THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES

GRIEVANCE BOARD

DALE MUNDAY,

Grievant,

v. **Docket No. 06-CORR-479**

Denise M. Spatafore

Administrative Law Judge

DIVISION OF CORRECTIONS/

ST. MARY'S CORRECTIONAL CENTER,

Respondent.

DECISION

Dale Munday ("Grievant") initiated this proceeding on November 1, 2007, alleging the improper handling of an overtime assignment that occurred on October 15, 16, and 17, 2006. Grievant seeks as relief to be compensated at 1.5 times his regular pay for thirty hours of overtime work. The grievance was denied at level one on November 9, 2006, and at level two on November 21, 2006. A level three hearing was held on December 6, 2006, and the grievance was denied in a written decision dated December 7, 2006. Grievant appealed to level four on December 21, 2006. During a prehearing conference conducted on February 6, 2007, the parties agreed to submit this matter for a decision based upon the record developed below. Fact/law proposals were due on March 9, 2007, which neither party elected to submit, and this grievance was reassigned to the undersigned administrative law judge on March 15, 2007. (See footnote 1)

Synopsis

Grievant contends that applicable policies regarding the assignment of voluntary overtime work were not followed during a three-day period in October of 2006. Because one officer was on suspension and another was on annual leave, Lieutenant Fred Howard was told to work the night shift for “C Group” on those three days. The operations officer intended to reassign Lt. Howard to the unit in order to avoid overtime. However, once Lt. Howard returned to his own unit, his total work hours for the week in question ended up resulting in approximately 19 hours of overtime. Respondent's policies allow reassignments to avoid overtime, so no violation of the voluntary overtime policy was proven.

Findings of Fact

1. Grievant is employed as a correctional officer at St. Mary's Correctional Center, and he is normally assigned to “Group D.” (See footnote 2) Grievant is a Lieutenant, which gives him supervisory authority over other, lower-ranking officers.

2. Fred Howard is also a Lieutenant at St. Mary's, and he is normally assigned to Group B.

3. In mid-October of 2006, both supervisors from Group C were to be absent at the same time. Captain Steven Berryman was on suspension, and Lt. David VanCamp was scheduled to take annual leave.

4. Robert Hill, Associate Warden of Security, asked Lt. Howard if he would agree to be reassigned to Group C on October 15, 16, and 17, 2006, to providesupervisory coverage for those shifts. At the time, Lt. Howard was not requested to work overtime, and Mr. Hill intended for Lt. Howard's supervisor to adjust his regular schedule accordingly, so that the reassignment would not result in overtime.

5. Lt. Howard's supervisor did not adjust his schedule on his normal shift during the week of October 15, 2006, which resulted in Lt. Howard working 19 hours (See footnote 3) of overtime, for which he received overtime pay.

6. The Division of Corrections' (“DOC”) Policy Directive 129.02 addresses “Voluntary Compensable Overtime for Correctional Officers,” providing, in pertinent part, as follows:

> It is the policy of [DOC] to maintain a mechanism that ensures compensable voluntary overtime be offered to employees . . . in a systematic fashion that affords equal

> opportunity to properly classified employees to perform essential duties consistent with the classification title and the level of work to be performed.
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> * * * * * * * *
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> When a vacancy exists and the situation necessitates employees work compensable voluntary overtime, the post will be filled in a manner consistent with this policy if the appointing authority/designee deems it necessary to fill the vacant post(s).
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> * * * * * * * *
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> Overtime shall be offered within the appropriate classification to employees who are qualified to perform necessary duties on a rotating basis beginning with the senior most employee within a given Correctional Officer classification and ending with the last senior person.

7. St. Mary's also has a policy addressing staff overtime, Operational Procedure #1.29-6, which contains similar provisions. That policy also provides, in pertinent part:

> Operations Officers should have available enough Roll Call sheets tentatively completed so the Chief Correctional Officer can determine if shiftreassignments would resolve the staffing issues more appropriately than the use of overtime.

8. Operational Procedure #1.29-6 defines “voluntary overtime” as “time spent working in excess of an employees' regularly scheduled shift through previous arrangement with the Operations Officer on duty.”

9. Both Policy Directive 129.02 and Operational Procedure #1.29-6 provide that employees who are in Pay Grade 13 or higher can only work voluntary overtime “at the discretion of the appointing authority” or “his/her designee.” Lieutenants and captains are compensated at a rate higher than Pay Grade 13.

Discussion

Since this grievance is not about discipline, Grievant must prove all of his claims by a preponderance of the evidence, which means he must provide enough evidence for the undersigned Administrative Law Judge to decide that his claim is more likely valid than not. *See Unrue v. W. Va.*

Div. of Highways, Docket No. 95-DOH-287 (Jan. 22, 1996); *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). If the evidence supports both sides equally, then Grievant has not met his burden. *Id.*

Grievant contends that both DOC's and St. Mary's policies on voluntary overtime were violated in this instance. He believes that, because Lt. Howard was allowed to accumulate overtime hours during the week in question, the position he filled was obviously an overtime assignment, for which the voluntary overtime rotation list should have been consulted.

Respondent counters that no policy violations occurred, because it chose to reassign Lt. Howard to cover the vacancy, rather than intentionally place employees in theposition as an overtime assignment. As DOC has correctly pointed out, St. Mary's operational procedure specifically encourages the supervisor to use reassignments in lieu of overtime whenever possible. Moreover, it was Mr. Hill's intention to reassign Lt. Howard with an adjustment to his schedule for the remainder of the week, so that he would not ultimately work any overtime, which unfortunately did not happen. Therefore, the actual overtime occurred when Lt. Howard was returned to his normal assignment with Group B, and Grievant has made no claim of entitlement to overtime during Lt. Howard's shift on Group B.

In addition, and perhaps most importantly, both policies at issue here provide that supervisory employees, such as Grievant and Mr. Howard, are only permitted to participate in the voluntary overtime program at the chief officer's discretion. In this case, Mr. Hill chose to fill the vacant shift through reassignment of another officer, which he has the authority to do under the applicable policies. Therefore, Grievant having no absolute right to earn overtime anyway, he has no authority to challenge the discretionary authority exercised by Mr. Hill.

The following conclusions of law support this decision.

Conclusions of Law

1. Grievant must prove all of his claims by a preponderance of the evidence, which means he must provide enough evidence for the undersigned Administrative Law Judge to decide that his claim is more likely valid than not. *See Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996); *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). 2. Grievant has failed to prove by a preponderance of the evidence that there has been

any violation, misapplication or misinterpretation of Respondent's overtime policies. *See W. Va. Code* 29-6A-2(i).

Accordingly, this grievance is **DENIED**.

Any party, or the West Virginia Division of Personnel, may appeal this decision to the Circuit Court of Kanawha County, or to the "circuit court of the county in which the grievance occurred." Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 29-6A-7 (1998). 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: April 10, 2007

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DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Grievant represented himself in this grievance, and Respondent was represented at level four by Charles Houdyschell Jr., Senior Assistant Attorney General.

Footnote: 2

Although no actual explanation of the "groups" was provided, it is assumed that these refer to work units of officers who are assigned to work together.

Footnote: 3

Apparently, Grievant was mistaken in his assumption that Lt. Howard had accumulated 30 hours of overtime as a result of this assignment.