BARBARA WORKMAN,

Grievant,

v. **Docket No. 97-CORR-153**

WEST VIRGINIA DIVISION OF CORRECTIONS,

Respondent.

DECISION

Barbara Workman, Grievant, filed this grievance on December 9, 1996, against Respondent, West Virginia Division of Corrections, alleging "I applied for a case managers [sic] position by the deadline of Friday[,] August 2, [19]96. There were only 10 positions open and 10 people that qualified on the list. I was the last one on the list that wasn't picked by Unit Managers." Amended Grievance Statement. As relief, Grievant seeks instatement to a Case Manager position, and backpay.

Grievant was denied relief at Levels I, II, and III, of the grievance procedure, on December 9, 1996, January 22, 1997, and March 17, 1997, respectively. Grievant appealed to Level IV on March 27, 1997. A Level IV evidentiary hearing was held at the Grievance Board's office in Elkins, West Virginia, on June 4, 1997, and the case became mature for decision at that time because the parties waived filing post-hearing submissions.

The following findings of fact were derived from the record.

FINDINGS OF FACT

1. Grievant has worked for Respondent for over seven years, and currently holds the Correctional Counselor classification.

2. On July 25, 1996, Mr. William C. Duncil, Warden of Huttonsville Correctional Center, issued a memo to all staff concerning reorganization within the institution, and the reallocation of certain positions. The memo, in pertinent part, provided:

> This reorganization will result in the creation of the positions of Unit Manager, Case Manager and addition of a number of Correctional Counselors. Because this is an internal reorganization and there are no new positions, persons selected will have their present job title "reallocated", if necessary.
>
> If you are interested in applying for one of these positions, please see Joyce Gum in the Business Office and pick up the job description and minimum qualifications for the position or positions in which you are interested and a green Civil Service Application. Fill out the application and attach copies of any certificates, degrees or diplomas which you feel may help qualify you and turn in to Mrs. Gumm by Friday, August 2, 1996.
>
> These applications will be forwarded to Hilda Williams our Division Personnel Officer who with the Division of Personnel will review each application and pre-qualify eligible candidates. The completed application turned in to Mrs. Gum will also serve as your application/interest in one of the positions and an interview will be scheduled for you, if you are qualified. If you pre-quality [sic] and later change your mind regarding one of the new positions you may of course withdraw, filing an application and pre-qualifying does not lock you into a Unit Management Position.

Level I, Ex. 1. Emphasis in original.

3. Grievant applied, and qualified for the Correctional Case Manager position on August 22, 1996. She did not qualify for reallocation to the Corrections Unit Manager classification.

4. The successful applicant for the final (tenth) Case Manager position was Robert N. Edmonds II. On October 31, 1996,

Mr. Edmonds qualified for both the Correctional Case Manager and Correctional Unit Manager classifications.

5. Both Grievant and Mr. Edmonds qualified for the Case Manager based on experience gained while working for Respondent.

6. Each Unit Manager was allowed to select a Case Manager, and their selections were approved by Warden Duncil.

DISCUSSION

Although Grievant asserts that the July 25, 1996, memo from Warden Duncil was a posting for vacant positions, a posting in this case is not required because there were no vacant positions. The positions were reallocated. West Virginia Division of Personnel Rules and Regulations, Section 3.77, defines "reallocation" as:

> Reassignment by the Director of Personnel of a position from one classification to a different classification on the basis of a significant change in the kind or difficulty of duties and responsibilities assigned to the position.

As noted in Stepp v. W. Va. Dept. Of Health and Human Resources, Docket Nos. 90-DHS-079/90-DHS-080 (Nov. 13, 1990), Personnel relies on their definition of "vacancy" contained in Section 3 of its regulations, which provides "[a]n unfilled budgetary position in the classified service to be filled by original appointment, promotion, demotion, lateral class change, transfer, or reinstatement." Emphasis added. As in Stepp, the positions in question concerned unbudgeted positions, and therefore, are not "vacancies" by definition.

In the instant case, Respondent reallocated employees to the Corrections Case Manager positions because there was not approval,

or funds allocated to bring new people on staff. The Warden's memo clearly states that positions will be "reallocated" because of reorganization within the institution. Current staff were utilized to perform the duties of the Correctional Case Managers, and the institution was reorganized. This procedure was used to fill all ten of the Correction Case Manager positions.

At Level III, Mr. Lowell Basford, Associate Director of Classification and Compensation for the West Virginia Division of Personnel, testified:

> [T]he August second memo was not a posting. First of all, there were no vacancies and the memo says that. That's the only thing that can be posted as an official job posting is a vacancy so there were no vacancies. ... [T]he employees were reallocated and reallocation is not one of the actions which occurs as a result of a vacancy posting.

Level III, Tr. at 24.

Grievant also asserts that the July 25, 1996, memo from Warden Duncil established Friday, August 2, 1996, was a position posting and established an application deadline. Because this case involves the reallocation of positions, and not the filling of a vacancy, there is no vacancy to post. Positions which are reallocated are not required to be posted. See Hart v. W. Va. Div. of Highways, Docket No. 92-DOH-136 (Apr. 30, 1993); Titus v. W. Va. Div. of Corrections, Docket No. 92-CORR-247 (Feb. 19, 1993); Junkins v. W. Va. Div. of Labor, Docket No. 91-DOL-460 (May 29, 1992); Watson v. W. Va. Dept. of Health, Docket No. 91-H-120 (Sept. 25, 1991).

Moreover, at the Level IV hearing, Warden Duncil testified

that August 2, 1996, was not a deadline, that it was still possible for applicants to be pre-qualified by the West Virginia Division of Personnel for a Case Manager position, and that the July 25, 1996 document is specified as a memo, and that it is not a posting for vacant positions, but was a notice to employees that reallocation of positions would occur in the future.

Likewise, at Level III, Mr. Basford testified:

> [T]he notice was put before the employees and it was done for two reasons. First of all, to let the employees show interest in the, to declare their interest. And that does two things. It not only tells you who is interested but also excludes from the potential, maybe those who are not interested, so the Warden would then know which positions not to consider for reallocation. And it also directed all the employees in the facility to submit application because they wanted to pre-qualify those and we think that that is certainly a proven measure as you are going to reallocate positions at some point in the future, it certainly would bewho [sic] the institution to make sure those people qualified ahead of time.

Level III, Tr. at 24.

Grievant also alleges on October 15, 1996, Mr. Bill Carter, Captain, and Mr. Bill Iseli, Associate Warden of Operations, came to her, after speaking with Warden Duncil, and told her that she would be placed in the final (tenth) Case Manager position. Both denied this allegation. Captain Carter testified he told Grievant that he would help her get the job, but did not tell her that she had the job. Associate Warden Iseli testified Grievant came to him and asked him if he "had any problem with her applying for the Case Manager job." Level IV, Tr. at ___.[1] He told her that he did not

[1]The Level IV transcript has not been transcribed.

have a problem with her applying for the position in question. Moreover, neither of these gentlemen have hiring authority, and Grievant failed establish how she was harmed, if at all, by this alleged miscommunication.

Several people applied after the initial target date. Grievant did not qualify for reallocation to the Corrections Unit Manager classification, the position above that she seeks. Both Grievant and Mr. Edmonds qualified for the Case Manager based on experience gained while working for Respondent. However, Mr. Edmonds qualified for both the Correctional Case Manager and Correctional Unit Manager classifications.

At Level IV, Warden Duncil also testified that Grievant has a high absenteeism rate, is "overly confrontive" with inmates, and does not have a good reputation as a Correctional Officer. Therefore, Respondent's selection of Mr. Edmond was not arbitrary and capricious.

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 nondisciplinary matters, a grievant must prove all of the allegations constituting her grievance by a preponderance of the evidence. Miller v. W. Va. Div. of Corrections, Docket No. 96-CORR-168 (Dec. 23, 1996).

2. Grievant did not prove by the preponderance of the evidence that she should have been selected for a Corrections Case

Manager position, or that Respondent was arbitrary and capricious its selection method.

Accordingly, the grievance is **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: 9/11/97

_ _____
JEFFREY N. WEATHERHOLT
ADMINISTRATIVE LAW JUDGE