DEBORAH S. MORELAND

v. Docket No. 96-BOT-462

BOARD OF TRUSTEES/WEST VIRGINIA UNIVERSITY

D E C I S I O N

Grievant, Deborah S. Moreland, employed by the Board of Trustees at West Virginia University (Respondent), filed a level one grievance on September 26, 1995, in which she alleged that her workload had increased to the point that it was impossible to complete her duties in a seven and one-half hour day, and that her supervisor had engaged in a pattern of harassment related to her inability to complete her assignments. Following denials at levels one and two, Grievant elected to bypass consideration at level three as is permitted by W. Va. Code §18-29-4(c), and advanced her appeal to level four on November 13, 1996. A level four hearing was conducted on January 30, 1997, for the purpose of supplementing the extensive record compiled at level two. The matter became mature for decision with Grievant's notification on April 11, 1997, that she would file no response to Respondent's post-hearing submission.

The following findings of fact have been determined based upon a preponderance of the evidence of record, including the transcript of the level two hearing, the testimony of the level four witness, and all documentary evidence.

Findings of Fact

1. Grievant, Deborah S. Moreland has been employed at West Virginia University since 1970, and is currently classified as a Program Assistant I in the Office of Graduate Education.

2. Grievant's position description dated January 1, 1994, describes the primary purpose of her position is to provide administrative support for the management and operation of the Graduate and Professional Tuition Waiver Program and the Interim Director of University GraduatePrograms.

3. The 1994 position description established that Grievant allocated sixty (60) percent of her time to the Tuition Waiver Program. Her listed duties were as follows:

- Enters Quota waiver application information and Graduate Assistant waiver information each

semester on computer (approximately 800 quota forms and 1400 Graduate Assistant forms processed each semester).

- Distributes waiver guideline, deadline calendars and forms to all WVU units and to contacts in all WV institutions of higher education each semester.

- Monitors supply of waiver forms for reordering.

- Answers the waiver phone line and responds to all calls regarding graduate and professional waivers.]

- Verifies applicants' eligibility based on state law, BOT regulations and institutional policy.

- Monitors Quota and Graduate Assistant waiver usage for incidence of abuse (e.g., non-use of Quota waiver credit hours; illegal use of waivers by undergraduates; graduate assistants not enrolled or not enrolled full-time).

- Supervises work activity and assignments of occasional part-time work-study students involved in projects concerning waiver program.

- Recommends to WVU Graduate and Tuition Waiver Committee all program timelines and due dates governing applications.

- Reports waiver use pattern reports and determines quota waiver credit hour allocation to colleges.

- Monitors quota waiver credit hour usage and deletions to insure maximum efficiency in use of WVU's allocation.

- Recommends policy changes/implementation to Graduate and Professional Tuition Waiver Committee and provides information to Office of Academic Affairs for possible policy implementations. (Acts as ex-officio to Policy Committee).

- Prepares mandated state reports each semester regarding the Graduate and Professional Tuition Waiver Program.

- Collects data and prepares reports for administrative decision support.

4. Thirty-five (35) percent of Grievant's time was allocated to Graduate Studies office support. Her duties in this area were listed as follows.- Supervises, updates and distributes the Swiger, DuBois, and the Endowed Supplemental Fellowships.

- Interprets guidelines and eligibility requirements when responding to inquires.

- Advises fellowship recipients of status and update procedures.

- Provides administrative support to fellowship committees.

- Schedules and attends meeting, records proceedings, and produces meeting summaries.
- Supervises preparation of tuition waivers for fellowship recipients each semester.
- Coordinates annual review of fellowships.
- Provides other staff support to the Interim Director (e.g., answering telephone when necessary, preparing mailings, arranging meetings, etc.).

5. Listed as marginal functions, comprising five (5) percent of Grievant's time was “Other incidental graduate studies/tuition waiver administrative support as assigned by the Assistant Vice President for Curriculum and Instruction or the Interim Director of University Graduate Programs.”

6. Dr. Robert Stitzel served as Interim Director of Graduate Programs and Grievant's immediate supervisor from December 1993 through October 1994. Dr. Stitzel served in this position on a part-time basis and retained his assignment in the Department of Pharmacology and Toxicology the remainder of the time. He did not share office space with Grievant, but worked from the Health Science Center.

7. In October 1994, Dr. Nithi T. Sivaneri was named as full-time Director of Graduate Education. Dr. Sivaneri vacated his previous position with WVU and moved into the office of Graduate Education.

8. Grievant's position description was revised in August 1995. Although the essential and marginal job functions, and the time allocated to them, remained unchanged, Dr. Sivaneri issuedGrievant a memorandum dated August 15, 1995, in which he “envisioned” that she would devote sixty (60) percent of her time to the Tuition Waiver Program and the remaining forty (40) percent in providing administrative support to him. In addition to working with the tuition waiver program, the Graduate Council, and the graduate and professional fellowships, Dr. Sivaneri requested that Grievant maintain his calendar, schedule meetings, answer his telephone, refine memos and letters before printing them, and “other such activities.” He also asked that she request specific approval from him prior to leaving the office for other than routine reasons, and to use work-study students for running errands. He stated that she should be absent from the office only when students are not available and the tasks required immediate attention.

9. On March 18, 1996, Dr. Sivaneri issued Grievant a memorandum regarding her job performance. He noted that contrary to his earlier directive to reduce the number and duration of phone calls, she still spent considerable time on the telephone advising employees in other offices

regarding the waiver process. He also noted that the minutes of the Graduate Council meetings were not promptly produced as requested, little work had been completed on the fellowships, requiring that the deadlines for their submission be extended, and that Grievant had not learned to use the macintosh computer to manage his calendar and refine his correspondence prior to printing. Dr. Sivaneri asked that Grievant meet with him weekly on Monday at 9:00 a.m. to review and prioritize work for the week.

10. In October 1995, Senior Compensation Analyst LuAnn Moore advised Provost and Vice President for Academic Affairs Thomas J. LaBelle, that Grievant's position had been reviewed and found “that it is appropriately classified at its current level.”

Grievant does not dispute that she is properly classified, but asserts that the quantity of thework exceeds the capabilities of one person. Grievant further complains that despite her efforts to complete the multitude of tasks, Dr. Sivaneri has engaged in ongoing harassment which has affected her health. It is Respondent's position that Grievant's position description represents a proper view of the range of duties and functions to be performed by the Program Assistant I position, and that Grievant is not performing the full duties and functions of the position. Respondent further denies that Dr. Sivaneri has engaged in harassment as defined by W. Va. Code §18-29-2(n), but characterizes his actions as consistent with that of a supervisor ensuring that his subordinate's work is completed within reasonable standards.

Discussion

Because this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & Employees Grievance Bd. 156 C.S.R. 1 §4.19 (1996); Arnold v. Bd. of Trustees/ W. Va. Univ., Docket No. 97-BOT-130 (July 30, 1997). In the present matter, Grievant has established that her workload in the area of administrative support to the director has increased significantly. The evidence also indicates that the quantity of tuition waiver duties has increased over the years. As stated in the letter of August 15, 1995, Dr. Sivaneri determined that duties related to tuition waivers and fellowships would comprise only sixty (60) percent of Grievant's time, whereas her job description had allowed ninety-five (95) percent of her time for these duties.

The record does not suggest that any of these duties were deleted, but rather, that Grievant was simply expected to complete them in less time. She has been given little assistance in effectuating this mandate. She was provided a macintosh computer, but apparently felt uncomfortable in learning how to use it. Some of the colleges are apparently beginning to provideher with waiver information in computer form, which should increase her efficiency; however, it does not appear that either the colleges or the Office of Graduate Education has planned for full computerization of their work in the near future. Dr. Sivaneri suggested that Grievant not spend so much time on the telephone explaining the waiver process to other employees; however, providing such information would appear to be her responsibility. Grievant reasonably stated that if she does not answer questions from employees less familiar with the waiver process, she usually will just have to deal with the situation later.

Grievant has proven that the quantity of secretarial work has increased significantly while there has been no decrease, and apparently some increase, in her remaining duties. Because her assignment was full-time prior to the thirty (30) percent increase in secretarial duties, Grievant is now expected to satisfactorily complete more than full-time work. An employee may not be required to perform the duties of more than one full-time position.

Since virtually the beginning of Dr. Sivaneri's tenure as Director of the Office of Graduate Education, their working relationship has deteriorated to the point that much of their communication is now conducted via memoranda. Grievant has presented many examples of what she characterizes as harassing actions by Dr. Sivaneri. It is not necessary to address all of her complaints; however, some of her complaints will be presented, along with Dr. Sivaneri's responses, to illustrate the nature of this issue.

1. Shortly after his arrival, Dr. Sivaneri told Grievant that she wrote like a left-handed person. Grievant interpreted this comment to mean that she had poor handwriting. Dr. Sivaneri stated that he meant no ill will, that it was meant to be an ice-breaker.

2. Dr. Sivaneri advised Grievant that she should be able to learn how to use themacintosh computer in about fifteen (15) minutes. She was unable to master the new hardware in that amount of time and interpreted the comment to be insulting. Dr. Sivaneri stated that it was simply an observation based upon his own experience and that of his young son.

3. Dr. Sivaneri returned a number of form letters to Grievant advising her that they were

"garbage" and required that they all be reproduced. He had typed the body of the letter and Grievant had filled in the names and addresses. When they were printed the first paragraph was not justified. Grievant stated that the letter appeared to be fully justified on her monitor and that she did not know why they were not printed properly. She opined that the individuals receiving large amounts of money would not be concerned whether the letter was fully justified. Dr. Sivaneri admitted that he called the letters garbage and stated that it was Grievant's responsibility to produce a satisfactory product.

4. Dr. Sivaneri directed Grievant to stop spreading propaganda, telling others that he had told her to stop giving advice over the telephone, in contravention of a University practice of helpfulness. He conceded that he asked her to stop advising other that he was ordering her to work contrary to University practice.

5. Grievant stated that she had asked Dr. Sivaneri to prioritize the assignments, but he would only respond that "[i]t all has to be done." Dr. Sivaneri cited his memorandum in which he asked Grievant to appear in his office at 9:00 a.m. on Monday mornings to discuss the workweek, but that she had met with him only once or twice. Grievant responded that she was waiting for him to call her in for the meeting, and he did not.

6. Grievant found a roughly drawn picture of a woman with the caption "crazy woman" on the back of Dr. Sivaneri's office door. As the only other employee in the office, she assumed thedrawing was her. Dr. Sivaneri stated that his young son had drawn the picture.

W. Va. Code §18-29-2(n) defines harassment as "repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession." While Grievant clearly feels that Dr. Sivaneri's conduct towards her was a continual criticism and demeaning of her work, his testimony indicates that Grievant's behavior was problematic for him. Although neither Grievant nor Dr. Sivaneri testified at level four, the extensive level two record establishes that they are incompatible as co-workers. Grievant had worked virtually independently for a long period of time and was quite used to doing things her way. Dr. Sivaneri has defined methods and procedures to be followed.

Different styles of working are generally not a problem unless, as in this instance, they are practiced by the only two employees in the office. In this situation a clash of wills has created an uncomfortable work environment for both individuals; however, Dr. Sivaneri is the administrator, and as such, Grievant must defer to his wishes on certain matters. While some examples of Dr. Sivaneri's

actions individually indicate a lack of sensitivity or tact, his overall approach toward Grievant has been in the nature of a continual disturbance contrary to the demeanor expected by law, policy and profession. Of particular concern is his directive to allocate less time advising other employees regarding the waiver program, and then chastising Grievant for explaining that she was no longer able to provide that service. His characterization that she was spreading propaganda carries a particularly negative connotation.

Perhaps most revealing is the portrait of “crazy woman” Grievant saw in Dr. Sivaneri's office. While it is not uncommon to have works of art rendered by one's children in an office, it is very questionable why this particular choice was made. Because Grievant is the only femaleemployee in the office, it was not unreasonable for her to believe that she was the subject of the portrait. Such actions make the performance of duties exceptionally difficult, if not impossible.

In addition to the foregoing it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. In a grievance involving a nondisciplinary action, Grievant must prove her case by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.19 (1996); Arnold v. Bd. of Trustees/W. Va. Univ., Docket No. 97- BOT-130 (July 30, 1997).

2. Grievant has proven that her workload has increased significantly in the area of secretarial services since the appointment of a full-time director of the Office of Graduate Studies, and that the remainder of her workload has not diminished; therefore, she is expected to complete duties which exceed those of a full-time position.

3. W. Va. Code §18-29-2(n) defines harassment as “repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession.”

4. Grievant has proven by a preponderance of the evidence that her supervisor's actions constituted harassment as defined by statute.

Accordingly, the grievance is GRANTED and Respondent is Ordered to revise Grievant's assignment to include only an amount of work which might reasonably be accomplished within the work day, and to cease and desist all harassment.

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: August 29, 1997 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE