JON V. STONEKING

v. Docket No. 93-CORR-530

WEST VIRGINIA DIVISION OF CORRECTIONS

D E C I S I O N

Grievant, a Correctional Officer (CO) employed by Respon dent West Virginia Division of Corrections (CORR) and assigned to the West Virginia Penitentiary (WVP), alleges that his reassignment to different working hours within the prison was effected to harass and unjustly punish him. Following adverse decisions at the lower grievance levels, he appealed to level four on or about December 20, 1993.1 As relief, Grievant asks

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1Grievant initially requested a hearing at level four. In January 1994, the parties agreed to a record decision. The record consists of the Grievant's pleadings, the lower level adverse decisions, issued September 9, October 7 and November 16, 1993, respectively; and the transcript and exhibits of the November 10, 1993 level three hearing. Since the parties never submitted an agreed-upon date for the submission of briefs, they were notified in writing on October 19, 1994 that any augmentation of the record via fact/law proposals or other written argument had to be filed by November 4, 1994. Neither party responded.

to be "placed back on Day-Watch and for any attorney fees if necessary to be paid by the state."

According to Grievant, WVP Director of Unit Management (Unit Manager Coordinator) Teresa Waid told him he was rotated from his daytime job to the night-watch Operations Unit because

of his poor work performance, negative attitude and lack of team spirit.2 Grievant's objections to this action are set forth in his filing statement: "I feel this is harrassment [sic] or some type of punishment. Due to I've never been councled [sic] or repremanded [sic] in anyway for these reasons. And I also feel it is harassment or some type of punishment because in June 1993 my transfer request for day-shift was granted. Due to family problems explained in it and I feel it was wrong to move me again with-out good reason. And I know enough Officer's re questing night-shift that their request should be granted before I was moved against my will."

Formerly, Grievant had worked for approximately five years on an afternoon shift, from 11:00 a.m. to 7:00 p.m. before being transferred to Ms. Wade's work unit to work "afternoon watch," from 3:00 p.m. to 11:00 p.m. In June 1993, he asked Ms. Wade to transfer him to day shift because of family problems. He had been on the day shift for barely two and one-half months before the reassignment at issue herein.

2The transcript of the level three hearing indicates that another officer was initially part of this grievance. However, the other party never filed a level four appeal, neither with Grievant Stoneking nor on his own behalf.

Grievant called upon three other workers in North Hall who testified generally that, in their opinion, conditions were "bad" in the unit, that Ms. Wade and another supervisor were seldom seen in the unit, and that Grievant had not refused assignments he did not like, he had merely offered "input" as to what was wrong, behavior which was similar to or at least no

worse than that of other officers.

One worker, identified as a "counselor" in the unit, stated that due to a new program in maximum security, the atmosphere had changed from "stringent" to "lax." This worker said there were too many people coming in and out of the unit, creating too much "movement" for security's sake. He also opined that, despite Warden Trent's August 16, 1993, staff report asking workers to provide input with respect to the implementation of unit management, no formal efforts had been expended to gather any input from affected personnel. Notwithstanding all of this testimony, the workers conceded that management has the preroga tive of assigning work hours and admitted that when they began working at WVP, no promises had ever been made to them that they could have preferred duties or working hours.

Ms. Wade appeared on behalf of WVP and essentially testi fied that Grievant's transfer was not disciplinary in nature. She stated that the success of unit management (to be fully implemented in West Virginia's new penitentiary) was dependent upon the "right people in the right places." According to Ms. Wade, Grievant was not the right person for the daytime job he formerly held in North Hall. She said Grievant offered little "positive input" relative to the unit, rather, that he and some other officers had spent too much time griping and complaining about change and too little time finding resolutions to the problems.

Ms. Wade acknowledged that some problems occurred in the work unit which needed management attention. She explained that, during a particular incident involving the implementation of "Fourth Tier procedures," the officers were rightfully concerned about the lack of written directives. Ms. Wade said

she responded to the situation and delivered the documentation as soon as someone "finally got it out of the computer." When asked to cite how much time she spent in North Hall, Ms. Wade stated that it varied according to need. She explained there were times when it simply was not possible for her to be in North Hall, but that she probably spent more time there than in any other housing unit.

Finally, Ms. Wade explained that transfers from work unit to work unit and shift to shift were occurring on a rapidly increasing monthly basis in order to meet the security needs of WVP. She said these transfers were not imposed by one person. According to her, transfer determinations were made collectively by division chiefs and others who met monthly to discuss staff ing issues and other matters, and that the acting Chief Correc tional Officer's signature was needed on the "policy directive" which effected the transfers.

Grievant's position in this dispute is that he had good evaluations right up to the period of the transfer. He contends that, due to Ms. Wade's lack of presence in his work unit, she did not possess sufficient knowledge of his day-to-day work performance and attitude. He essentially argues that, if there were problems with his work performance, there were other avenues to pursue rather than his transfer to a night shift.

CORR's position is that under West Virginia Division of Person nel (Personnel or DOP) regulations, an employer may transfer an employee at any time.

Grievant's argument that, since he had been issued good evaluations right up to the time of the transfer and had not been counseled about his work performance, he should not have been subjected to unilateral transfer, is not persuasive. That

argument was considered and initially rejected in Crow v. W.Va. Dept. of Corrections, Docket No. 89-CORR-116 (June 30, 1989), and more recently in Titus v. W.Va. Div'n of Corrections, Docket No. 93-CORR-528 (Nov. 22, 1994).

Moreover, the record in its entirety supports that the transfer was necessary for security reasons. Everyone who testified in this matter was in general agreement that problems existed in North Hall due to new inmate programs and processing and the institution of the unit management concept. Certainly, WVP's managers must be able to determine who serves effectively and who does not, for safety's sake alone. Proper training and staffing needs were met, in part, by reshuffling the work force. See id. Under those circumstances, and absent any evidence of record that CORR acted contrary to law, regulation or policy, the undersigned cannot conclude that Grievant's reassignment to a different work shift constituted "punishment" or harassment or that it resulted from improper motivation on the part of WVP's administration.

In addition to the foregoing, the following findings and conclusions are made.

Findings of Fact

1. Grievant was involuntarily transferred from a daytime work shift, which he had requested due to family problems and had held for just two and one-half months, to a night shift, although he had been issued no bad evaluations and had not been "counseled" about his work performance.

2. Many problems existed in Grievant's former work unit due to changes brought about in anticipation of a new prison and a new type of inmate management; as a result, officers were asked to provide input about such matters.

3. Grievant was among some other officers who disagreed with newly-instituted procedures for inmate management and control in his former work unit and complained of these matters to other personnel.

4. The record supports that the primary reason for Grievant's reassignment was not to punish him but to ensure staffing patterns within the work unit which would tend to bolster team efforts in furtherance of the unit management concept.

Conclusions of Law

1. According to West Virginia Division of Personnel regulations a "transfer of a permanent employee from a position in one organizational subdivision of an agency to a position in another organizational subdivision of the same or another agency may be made at any time by the appointing authorities con cerned." Goodnight v. W.Va. Dept. of Human Srvcs., Docket No. 91-DHS-111 (May 31, 1991).

2. "Barring any impermissible motivation, CORR's manage ment may unilaterally transfer prison staff from one work unit and/or work shift to another . . . depending on circumstances and need. See Pell v. W.Va. Dept. of Human Srvcs., Docket No. 91-DHS-135 (Sept. 30, 1991); Crow v. W.Va. Dept. of Corrections, Docket No. 89-CORR-116 (June 30, 1989)." Titus v. W.Va. Div'n of Corrections, Docket No. 93-CORR-528 (Nov. 22, 1994).

3. Grievant failed to prove that his involuntary transfer to different working hours was the result of any violation of prevailing laws, policies or regulations, non-compliance with current agency directives, or improper motivation on the part of WVP administrators.

Accordingly, this grievance must be 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 Employ ees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appeal ing party must advise this office of the appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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NEDRA KOVAL

Administrative Law Judge

Date: November 30, 1994