SAMUEL J. LOPEZ

v. Docket No. 96-BOT-499

BOARD OF TRUSTEES/WEST VIRGINIA UNIVERSITY

D E C I S I O N

Grievant, Samuel J. Lopez, advanced this complaint, that he was demoted based on an invalid performance evaluation, to level four on November 22, 1996, pursuant to the provisions of W.Va. Code §18-29-4(c), after denials at levels one and two. An evidentiary hearing was conducted on February 6, 1997, and the grievance became mature with the submission of proposed findings of fact and conclusions of law by both parties on March 17, 1997.

The underlying facts of this matter are not in dispute and may be set forth as formal findings of fact.

1. Grievant, Samuel Lopez, has been employed by the Board of Trustees at West Virginia University for approximately seventeen years, and had held the position of Manager of Inventory Control in the Department of Purchasing and Inventory from January 1985 through June 30, 1996.

2. In September 1995, Jeri Ireland, Interim Director of Purchasing and Inventory Management, completed a performance appraisal reviewing Grievant's work from March 1994 to July 1995. Grievant's performance was rated overall as unacceptable. Specific comments included:

[w]ork standards are inadequate and inconsistent. Inventory records are not dependable . . . Same appears to need precise instructions and specific deadlines and this is unacceptable for a manager at this level. . . Could not come up with usable short term or long term plans to bring the area into federal compliance . . . No consistent standards are in place. . .[Cost management] none apparent. . . This manager needs to be involved in the day to day management of this unit - not doingthe jobs - but coordinating, managing, evaluating, problem solving. I do not observe this occurring. . . There is little proactive management. What does occur is mostly reactive. . . Sam's experience and background would indicate he

has all the tools to handle the requirements above - but I see little evidence of any organized effort on Sam's part to influence his staff to obtain positive desired results.

Other comments noted that the Inventory unit had been cited for deficiencies in 1989 and 1991 by the Office of Naval Research and that WVU was in jeopardy of losing its federal funding due to the state of its property system. When planning for a federal audit, Grievant's only suggestion was to hire six full-time regular staff members. When advised that was not feasible and that another alternative, such as hiring full-time temporary help, should be considered, Grievant insisted that only regular employees were acceptable. Noting that Grievant could be cooperative and pleasant, Ms. Ireland also found that at times he could be nonflexible and less than courteous.

3. On or about September 14, 1995, Grievant filed a grievance regarding the performance appraisal. This complaint was not pursued beyond level one.

4. The recently appointed Director of Purchasing and Inventory Management, Doug Knorr, noted on the evaluation that he had conducted a number of discussions with Grievant regarding his expectations. He also noted that Grievant had been assigned as a Buyer for the Procurement Card project from January through April 1996. Grievant indicated that this assignment had been with his cooperation since he believed that the experience would better prepare him to further his career.

5. In June 1996, Mr. Knorr determined that Grievant was performing successfully as a buyer and facilitated his permanent classification as a Contract Specialist, effective July 1996.

6. The position of Inventory Manager is compensated at pay grade 20; Contract Specialist is compensated at pay grade 18. Although the change in classification was a demotion, Grievant did not experience a loss in base pay. (See footnote 1)

7. After Grievant filed a level one complaint as a result of the demotion, Mr. Knorr offered to reinstate him as Inventory Manager, subject to the tracking of performance expectations. If at any time during the performance period Grievant was to fall below an acceptable level, based upon Mr. Knorr's evaluation, he would "move towards progressive discipline with the option of termination."

8. Grievant did not accept the offer of reinstatement.

Because this grievance involves a disciplinary measure, Respondent must prove the

charges by a preponderance of the evidence. W.Va. Code §18-29-6; Latassa v. Bd. of Trustees/West Virginia University, Docket No.96-BOT-477 (July 24, 1997). Mr. Knorr testified at levels two and four regarding the inefficient manner in which Inventory Management had functioned for a period of years. He noted that in addition to the two federal audits conducted by the Department of the Navy, two internal audits had revealed unsatisfactory practices. All the audits noted that no physical inventory had been recorded, there was an inadequate or incomplete pre-acquisition screening process, the system contained unreliable data, and there was no reconciliation of inventory on an annual basis. Grievant agrees that Inventory Control does not function properly; however, he distinguishes his performance from that of the division. He does not accept responsibility for the condition of the division because many of the problems were in existence when he became manager,and because Respondent refused to give him the personnel, training, and other support necessary to correct the situation. Grievant asserts that the measure of discipline was unreasonable since he had not been given notice that his performance was unacceptable, or an opportunity to provide an explanation for the supervisor's concerns prior to the demotion.

Although he suffered no immediate loss of salary, Grievant estimates that he will lose $7,000 to $8,000 in the coming two or three years if the equity steps are implemented. These raises are based on salary and Grievant's present salary is at the top of the pay scale for pay grade 18, making him ineligible for any additional increases. Grievant indicated that he is not primarily concerned that he be returned to the position of Manger of Inventory Control, because he will accept any assignment, but he does need to maintain his income at pay grade 20.

Grievant does not allege a violation, misapplication, or misinterpretation of any statute, policy, rule, or regulation. Contrary to the argument that he had not been given notice that his work performance was not satisfactory, Grievant was given a performance evaluation in September 1995 which rated him as “unsatisfactory”. Grievant disagreed with that evaluation but did not pursue the grievance beyond level one. Reconsideration of the evaluation will not be reopened at this time. In any event, Grievant acknowledges that Inventory Control had been experiencing severe problems which he could not correct with available resources. Given Grievant's admission of problems, and his inability to correct them, it cannot be

determined that the demotion was without just cause, or was otherwise improper.

In addition to the foregoing findings of fact and narration it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. In disciplinary matters the burden of proof is upon the employer and the employer must meet that burden by proving the charges against the employee by a preponderance of the evidence. W.Va. Code §18-29-6; Latassa v. Bd. of Trustees/West Virginia University, Docket No. 96-BOT-477 (July 24, 1997).

2. Respondent proved that Grievant was unable to satisfactorily perform the duties of Manager of Inventory Control.

3. Respondent's demotion of Grievant from Manager of Inventory Control to Contracts Specialist was for cause, and was not in violation of any statute, regulation, rule or policy.

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. 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.

Date: July 31, 1997 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Board of Trustees Policy 62 defines a demotion as the result of an employee moving from his current position to a vacant or newly created position assigned to a different job title and lower pay grade, and which requires a significantly lesser degree of skill, effort and responsibility.