

BASHAR N. KHOURY

Grievant,

v. DOCKET NO. 95-PSC-501

PUBLIC SERVICE COMMISSION,

Respondent,

DECISION

On or about October 17, 1995, Grievant, a Chief Utilities Analyst with the Public Service Commission of West Virginia (Commission) filed a grievance against the Commission in which he asserted, in sum, that he had been discriminated against with respect to the assignment of parking spaces on the Commission's parking lot. Grievant seeks the following remedies:

1. To be assigned a Preference 3 or Preference 2 parking space, as warranted by his 24 years and 7 1/2 months service with the Commission and as applied to a fair parking policy outlined in Appendix A without any exceptions.
2. That a finding of bad faith behavior on the part of the Commissioners be made and that the Commission be ordered to purge, from Grievant's personnel file, the disciplinary Warning dated October 26, 1995 and the second Disciplinary Warning dated October 27, 1995.
3. Letter of apology, signed by the three Commissioners, for unjustly issuing the above two warnings to Grievant. Such letter shall be issued in two originals. One original to be lodged in Grievant's personnel file and the other original to be deposited with the Grievant.
4. Reimbursement of full attorney fees and expenses by the three Commissioners in order to deter them from further violating the civil service laws and regulations.
5. A space in the Directors' parking section be assigned immediately to Grievant. This can be made on a temporary basis until this Grievance is finally resolved.

(Grievant's Exhibit A, Appendix A)

This claim was denied at levels one, two and three. Grievant made appeal to level four on November 15, 1995, requesting that a decision be based upon the evidence produced at the lower levels of the procedure. The case became mature on November 17, 1995, upon receipt of the case file from the PSC.

FINDINGS OF FACT

- 1. Grievant is employed by the Commission as a Chief Utilities Analyst.**
- 2. Grievant's most recent employment date at the Commission is December 1, 1981.**
- 3. Grievant had been previously employed with the Commission two different times in the past.**
- 4. When Grievant was hired in 1981, Grievant was hired with vacation and annual leave accrued, indicative of someone who has more than ten years of service with the state.**
- 5. The Commission has a policy on parking assignments outlined in a January 18, 1989 memorandum, which states that no employee should consider free parking as a condition of employment or consider any parking space as being permanently assigned to an employee. This memorandum further states that future circumstances or management policy could result in other policy changes.**
- 6. The Commission sent out a memorandum dated December 13, 1991, which further clarified parking assignments. This memorandum states that employees would be assigned to a space according to their most recent employment date with the Commission.**
- 7. Grievant has had his current parking assignment for a number of years, one which requires tandem/dual parking with another employee, i.e., two employees must park end to end, (in two spaces) requiring coordination of arrivals and departures.**
- 8. For several years, Grievant's parking partner generally did not use the adjacent space.**
- 9. On or about October 12, 1995 the Commission reassigned Grievant's adjacent space to another employee.**
- 10. In a memorandum dated October 13, 1995, Grievant requested that to the Commission that no change be made in his parking assignment until this grievance was adjudicated. This request was denied by the Commission. Grievant, however, parked in his space in such a manner as to render it impossible for another employee to use the adjacent space.**

11. The Commission sent two disciplinary warnings to Grievant requesting that he parking his vehicle in only one space. Grievant refused to do so.

12. Grievant requested information from the Commission on October 17, 1995. This information was provided to Grievant on October 24, 1995.

DISCUSSION

This is not a disciplinary case, and accordingly, Grievant bears the burden of proving his claims by a preponderance of the evidence. W.Va. Code §29-6A-6.

The Commission issued a memorandum on January 18, 1989 which, in large part, comprises the present day policy regarding the assignment of parking spaces to employees. The Commission stated in this memorandum:

...The Commission has decided to reassign parking spaces effective in early January, 1989. The major reassignment will take place on the Brooks Street lot; however, some reassignment of the dual spaces will be required. The reassignment of single spaces will be based, as much as possible, on employee preferences. When preference for any space is indicated by two or more employees the Commission will generally try to assign the space based on seniority. Permanently assigned state cars will be excluded from the Brooks Street lot and exceptions to the seniority preference may be necessary to accommodate special situations. The commission will establish designated spaces for visitors, Division Directors, Deputy Directors, Data Processing Director, Building Supervisor, commissioners, and the commission's personal staff. These spaces will not be available for seniority preference..."(Grievant Exhibit A and PSC Exhibit No. 1)

The memorandum also stated that no employee should consider free parking as a condition of employment or consider any parking space as being permanently assigned to an employee. The memorandum concluded that future circumstances or management policy could result in other policy changes. (Grievant Exhibit A and PSC Exhibit No. 1).

The Commission issued another memorandum on December 13, 1991 regarding parking. This memorandum, in part, clarified that employees would be assigned to a space according to their most recent employment date with the Commission. This memorandum did not in any other manner change the policy outlined in the January 18, 1989 memorandum. (Grievant

Exhibit A and PSC Exhibit No. 2).

Grievant testified that:

I have parked in this spot for a period of two years, in excess of two or three years. The only reason I accepted that assignment is because there was someone parked with me, who generally did not drive. Had I been notified of any change and reassignment, I would have filed a grievance much earlier. That -- that arrangement was satisfactory to me as long as it lasted. And then until October 12, 1995, where Mr. Elswick on instructions from Wayne Crowder, reassigned Susan Sigmund or whoever is parking with me to -- asked her to give up her spot. And she did give her spot up and he assigned some other people with me. So, I no longer have the ability to have a -- the equivalent of a single parking spot. I would have filed a grievance much longer, if it wasn't for that arrangement. Now, that they have chosen to do what they did, then that arrangement -- the present arrangement is no longer acceptable to me. And neither is the prior arrangement, if it were to be awarded back to me." (Hearing Transcript, p. 8) As a result of the reassignment, Grievant filed this grievance. Moreover, since filing this grievance, Grievant has been parking in this particular space in such a manner as to essentially take up two spaces. (Transcript, p. 8)

It is Grievant's contention that he has been subject to discrimination in regard to parking assignments. However, it is the Undersigned's opinion that the grievant has no standing to bring this grievance. Grievant does not have standing as to the reassigned parking space because he was not harmed in any way. Grievant's employment rights have not been adversely affected by the reassignment of the tandem parking space adjoining Grievant's parking space, and therefore, Grievant's complaint does not constitute a matter cognizable under W.Va. Code §29-6-1 et seq., the grievance statute. See Shobe v. Latimer, 253 S.E.2d 54 (W.Va. 1979); Lyons v. Wood County Bd. of Educ., Docket No. 89-54-601 (Feb. 28, 1990). The Grievance Board has consistently refused to issue decisions where it appears the grievant has suffered no real injury on the basis that such decisions would be merely advisory. Lyons.

CONCLUSIONS OF LAW

1. This is not a disciplinary case, accordingly, Grievant bears the burden of proving his

claims by a preponderance of the evidence. W.Va. Code §29-6A-6

2. Grievant's complaint is in regard to the reassignment of another employee's parking space which does not harm Grievant. Therefore, Grievant's complaint does not constitute a matter cognizable under W.Va. Code §29-6-1 et seq., the grievance statute. See Shobe v. Latimer, 253 S.E.2d 54 (W.Va. 1979); Lyons v. Wood County Bd. of Educ., Docket No. 89-54-601 (Feb. 28, 1990).

3. To the extent that Grievant has challenged the contents of the Commission's parking policy, the evidence supports a finding that the grievance is untimely.

4. The Commission did not act in bad faith, as Grievant alleges, in issuing disciplinary warning for his conduct in parking in two spaces.

5. Grievant failed to show a prima facie case of discrimination within the meaning of W.Va. Code §29-6A-2(d).

6. Grievant failed to show a violation, misapplication or misinterpretation of any statute, policy, rule, regulation or written agreement.

Accordingly, this grievance is DENIED.

Dated: January 31, 1996 _____

MARY BETH ANGOTTI-HARE
ADMINISTRATIVE LAW JUDGE