SHERRY DARLENE NEIL,

Grievant,

v.

DOCKET NO. 02-22-210

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Sherry Darlene Neil, filed this grievance against her employer, the Lincoln County Board of Education ("Board") on May 22, 2002:

> Grievant, a regularly employed Coordinator, Executive Secretary/Accountant II, is currently compensated for 29.73 hours of college credit or vocational training. Grievant received training at the Yeager Career Center. She is seeking credit for the vocational training received at Yeager. She alleges a violation of West Virginia Code § 18A-4-8a and State Board of Education Policy 5301.
>
> Relief sought: Grievant seeks prospective and retroactive monetary relief and interest on all monetary sums.

The grievance was denied at level one by Board Treasurer, Birdie Gandy, on May 28, 2002. A level two hearing was conducted on June 26, 2002, and the grievance denied by Superintendent William K. Grizzell on July 11, 2002. Grievant by-passed level three and appealed to level four on July 22, 2002, and a hearing was held on September 23, 2002. The matter became mature for decision on October 28, 2002, the deadline for the parties' proposed findings of fact and conclusions of law. Grievant was represented by John E.Roush, Esq., West Virginia School Service Personnel Association, and the Board was represented by James W. Gabehart, Esq.

SUMMARY OF EVIDENCE

LII Grievant's Exhibits

Ex. 1 -

Lincoln County Vo-Tech Center Class Record Book, Clerical I Evening, 1979-80.

Ex. 2 -

June 7, 2002 Affidavit of Wilburn Triplett.

Ex. 3 -

June 24, 2002 memorandum from Debbie Nida Meade.

Ex. 4 -

March 28, 2002 memorandum from Linda Swann.

Ex. 5 -

May 21, 2002 memorandum from Doris Wade.

Ex. 6 -

March 16, 2002 memorandum from Larry Bays.

Ex. 7 -

Employability Plan, Public Service Employment, November 1979.

LII Board Exhibits

Ex. 1 -

Board Certification Records for Sherry Darlene Neil.

Ex. 2 -

Board Certification Records for Sherry Darlene Neil.

LIV Grievant's Exhibits

Ex. 1 -

August 14, 2002 letter from Sherry Darlene Neil Alford Neil to Cecil D. Roberts.

Ex. 2 -

August 15, 2002 letter from Cecil Roberts to Sherry D. Alford Neil.

Ex. 3 -

Lincoln County Vo-Tech contact hours received by Sherry Darlene Neil.

LIV Board Exhibits

None.

Testimony

Grievant testified in her own behalf, and presented the testimony of Charles McCann, Debbie Mead, and Angela Pritchard. The Board presented the testimony of Birdie Gandy.

Based upon a review of the record in its entirety, I find the following facts have been proven by a preponderance of the evidence.

FINDINGS OF FACT

1. Grievant is employed by the Board as a regular school service personnel employee. She presently holds the multiclassification title of Purchasing Coordinator/Secretary/Accountant.

2. For the time period in question, for every 12 college credit hours or comparable credit obtained in a trade or vocational school, a school service employee was entitled to an additional $10.00 above the minimum monthly pay. W. Va. Code §18A-4- 8a(3). Fifteen (15) hours of vocational training is equivalent to one college credit hour.

3. Grievant participated in the Comprehensive Educational Training Act ("CETA") program from November 28, 1979 through June 18,1980. During that period, Grievant worked one-half day at Hamlin Junior High School.

4. From March 3, 1980 through June 18, 1980, Grievant attended a clerical class and an accounting class which, taken together, added up to 3.75 hours in the afternoons. She was credited with 132 vocational hours for this period, or 8.8 college credit hours.

5. Grievant participated in the CETA program during the 1980-81 school year as well, from

August 1980 through May 28, 1981.

6. From January 1981 through May 1981, Grievant attended a night-time clerical class, for which she was given credit for 254 contact hours, or 16.93 college credit hours.

7. Grievant also had 4 college credit hours from a course taken through Marshall University in 1985. 8. Grievant has been credited with a total of 29.73 college credit hours, entitling her to an additional $20.00 above her minimum monthly pay for a maximum of 24 hours. (See footnote 1)

DISCUSSION

In a non-disciplinary grievance, grievants bear the burden of proving each element of their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1, Section 4.21 (2000); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1998); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988); See W. Va. Code § 18-29-6.

W. Va. Code § 18A-4-8a provides, in pertinent part:

> (1) The minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the “state minimum pay scale pay grade I” ... Provided, That beginning the first day of the second quarter of the employment term in the school year two thousand one-two thousand two the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the “state minimum pay scale pay grade II” ... set forth in this section.

That Code Section also provides that an additional ten dollars ($10.00) per month shall be added to minimum monthly pay of each service employee for every twelve college hours or comparable credit obtained in a trade or vocational school as approved by the state board. Under Title 126 of the Code of State Regulations, Series 163, each fifteen(15) contact hours of training obtained from an approved vocational institution is equivalent to one semester hour of college credit. Under 126 C.S.R. 163 § 4:

> Verification of credit will be an official transcript of course work completed from an accredited institution of higher education or a grade report of completed contact hours in a post-secondary program from an approved trade, vocational, technical, business, or similar institution. Each employee is responsible for obtaining and providing copies of the required records to his/her employer. ... County boards of education are responsible for verifying the number of hours completed by their respective employees for additional pay purposes.

Grievant alleges the Board has violated W. Va. Code § 18A-4-8a because it has refused to give her credit for additional contact hours for classes she attended in the 1979- 80 and 1980-81 school years. The Board denies any statutory violation, and maintains that Grievant has not produced evidence sufficient to meet her burden that she was enrolled in and/or completed the contact hours she is claiming to have earned.

For the 1979-80 school year, the year Grievant began employment with the Board as a participant in the CETA program. She worked one-half day for the Board, and attended vocational training the other one-half day. The evidence demonstrates Grievant attended two classes in the afternoons for a total 3.75 hours per day - a clerical and an accounting class. The Board credited her with attendance from March 3, 1980 through June 18, 1980, or 132 contact hours equaling 8.8 college credit hours.

Grievant claims she should receive credit for attendance from her date of hire, November 28, 1979 through June 18, 1980, for an additional 355.5 contact hours, or 23.7 college credit hours, for a total of 32.5 credit hours.

Grievant also contends she attended classes in the afternoon during the 1980-81 school year, from August 1980 through May 28,1981. She claims she worked one-half dayand attended a Clerical II class at the vocational center the other one-half day, for which she should receive credit for 637.5 contact hours, or 42.5 college credit hours. (See footnote 2)

Grievant produced an affidavit from Wilburn Triplett, the now retired teacher who taught the clerical class in 1979-80, confirming Grievant was “enrolled in afternoon classes for clerical training from November 28, 1979 thru May 28, 1981.” LII G. Ex. 2. However, the only grade book which could be located was from Mr. Triplett's Clerical I class beginning in January 1980 through June 1980. LII G. Ex. 1. Grievant also produced letters from Linda Swann, a secretary at Hamlin High School (LII G. Ex. 4), Doris Wade, a retired secretary (LII G. Ex. 5), and Larry Bays, Director of the Career Center (LII G. Ex. 6), verifying Grievant was employed from November 28,1979 through May 1981, and attended training classes during the period of her employment. Additionally, Grievant produced a letter and testimony from a friend, Debbie Nida, who testified she attended the clerical classes with Grievant from November 18, 1979 through May 1981. LII G. Ex. 2. All of these memoranda were prepared in 2002 for this grievance.

Grievant's work history during her CETA participation was documented by the Board. Her six-

month update report indicates she “enrolled half day at Lincoln Vocational Technical Center in clerical/accounting March 3 through June 18, 1980.” The one year up- date notation indicates she works full time, and makes no reference to her taking any classes. The fifteen and eighteen-month updates likewise make no reference to her taking any classes. LII G. Ex. 7. The Board introduced an Adult Education Certificate dated May 1, 1980, showing Grievant completed 132 hours of clerical and accounting training at the Vo-Tech center (LII Bd. Ex. 1); and a Notice of Enrollment form for the CETA program indicating the beginning date for the clerical and accounting training was March 3, 1980 and ended June 18, 1980 (LII Bd. Ex. 2). Mr. Bays, the Vocational Director, authored a memorandum indicating Grievant's last enrollment at the vocational center was from January 1981 to May 1981, for a total of 254 hours “in Accounting, Shorthand, Data Processing and other office skills.” LII Bd. Ex. 1.

While the undersigned does not believe Grievant is being untruthful when she asserts she attended the clerical and accounting classes from November 28,1979 through June 18, 1980, nor are those individuals who have verified that information, the length of time that has passed has no doubt clouded memories and recollections may be swayed based on suggestion.

For the 1979-80 school year, the Board's records, completed contemporaneously with the events, indicate Grievant did not enroll in the clerical and accounting classes until March 3, 1980. In order to credit employees for completed course work, the employees are required to present the Board with some verifiable evidence. Grievant has not met her burden of proving by a preponderance of the evidence that she began attended classes in November 28, 1979.

For the 1980-81 school year, other than Grievant's own testimony, and the recent memoranda from the individuals noted above, there is simply no verifiable, contemporaneous evidence that Grievant was enrolled in afternoon classes at the vocational center from August 1980 through May 1981. Again, the undersigned is not concluding Grievant is being untruthful; it is simply a matter of complying with the regulations, which require some sort of verifiable documentation, such as an “official transcript of course work completed” or “a grade report.” Grievant has not been able to produce the type of evidence needed to substantiate her entitlement to additional college credit hours. See Sexton v. Boone County Bd. of Educ., Docket No. 00-03-373 (Mar. 29, 2001).

CONCLUSIONS OF LAW

1. In a non-disciplinary grievance, grievants bear the burden of proving each element of their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1, Section 4.21 (2000); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1998); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988); See W. Va. Code § 18-29-6.

2. Under Title 126 of the Code of State Regulations, Series 163, each fifteen (15) contact hours of training obtained from an approved vocational institution is equivalent to one semester hour of college credit. Under 126 C.S.R. 163 § 4:

> Verification of credit will be an official transcript of course work completed from an accredited institution of higher education or a grade report of completed contact hours in a post-secondary program from an approved trade, vocational, technical, business, or similar institution. Each employee is responsible for obtaining and providing copies of the required records to his/her employer. ... County boards of education are responsible for verifying the number of hours completed by their respective employees for additional pay purposes.

3. Grievant has failed to prove by a preponderance of the evidence that she is entitled to credit, and additional compensation corresponding thereto, for anything otherthan (1) the four college credit hours earned at Marshall University; (2) 8.8 hours college equivalency hours based upon the Certificate of Completion of 132 vocational hours dated May 1, 1980, and (3) 16.93 college equivalency hours based upon 254 vocational hours verified by the vocational Director Larry Bays.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln County. Any 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.

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MARY JO SWARTZ

Administrative Law Judge

Dated: November 21, 2002

Footnote: 1

During the course of research into this matter, it was discovered that Grievant had been receiving credit for 694 contact hours, or 12.8 college credit hours, for courses she took in high school. Only post-secondary course work counts in calculating college credit hours. The 12.8 college credit hours were deducted from Grievant's total calculation, and Grievant does not take issue with this correction.

Footnote: 2

Grievant attended night classes during this time period, for which she was given credit. See Finding of Fact No. 6, supra.