DARLENE MCCLINTOCK,

Grievant,

v. **Docket No. 02-32-378**

MORGAN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Darlene McClintock (Grievant), employed by the Morgan County Board of Education (MCBE or Respondent) as a bus operator, filed a level one grievance on October 8, 2002, in which she alleged violations of W. Va. Code §§ 18A-4-8b and 18-29-2(m) occurred when she was no longer allowed to accept extra-duty assignments which conflict with her supplemental run. (See footnote 1) Grievant seeks payment for those extra-duty assignments she has been denied, and allowed to accept such assignments in the future. Grievant's immediate supervisor lacked authority to grant the requested relief at level one. The grievance was denied at level two, and MCBE waived consideration at level three. Appeal was made to level four on November 21, 2002, and an evidentiary hearing was conducted on February 25, 2003. Grievant was represented by John E. Roush, Esq. of West Virginia School Service Personnel Association, and MCBE was represented by Kimberly S. Croyle, Esq., of Bowles Rice McDavid Graff & Love. The matter became mature for decision upon receipt of proposed findings of fact and conclusions of law filed by the parties on or before March 26, 2003.

The following facts are undisputed.

Findings of Fact

1. Grievant has been employed by MCBE as a bus operator for approximately thirteen years.

2. In addition to her regular a.m./p.m. run, Grievant bid on, and received, an extra-duty assignment for the 2002-2003 school year. This supplemental run from Berkeley Springs High School to Warm Springs Middle School begins at 9:30 a.m. and ends at approximately 10:00 a.m. Compensation for the assignment is $15 dollars per day. There was no statement that this run would take priority over other curricular or extra-curricular runs held by the employee.

3. On August 14, 2002, MCBE posted a “supplemental” bus run to transport as many as two students in a county car from their home in the Unger Store Area to Great Cacapon School and back.

The students were to be at school by 9:45 a.m., and were to be returned home by 2:15 p.m. The duration of this run was stated to be “September 9, 2002-May 29, 2003 as needed Tuesday and Thursday as needed”. Compensation for this assignment was $45 per day. The posting for this and all other extra-duty assignments provided that “[t]he responsibilities of this position will take priority over curr[icular] and extra curricular bus runs.”

4. Beginning in August 2002, MCBE determined that bus operators with supplemental runs would not be eligible for extra-duty trips that interfered with their supplemental runs. This action was taken due to difficulty in securing substitute bus operators for the supplemental runs.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance 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.

Grievant argues that she is entitled to take the more lucrative extra-duty trips by the provisions of W. Va. Code § 18A-4-8b, and because the posting for her extra-duty assignment does not include the proviso that it takes priority over other runs. MCBE asserts that it has substantial discretion in the assignment of school personnel, and that it is neither contrary to law, or arbitrary and capricious to require that an employee be available for his/her extra-duty assignments.

W. Va. Code § 18A-4-8b ¶ 1 provides:

A county board shall make decisions affecting promotions and the filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight [§18A-4-8] of this article, on the basis of seniority, qualifications and evaluation of past service.

The Grievance Board has consistently held that,"[i]mplicit in the provisions of W. Va. Code § 18A-4-8b governing the appointment of school service employees is the premise that an employee making application must be available to assume the duties of a position at the times designated by the Board. See Barber v. McDowell County Bd. of Educ., Docket No. 94-33-405 (Apr. 21, 1995)." Skeens v. Lincoln County Bd. of Educ., Docket No. 02-22-070 (June 19, 2002); White v. Monongalia

County Bd. of Educ., Docket No. 00- 30-279 (Jan. 2, 2001); Teter v. Randolph County Bd. of Educ., Docket No. 95-42-535 (May 9, 1996); O'Neal v. Kanawha County Bd. of Educ., Docket No. 20-86-239 (May 13, 1987). As of the time she applied for the Unger Store Area to Great Cacapon School extra-dutyposition, Grievant was already committed to a prior assignment during the same time period. Therefore, Grievant was not available to perform this job, or any other assignments which occur at the same time as her extra-duty assignment. Finally, the fact that the posting for the extra-duty assignment held by Grievant did not state that it took precedence over other runs, does not entitle Grievant to treatment inconsistent with that of other bus operators.

The following conclusions of law support the decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.21 (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. "Implicit in the provisions of W. Va. Code § 18A-4-8b governing the appointment of school service employees is the premise that an employee making application must be available to assume the duties of a position at the times designated by the Board. See Barber v. McDowell County Bd. of Educ., Docket No. 94-33-405 (Apr. 21, 1995)." Skeens v. Lincoln County Bd. of Educ., Docket No. 02-22-070 (June 19, 2002); White v. Monongalia County Bd. of Educ., Docket No. 00-30-279 (Jan. 2, 2001); Teter v. Randolph County Bd. of Educ., Docket No. 95-42-535 (May 9, 1996); O'Neal v. Kanawha County Bd. of Educ., Docket No. 20-86-239 (May 13, 1987). 3. Grievant has not demonstrated she was available to perform any extra-duty assignments for which she claims entitlement.

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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

DATE: APRIL 18, 2003 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Grievant did not address the discrimination claim at level four, and it is deemed abandoned.