situation which existed at the time of the assignments.

The foregoing discussion of the case is hereby supplemented by the following appropriately made conclusions of law.

Conclusions of Law

1. Administrative agencies must abide by the remedies and policies it properly establishes to conduct its affairs. See generally, Powell v. Brown, 238 S.E.2d 220 (W.Va. 1977).

2. The RJA violated the provisions of Policy 9007 when it chose to assign inmate transportation duties to those correctional officers who did not meet the minimum requirements for said assignment under Policy 9007. Further, the RJA did not comply with Policy 9007 when it did not "rotate out" the officers who had been assigned such duties under Policy 9007 after they had performed transportation duties for the period of a year.

3. While the RJA's actions at issue herein cannot be condoned, W. Va. Code §31-20-5 provides the RJA with the authority to promulgate rules and regulations pursuant to this State's Administrative Procedures Act in order to effectuate the powers, duties and responsibilities vested in it by said Article. Within the RJA's general authority, it has the power to create, amend and/or repeal policies which are necessary or convenient to maintain, operate or oversee the operation of the regional jails and correctional facilities.

4. The repeal of Policy 9007 by the Executive Director of the RJA rendered Grievants' complaint moot. Absent the provisions of Policy 9007, correctional officers may be assigned transportation duties pursuant to the discretion held by the facilities' administrators. Grievants cannot now claim entitlement to said assignment on the basis of Policy 9007 as this Policy has been repealed. Further, they cannot rely upon the provisions of said Policy to argue that the transportation duties should be removed from the eight officers who now perform them. Therefore, no remedy can be afforded Grievants consistent with their arguments because they have not demonstrated by a

preponderance of the evidence that any agent of the RJA has abused their discretionary authority with regard to the assignment of transportation duties to the correctional officers.

Therefore, this grievance is hereby **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision 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. 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. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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ALBERT C. DUNN, JR.

Administrative Law Judge

October 17, 1994