

**BOBBY PHILLIPS,**

**Grievant,**

**v. DOCKET NO. 96-CORR-112**

**WEST VIRGINIA DIVISION OF CORRECTIONS,**

**Respondent.**

**DECISION**

Mr. Bobby Phillips (Grievant) filed a grievance against the West Virginia Division of Corrections (Respondent) on January 27, 1996. The grievance stated:

Davis Center currently has four senior officers. One officer is assigned to the 7-3 shift and two officers are assigned to the 3-11 shift. One of the officers is in a none [sic] supervisory capacity. The chief correctional officer is currently dividing his time between the 3-11 shift and two hours on the 11-7 shift. Why do we need three officers on the 3-11 shift? It is already covered by two senior officers seven days a week.

The 11-7 shift is currently being supervised by a CO II four days a week. One day a week is being supervised by a CO I. Why hasn't the officer on the 3-11 shift who is in a none [sic] supervisory capacity been moved up to the 11-7 shift as supervisor.

On the first of January 1996[,] our field training officer was reclassified from a CO II to a CO III. During the original reclassification of all officers at the Davis Center it was determined by thereclassification section that the Davis Center only needed three senior officers. These were the chief correctional officer CO 5, a 3-11 shift supervisor CO 4, and a day shift supervisor CO 3.

What is the justification in reclassifying the field training officer to a CO 3 position in an institution that only had room for three senior officers as determined by the reclassification board. The hours that the field officer has devoted to his job in the last three years has been a total of 64 hours. In 1993[,] a total of approximately 84 hours was devoted and in 1994[,] 328 were devoted with the biggest part of these taking

place at the academy. I am sure he was not an instructor at the academy 40 hours per week for six weeks. In 1995[,] a total of 76 hours were devoted to training. The total man hours this individual has devoted to training at the Davis Center does not justify a reclassification to a CO 3 position. If he were in a larger institution I could understand the institutions [sic] to teach first aid and CPR. His total instruction time at the Davis Center is approximately 24 hours for the entire year. Sixteen hours were devoted to teaching first aid and CPR and the remainder of the time is keeping the hours of those officers enrolled in the apprenticeship program.

As relief, Grievant requests "[t]o have a senior officer on 11-7 shift[.] Also would like to know how a CO II can be reclassify [sic] too [sic] a CO III in an institution that does not have a position for him."

Grievant's immediate supervisor denied relief at Level I, on January 27, 1996. At Level II, the grievance was denied on February 6, 1996. At Level III, a hearing was held on February 23, 1996, and the hearing examiner recommended, by written communication dated March 8, 1996, to Nicholas J. Hun, Commissioner, that the grievance be denied. Mr. Hun concurred and accepted that recommendation. Grievant's appeal to Level IV was received by the Grievance Board on March 18, 1996. An evidentiary hearing at Level IV was conducted on May 9, 1996. The parties did not desire to file post-hearing submissions. The case became mature for decision on June 5, 1996, with the receipt of the Level III transcript.

The following Findings of Fact were derived from the record.

## **FINDINGS OF FACT**

1. Grievant is a Correctional Officer II (CO II) at the Davis Center.
2. The Davis Center is a "non-lock-down" facility for non-violent juvenile offenders. Seventeen COs are employed at this facility which typically houses between 50-57 "residents". The "residents" are typically 16-17 years old.
3. During the 3-11 shift, the "residents" are "out of program." During this time their environment is less structured, and more problems are likely to occur.
4. Group meetings occur every evening usually from 6-10 p.m., and some COs serve as group leaders during these sessions.
5. The "bulk" of the officers are needed on the 3-11 shift.
6. Mr. Evans' position at the Davis Center was reclassified from a CO II to a CO III.
7. Grievant does not want Mr. Evans' position or any CO III position.

## **DISCUSSION**

Grievant's grievance statement, as reproduced above, contains three questions. Each question

will be addressed below. The first two questions will be addressed together.

Questions 1 and 2:

1. Why do we need three officers on the 3-11 shift?
2. Why hasn't the officer on the 3-11 shift who is in a none [sic] supervisory capacity been moved up to the 11-7 shift as supervisor[?]

Mr. Dan Hockman, Superintendent at the Davis Center, answered these two questions at the hearings held at Levels III and IV. The following explanation occurred at Level IV:

Well, with 25 years of experience at the Davis Center, probably most of our problems arise on the 3-11 shift. Over the years, that's when most of our escapes have occurred. That's when the kids are out of program. From 7-3 in the afternoon, they're in structured settings - in school, shops - and we have, naturally, on every shift a certain amount of problems. But the 3-11 shift, that is the time, when all the kids are out of school, they're in the barracks, they're out on the ball field playing ball, they're going swimming, they're going camping, and the 3- 11 shift is where we need most of our staff for security purposes. As Mr. Cororan pointed out, even though we have seventeen correctional officers, if we have fourteen or fifteen active at one time, working three shifts a day, seven days a week, we're lucky. So consequently, on that 3-11 shift, with group meetings going on, kids out on the ball field playing ball, different activities going on, we need the bulk of our staff at that time. Because that's when the bulk of the incidents occur, in my twenty-five years of experience at Davis.

Grievant also testified concerning occasions where he performed certain tasks he thought were supervisory in nature. Mr. Cororan, Scheduling Officer, testified concerning these instances and his testimony was uncontroverted. He testified that it was only on "very, very rare occasions" that two CO Is were scheduled to work together on the 11-7 shift. Again, a contributing factor is that the facility only has seventeen officers, and some of these officers also serve as group leaders for the residents.

In summary, Grievant has failed to show a violation, misapplication or misinterpretation of any statute, policy, rule, regulation or written agreement. This grievance should not be granted merely because Grievant has different ideas on how the Davis Center should be managed.

Question 3:

3. What is the justification in reclassifying the field training officer to a CO 3 position in an institution that only had room for three senior officers as determined by the reclassifi- cation board[?]

Grievant's question deals with Mr. Evans, who is also an employee of Respondent. He was a CO II and his position was reclassified to CO III.

Although Respondent answered this question in detail during the Level III and Level IV evidentiary hearings, that answer does not need to be reproduced here. Grievant candidly admitted he does not have any interest in the position of Mr. Evans or any CO III position. Therefore, since

Grievant was not "adversely affected" by that employment decision, he does not have standing to challenge the reclassification of Mr. Evans. Hopkins v. Fayette County Bd. of Educ., Docket No. 95-10-486 (Mar. 15, 1996); Weaver v. Mason County Bd. of Educ., Docket No. 94-26-028 (Oct. 5, 1994); Mullins v. Kanawha County Bd. of Educ., Docket No. 94-20-364 (Dec. 29, 1994). [\(See footnote 1\)](#) In addition to the foregoing findings of fact and narration, it is appropriate to make the following conclusions of law.

### **CONCLUSIONS OF LAW**

1. In nondisciplinary matters, Grievant must prove all of the allegations constituting the grievance by a preponderance of the evidence. Ward v. W. Va. Regional Jail and Correctional Facility Authority, Docket No. 95-RJA-410 (Feb. 20, 1996); Crow v. W.Va. Dept. of Corrections, Docket No. 89-CORR-116 (June 30, 1989).

2. Grievant must prove that he was "adversely affected" by the employment decision being challenged. Weaver v. Mason County Bd. of Educ., Docket No. 94-26-028 (Oct. 25, 1994); Mullins v. Kanawha County Bd. of Educ., Docket No. 94-20-364 (Dec. 29, 1994).

3. Given that Grievant did not desire the position in question, he lacked standing to complain about alleged improprieties in the reclassification of Mr. Evans as he has not shown that he has "adversely affected" by the employment decision being challenged. Weaver, *supra*; Mullins, *supra*.

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

5. Grievant failed to prove by a preponderance of the evidence that he was entitled to any relief as a matter of law.

Accordingly, the grievance must be **DENIED**.

Any party 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.

DATED: June 19, 1996\_\_\_\_\_

JEFFREY N. WEATHERHOLT

ADMINISTRATIVE LAW JUDGE

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[Footnote: 1](#)

*Even though education cases are cited, the legal principle is the same.*