HARRY AREFORD,

Grievant,

v. Docket No. 98-BOT-163

BOARD OF TRUSTEES/WEST VIRGINIA UNIVERSITY,

Respondent.

D E C I S I O N

Grievant, Harry Areford, employed by the Board of Trustees as a Motor Pool Fleet Attendant at West Virginia University (Respondent), filed a level one grievance on March 18, 1998, in which he alleged that he was being denied overtime work. Following denials at levels one and two, Grievant elected to by-pass consideration at level three, as is permitted by W. Va. Code §18-29-4(c), and advanced his complaint to level four. An evidentiary hearing was conducted on July 28, 1998, at which time Grievant was represented by Diane Parker of LIUNA, Local 814, and Respondent was represented by Samuel R. Spatafore, Assistant Attorney General. The matter became mature for decision with the submission of proposed findings of fact and conclusions of law by the parties on or before August 31, 1998.

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

Findings of Fact

1. Grievant has been employed by West Virginia University in the Motor Pool for approximately twenty-five years. He served fifteen years as a mechanic, ten years as an Assistant Supervisor, and is presently classified as a Motor Pool Fleet Attendant.

2. As Motor Pool Fleet Attendant, Grievant is responsible for the scheduling of all Motor Pool vehicles. He is not required to possess a Commercial Drivers License(CDL) in this position, but holds a CDL with a “passenger” endorsement which enables him to drive buses with passengers.

3. Respondent currently employs six full-time, and one part-time, bus drivers. 4. When additional bus drivers are needed, Motor Pool Supervisor Denzil Banks assigns the work to one of the five mechanics employed at the Motor Pool. Mechanic John Sargent substitutes as a bus driver frequently, and receives all, or nearly all, overtime work as a bus driver.

5. Mechanics drive the buses on a limited basis pursuant to their job description, and are therefore required to possess a CDL.

6. In addition to the CDL, bus drivers and mechanics are required to obtain Hepatitis B shots, and participate in drug testing programs. As Motor Pool Fleet Attendant, Grievant is not required to meet either requirement.

Discussion

At issue in this grievance is the Board of Regents [Trustees] Classified Employees' Handbook, Section 6.7, “Overtime”, which provides in pertinent part that “[w]hen possible, overtime is distributed equally among all employees within a group, department or occupation.” Grievant argues that the overtime is not assigned within the “department” because all employees within the department are not qualified to drive a bus, and all departmental employees have not been offered overtime work. Grievant next asserts that overtime is not assigned within an “occupation” because all bus drivers are given the opportunity to work overtime; however, all mechanics are not. Mr. Sargent is the only mechanic offered overtime work. Thus, Grievant argues that by the process of elimination, Respondent offers overtime to a “group”, and because he is part of the “group” of MotorPool employees, is licensed, and is willing to obtain the necessary inoculation and participate in the drug testing program, he is entitled to overtime work as a bus driver.

Respondent denies that Grievant is part of a “group” of employees, because “group” is defined as consisting of eligible employees, as determined by the types of assignments and qualifications of the positions. Specifically, mechanics substitute as bus drivers because they are required to possess a CDL and must operate motor vehicles pursuant to their job descriptions, whereas, Grievant is not required to possess a CDL or operate motor vehicles as part of his job description. Although Respondent agrees that Grievant is in the same “department” as mechanics and bus drivers, it asserts that the differences in qualifications and duties place him in a different “group”. Because he is in a different “group”, Respondent concludes that it is not possible, or feasible, to distribute overtime equally among the mechanics and Grievant.

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of his grievance 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); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-

88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6.

Because Respondent's Handbook does not define “group”, both parties have taken the opportunity to characterize it in a manner supportive of their argument. However, because Grievant is not required to possess a CDL, be immunized for Hepatitis B, or participate in a drug programs to hold his regular position, he is not a member of a “group” eligible for overtime employment as a bus driver. Simply because Grievant is licensed, andwilling to meet the remaining qualifications set by Respondent in order to be qualified, does not entitle him to overtime work. Qualifications obtained on one's own initiative and not required for the position held, while commendable, do not impose upon the employer any additional obligations, or grant the employee additional rights or benefits. Therefore, it cannot be determined that Grievant is entitled to overtime work as a bus driver.

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

Conclusions of Law

1. When a grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of his grievance 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); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ. Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6.

2. Grievant has failed to prove that he is entitled to overtime work as a bus driver.

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 preparedand transmitted to the appropriate Court.

Date: September 28, 1998 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE