HAROLD LOWTHER, et al.,

Grievants,

v. Docket No. 01-DOH-589R

DEPARTMENT OF TRANSPORTATION/

DIVISION OF HIGHWAYS,

Respondent.

ORDER

By Order entered July 22, 2003, the Honorable Charles E. King, Jr., Circuit Judge, Circuit Court of Kanawha County, affirmed the Decision of the Grievance Board issued March 27, 2002, in Docket No. 01-DOH-589, and remanded this matter to the Grievance Board for a determination of "the amount of attorney fees each of the respondents incurred in this matter." Judge King further ordered "that each respondent shall recover his or her attorney fees and costs expended."

The undersigned requested documentation of the legal fees incurred by each of the four Grievants, and that information has been provided in the form of a fee statement provided by Grievants' counsel, and affidavits from Grievants. Respondent has not lodged any objection to the fees themselves, but asserts that it cannot be made to pay more than $1500.00, citing W. Va. Code § 29-6A-10. Both parties were given the opportunity to brief this issue, and declined to do so.

The undersigned finds that the total legal fees and costs incurred by the Grievants in pursuing this grievance is $3,245.05, and that each of the four Grievants was responsible for payment of one-fourth of this amount, or $811.26.

W. Va. Code § 29-6A-10 provides as follows:

> If an employee appeals to a circuit court an adverse decision of a hearing examiner rendered in a grievance proceeding pursuant to provisions of this article or is required to defend an appeal and the person substantially prevails, the adverse party or parties is liable to the employee, upon final judgment or order, for court costs, and for reasonable attorney's fees, to be set by the court, for representing the employee in all

> administrative hearings and before the circuit court and the supreme court of appeals, and is further liable to the employee for any court reporter's costs incurred during any administrative hearings or court proceedings: Provided, That in no event shall such attorney's fees be awarded in excess of a total of one thousand five hundred dollars for the administrative hearings and circuit court proceedings nor an additional one thousand dollars for supreme court proceedings: Provided, however, That the requirements of this section shall not be construed to limit the employee's right to recover reasonable attorney's fees in a mandamus proceeding brought under section nine [§ 29-6A-9] of this article.

While Judge King's Order does not limit the amount of the attorney fees and costs that Grievants are to recover, it must be read in conjunction with the limitations set forth in the statute. However, the statute addresses what “an employee” may recover. In this casethere were four employees, each of whom incurred less than $1500.00 in attorney fees and costs. Accordingly, the undersigned concludes that each Grievant should recover $811.26 in legal fees and costs from Respondent herein.

IT IS ORDERED that, consistent with Judge King's Order, Respondent pay to each Grievant, that is, to Harold Lowther, Jimmy Collins, Ronald Tenney, and Frederick Allen, $811.26, and that this payment be made as soon as possible.

Brenda L. Gould

Administrative Law Judge

Dated: October 20, 2003