WARREN HEADLEY, et al.,

Grievants,

v. **Docket No. 98-BOT-015**

BOARD OF TRUSTEES/WEST VIRGINIA UNIVERSITY,

Respondent.

D E C I S I O N

Grievants, ten individuals employed by the Board of Trustees (Respondent) as Heating, Ventilation, and Air Conditioning (HVAC) mechanics at West Virginia University (WVU), filed a level one grievance on October 8, 1997, in which they alleged, "[n]ot receiving adequate compensation in line with other HVAC Mechanics or any other leads in correlation with importance as related to hours of work. We are not permitted to work the Alternate Work Schedules as other employees are within the Physical Plant." For relief, Grievants requested "higher compensation commensurate with importance of position and availability, or allow employees to work alternate work schedules."

The grievance was denied at levels one and two, and appeal was made to level four on January 9, 1998. An evidentiary hearing was conducted on March 24, 1998, at which time Grievants clarified that the only relief they were requesting was an alternative work schedule, i.e., a four day work week. The claim for additional compensation was specifically abandoned. The matter became mature for decision on May 1, 1998, the due date for final post-hearing submissions. (See footnote 1)

The facts of this matter are undisputed and may be set forth as the following findingsof fact.

Findings of Fact

1. Grievants are employed by WVU as HVAC Mechanics, Lead or Journeymen, and are assigned to the Physical Plant.

2. In 1994, WVU instituted a Total Quality Management (TQM) team to develop an Alternate Work Week Plan for the Physical Plant. The plan was subsequently adopted by some shops at the Physical Plant, but not the HVAC shop.

3. Since 1994, the Physical Plant has been undergoing a reorganization, due at least in part to budget cuts. The HVAC shop has lost three positions, which may not be filled, and additional

positions may be eliminated through attrition.

4. The HVAC shop staff currently consists of two employees assigned to the Air Handling Team, two employees assigned to the Fan Coil Unit Team, and Grievants, five Lead HVAC Mechanics and five HVAC journeymen. Unit 35, the emergency shift, was not well-defined in the record, but appears to consist of two additional employees.

5. Grievants work from 7:00 a.m. to 3:00 p.m., Monday through Friday.

6. Grievants' work consists of scheduled projects and call-outs as situations arise throughout the day. The HVAC shop receives an average of sixteen to twenty call- outs per day.

7. Grievants work on both the downtown and Evansdale campuses, each of which is divided into two zones. A Lead and a Journeyman are generally assigned to a zone, with two employees working as “floaters”.

Argument

Grievants argue that because alternative work schedules are permitted by statute and policy, and have been successfully implemented in other areas of the Physical Plant, they should also be afforded the opportunity to alter their schedules to a four-day work week. Grievants propose a schedule which provides that no more than two of them will be away from the workplace on any day, and offer assurances that they will cover for each other as needed. Grievants also note that by permitting the longer work day, Respondent will benefit in that coverage will increase from thirty-seven and one-half (37½) hours per week, to fifty (50) hours per week.

Gary Boyd, Building Trade Supervisor II and Grievants' immediate supervisor, testified at levels two and four that he is understaffed with a backlog of work orders to be completed; therefore, the operational needs of the institution do not make an alternative work schedule possible for Grievants. Mr. Boyd stated that while he does permit his employees to use flex-time for special needs, such as a doctor's appointment, or a trip, to allow two employees to be away from work each day, while assigning six others to special projects such as replacing fume hoods, would potentially leave one person to answer twenty to twenty-five calls in the four geographic zones on any given day.

Discussion

In a non-disciplinary matter, Grievants must prove their claim 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); Shackleford v. W. Va. Bd. of Directors/Concord College, Docket No. 96-BOD-414 (Oct. 9, 1997); Baroni v. Bd. of Directors/Fairmont State College,Docket No. 92-BOD-271 (Feb. 11, 1993). See W. Va. Code §18-29-6.

Some guidance in this matter is provided by W. Va. Code §18B-7-9, which provides:

Before the first day of January, one thousand nine hundred ninety-four, each governing board, with the advice and assistance of the staff councils and other groups representing classified employees, shall establish a policy pursuant to the provisions of article three-a [§29A-3A-1 et seq.], chapter twenty-nine-a of this code that discourages temporary, nonemergency, institutionally-imposed changes in an employee's work schedule; that maintains reasonable continuity in working schedules and conditions for employees; and that requires institutions to consider feasible and innovative ways to most efficiently utilize the institution's classified employees, such innovations to include flexibility in employee scheduling, job-sharing and four-day work weeks.

Present WVU policy, as stated in the Employee Handbook is that:

an employee may request and work other than University business hours, provided that he/she work the required number of hours in the respective work week with the approval of the immediate supervisor. The supervisor, in cooperation with the respective dean or director, may approve or deny a request for flexible work hours. Based on operational need, the supervisor has the authority to require, only in emergency, flex time. Flex time may be granted on a fixed schedule or short-term basis.

Clearly, it is within the discretion of the immediate supervisor to deny an alternative work schedule based upon the operational needs of the institution. Mr. Boyd's reasons for denying the alternative work schedule were well stated; i.e., a four-day work week would not leave him with enough staff to provide adequate coverage to the institution. Although Grievants credibly testified that they would cooperate to make the alternative schedule work. The Alternative Work Schedule could be successful, even with the understaffing, if Grievants' work was limited to scheduled projects; however, it is not reasonable thatGrievants can complete those projects, and provide a timely response to the call-outs, when two members of the staff are not on site each day. While the project work can be completed in four (4), ten (10) hour days, or five (5), eight (8) hour days, call outs are unscheduled, yet may be priority assignments in that they involve refrigeration and heating units. If the call outs are

not promptly serviced, the operational needs of the institution are not being met.

The present situation is somewhat similar to the factual situation presented in Smith v. W. Va. Parkways Economic Development and Tourism Auth., Docket No. 97-PEDTA- 484 (Apr. 17, 1998). In Smith, the employees in the Ghent maintenance shop were permitted to work an Alternative Work Schedule consisting of four (4), ten (10) hour days, Monday through Thursday, from late April through October. When equipment needed repaired on Fridays, employees from the Beckley shop were sent to Ghent. The Alternative Work Schedule option was withdrawn by the supervisor who determined the Ghent shop needed to be open on Fridays because some amount of equipment needed servicing for work on Monday, it was not efficient to send a mechanic from Beckley, and it affected the productivity of the Beckley shop. The supervisor's determination was upheld at level four, based upon a finding that Grievants had failed to prove the decision was arbitrary and capricious. In the present matter, Mr. Boyd's decision was not arbitrary and capricious, but was based upon a logical conclusion that his shop could not satisfactorily complete all the HVAC duties with two employees off site every day.

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

Conclusions of Law

1. In a non-disciplinary matter, Grievants must prove their claim 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); Shackleford v. W. Va. Bd. of Directors/Concord College, Docket No. 96-BOD-414 (Oct. 9, 1997); Baroni v. Bd. of Directors/Fairmont State College, Docket No. 92-BOD-271 (Feb. 11, 1993). See W. Va. Code §18-29-6.

2. W. Va. Code §18B-7-9 provides that each higher education governing board must establish a policy that requires higher education institutions to consider feasible and innovative ways to most efficiently utilize the institution's classified employees, including flexibility in employee scheduling, and four-day work weeks. Respondent has complied with this provision.

3. Mr. Boyd had the authority to require employees to work five (5), eight (8) hour days per week, if necessary to meet the institutional needs of West Virginia University.

4. Grievants failed to prove by a preponderance of the evidence that Mr. Boyd's decision to denying them alternative work schedules was arbitrary and capricious.

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 ofthe intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

Date: June 15, 1998 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Grievants were represented by Diane Ridgway, Laborers' International Union, Local 814 Representative. Respondent was represented by Assistant Attorney General Samuel R. Spatafore.