LINDA MORGAN,

Grievant,

v. **Docket No. 99-40-057**

PUTNAM COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Linda Morgan (Grievant) challenges the method by which the Putnam County Board of Education (PCBOE) calculated payments for overages in her kindergarten class, per the procedure set forth in W. Va. Code § 18-5-18a. The record does not reflect the proceedings which occurred at level one of the grievance procedure. Grievant appealed to level two, where a hearing was held on January 7, 1999. The grievance was subsequently denied at that level by Harold Hatfield, Grievance Evaluator, on February 2, 1999. Level three consideration was waived, and Grievant appealed to level four on February 9, 1999. The parties agreed to submit this matter for a decision based upon the record developed below. This matter became mature for consideration upon receipt of the parties' fact/law proposals on March 16, 1999. (See footnote 1)

The following findings of fact are made from a preponderance of the evidence submitted at level two.

Findings of Fact

___1. Grievant is employed by PCBOE as a kindergarten teacher at Scott TeaysElementary School.

2. Since the beginning of the 1998-1999 school year, Grievant has had 23 students enrolled in her class, with the exception of fifteen days when she had only 22 students. (See footnote 2)

3. W. Va. Code § 18-5-18a states that any kindergarten teacher who has more than twenty students enrolled in her class shall be paid additional compensation based upon the teacher's

average daily salary divided by twenty for every day times the number of additional pupils enrolled.

4. The practice of PCBOE in paying teachers for overages is to compensate them on a per-minute basis, based upon the total number of minutes during the school day that the additional students are instructed. This practice was necessary because some teachers only have additional students for part of the school day.

5. Because Grievant's additional students are enrolled in all of her classes for the entirety of each school day, Grievant has been compensated for the overage for the entire 420-minute school day. The 420 minutes is based upon a 7½-hour school day times 60 minutes per hour, minus a 30-minute duty-free lunch period.

6. Grievant is compensated for the overages on holidays, vacation days, sick days, noninstructional days, and during her planning period.

7. Grievant has received differing amounts of overage pay since the beginning of the school year, because various corrections have been made by PCBOE to accountfor errors that were made in computing the appropriate amounts of overage pay.

8. PCBOE has not provided to Grievant a breakdown of how her overage pay has been calculated for each pay period.

Discussion

Grievant's two chief contentions are that W. Va. Code § 18-5-18a prohibits PCBOE from calculating overage pay on a per-minute basis and that the statute also does not allow for a deduction for the teacher's lunch period. She has not been provided with any breakdown of the calculations done by PCBOE regarding her overage pay, which has been different virtually every pay period. However, PCBOE contends that it has compensated Grievant for all overage pay to which she is entitled, and that the amounts have differed due to the need to correct underpayments and the initial use of an incorrect formula by payroll personnel.

Grievant's confusion regarding her overage pay is understandable. In fact, the record does not explain the exact formula utilized by PCBOE in order to arrive at the proper amounts for these payments. However, PCBOE is correct in its contention that the use of a per-minute basis for the overage pay is permitted. It has been previously held by this Grievance Board that it is proper to calculate a teacher's overage pay based upon the amount of time during the school day that she

actually has the extra students in class. Harmon v. Mingo County Bd. of Educ., Docket No. 95-29-447 (Mar. 29, 1996). Therefore, PCBOE's method of breaking down the instructional day into minutes and paying teachers accordingly is appropriate. Since Grievant has overages during the entire instructional day, PCBOE correctly compensates her for overages for 420 minutes of instruction time. Accordingly, per the reasoning in Harmon, supra, Grievant's overage pay would be calculated as follows: Her daily salary would be divided by 450 (the total number of minutes in a 7½ hour day) to arrive at a per-minute salary. That number would then be multiplied by 420, the total amount of instructional time that Grievant has overages. The resulting figure would be divided by 20, as dictated by the statute, and multiplied by the number of students over 20. This number would be the per day amount Grievant is to be paid for each day she has overages in her class.

Because Harmon, supra, allows compensation of teachers for overages only during the instructional school day, it is not improper for PCBOE to deduct the 30-minute duty- free lunch period. By definition, this lunch period does not involve any required teaching duties. Grievant testified that she occasionally supervises children or uses her lunch period for planning time. However, she did not state that she is required by PCBOE to perform these functions during her lunch period. If this were the case, it would seem that Grievant would have asserted a claim that she has been denied a duty-free lunch period, and she has not. The evidence does not establish that this is the case, and it is proper for PCBOE to deduct Grievant's lunch period from her overage compensation.

While PCBOE contends that it has complied with W. Va. Code § 18-5-18a in calculating Grievant's overage pay, the record does not establish whether it has or has not. Accordingly, PCBOE is directed to provide Grievant with a breakdown of how her overage pay has been calculated, showing the exact calculations. If it has not used the formula set forth above, then Grievant's overage pay for the 1998-1999 school year should be recalculated, and Grievant should be compensated for any differences between theappropriate amounts of overage pay and the compensation she has received.

In accordance with the foregoing findings and discussion, the following conclusions of law are appropriate.

Conclusions of Law

1. In a non-disciplinary matter, a grievant must prove the allegations of her complaint 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. Any kindergarten teacher who has more than twenty students enrolled in her class must be paid additional compensation based upon the teacher's average daily salary divided by twenty for every day times the number of additional pupils enrolled. W. Va. Code § 18-5-18a.

3. A teacher is entitled to overage pay only for the amount of time during the school day that she actually has the extra students in class. See Harmon v. Mingo County Bd. of Educ., Docket No. 95-29-447 (Mar. 29, 1996).

4. Grievant did not establish by a preponderance of the evidence that it was improper for PCBOE to compensate her for overages based upon a 420-minute instructional day.

5. PCBOE has not provided a sufficient explanation of how Grievant's overage pay was calculated, and Grievant is entitled to such an explanation.

Accordingly, this grievance is **GRANTED IN PART** and **DENIED IN PART**. Respondent is directed to provide Grievant with a detailed breakdown showing the calculations used to determine her overage pay. If it has not been using the formula described in this Decision, PCBOE is **ORDERED** to compensate Grievant for any deficiencies in the amount of overage pay she has received since the beginning of the 1998-1999 school year, plus interest.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Putnam 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. 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: March 29, 1999 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Grievant was represented by Susan Hubbard of the West Virginia Education Association, and Respondent was represented by counsel, John A. Grafton.

Footnote: 2

The record does not explain where the third student was during this fifteen-day period.