DAVID KISAMORE,

Grievant,

vs. **Docket No. 03-30-059**

MONONGALIA COUNTY
BOARD OF EDUCATION,

Respondent.

DECISION

David Kisamore ("Grievant") initiated this grievance on January 2, 2003, alleging entitlement to credit for six years of experience while he was employed as a bus operator in Maryland. After attempts were made to resolve the grievance, it was denied at level one on January 16, 2003. Upon appeal to level two, a hearing was scheduled and held on February 14, 2003. The grievance was denied in a written decision dated February 21, 2003. Level three consideration was waived, and Grievant appealed to level four on February 28, 2003. A hearing was held in the Grievance Board's office in Westover, West Virginia, on April 14, 2003. Grievant was represented by counsel, Peter Dinardi, and Respondent was represented by counsel, Kelly Kimble. This matter became mature for consideration upon receipt of the parties' fact/law proposals on May 12, 2003.

The following findings of fact are made based upon a preponderance of the credible evidence of record.

Findings of Fact

1. Grievant began employment with Respondent as a bus operator on September 26, 2001.

2. Prior to being hired by Respondent, Grievant was employed as a school busoperator in Garrett County, Maryland, from May 11, 1993, to January 31, 2001.

3. While driving a school bus in Maryland, Grievant was employed by a private contractor who owned the bus and contracted with the board of education to provide bus services. Grievant was

trained and tested by the board of education and had to be approved by the board before he could drive a school bus.

4. Respondent's Policy “GD” provides that “new service employees with prior experience with a Board of Education may have those years counted for as years of employment for incremental pay purposes.”

5. Rick Williams, Assistant Manager for Human Resources for Respondent, directed the payroll department to credit Grievant with the years of experience he obtained while working as a bus driver in Maryland. The credit was reflected in Grievant's salary the first few months of his employment.

6. By letter dated November 19, 2002, Mr. Williams informed Grievant that the experience credit has been granted to him in error. He further explained that, pursuant to statute and Respondent's policy, Grievant would only be entitled to the credit if he had been directly employed by the board of education, not by a private contractor.

7. The experience credit was deducted from Grievant's salary beginning in December of 2002.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Holly v. LoganCounty 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.

Grievant contends that he has unfairly been deprived of the experience credit to which he is entitled. He argues that both Respondent's policy and W. Va. Code § 18A-4-8 provide for the credit. The statute defines “years of employment” as “the number of years which an employee classified as service personnel has been employed by a board in any position[.]” In turn, employees' salaries are determined pursuant to their years of employment as listed in the state minimum pay scale in W. Va. Code § 18A-4-8a.

Respondent contends that the portion of W. Va. Code § 18A-4-8 which defines years of employment as employment with “a board” refers only to employment directly by a county board of education, which would exclude Grievant's work for a private bus contractor. The term “board” is defined only in W. Va. Code § 18-1-1(d) as “the county board of education.” Therefore, Respondent

reasons that, since Grievant was actually employed by the contractor, not the board of education, he is not entitled to the experience credit.

"In the absence of specific indication to the contrary, words used in a statute will be given their common, ordinary and accepted meaning, and the plain language of a statute should be afforded its plain meaning." Meadows on Behalf of Professional Employees of W. Va. Educ. Assoc. v. Hey, 399 S.E.2d 657, n. 9 (W.Va. 1990), citing Hodge v. Ginsberg, 303 S.E.2d 245 (W.Va. 1983). The undersigned agrees with Respondent that the plain language of W. Va. Code § 18A-4-8 provides only for experience obtained while employed by a county board of education, which would clearly exclude Grievant's work for a private contractor. However, it must be noted that Respondent's Policy GD differs slightly in language from the statute, in that it provides for credit for "prior experience with a board of education," and it does not refer to "employment by" a board of education. Arguably, although Grievant was not directly employed by the Garrett County Board of Education, he did obtain "experience with" that board of education by driving children to and from its schools after being trained, tested, and approved by the board.

It is well established that a government agency's determination regarding matters within its expertise is entitled to substantial weight. Princeton Community Hosp. v. State Health Planning & Dev. Agency, 174 W. Va. 558, 328 S.E.2d 164 (1985). See W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681 (1993); Security Nat'l Bank v. W. Va. Bancorp, 166 W. Va. 775, 277 S.E.2d 613 (1981). Additionally, where the plain language of a policy does not compel a different result, deference must be extended to the agency in interpreting its own policies. See Dyer v. Lincoln County Bd. of Educ., Docket No. 95-22-494 (June 28, 1996). Where the language in a policy is either ambiguous or susceptible to varying interpretations, this Grievance Board will give reasonable deference to the agency's interpretation of its own policy. See Dyer, supra; Edwards v. W. Va. Parkways Dev. and Tourism Auth., Docket No. 97-PEDTA- 420 (May 7, 1998). See generally Blankenship, supra; Princeton Community Hosp. v. State Health Planning & Dev. Agency, 174 W. Va. 558, 328 S.E.2d 164 (1985); Jones v. Bd. of Trustees, Docket No. 94-MBOT-978 (Feb. 29, 1996); Foss v. Concord College, Docket No. 91-BOD-351 (Feb. 19, 1993). Thus, Respondent's interpretation of its policy is entitled to deference by this Grievance Board, unless it is contrary to the plain meaning of the language, is inherently unreasonable, or is arbitrary and capricious. Dyer, supra.Respondent contends that its policy is consistent with the provisions of W. Va. Code § 18A-4-8

and that employment with a private contractor does not constitute “experience with a board of education”

The undersigned is unable to conclude that Respondent's interpretation of its policy is unreasonable. Although reasonable minds could certainly differ regarding the meaning of “experience” with a board of education, it could certainly be construed to mean direct employment by a board. Moreover, the policy merely states that employees “may” have their prior experience counted for incremental pay purposes, providing Respondent with some discretion in granting the credit. Therefore, Grievant has not established that he is entitled to the relief requested.

The following conclusions of law support the decision reached.

Conclusions of Law

1. In a non-disciplinary matter, Grievant has the burden of proving his claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); 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. School personnel are compensated based upon their “years of employment,” which is defined as “the number of years which an employee classified as service personnel has been employed by a board in any position[.]” W. Va. Code § 18A-4-8.

3. Grievant's employment by a private contractor driving a school bus does not entitle him to experience credit for those years of employment.

Accordingly, this 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. 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: June 25, 2003 _____

DENISE M. SPATAFORE

Administrative Law Judge