JAMES W. EISENTROUT,

Grievant,

v. Docket No. 05-39-264

PRESTON COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

James W. Eisentrout ("Grievant") initiated this proceeding on July 12, 2005, alleging entitlement to reimbursement for travel expenses related to obtaining his commercial driver's license ("CDL"). The grievance was denied at level one on July 13, 2005, and a level two hearing was conducted on July 27, 2005. The grievance was denied at that level on August 3, 2005. Level three consideration was bypassed, and Grievant appealed to level four on August 5, 2005. A hearing was conducted in Westover, West Virginia, on October 12, 2005, at which Grievant was represented by counsel, John E. Roush, and Respondent was represented by counsel, Kimberly S. Croyle. This matter became mature for consideration upon receipt of the parties' fact/law proposals on November 15, 2005.

The following material facts have been proven by a preponderance of the evidence of record.

Findings of Fact

___1. Grievant is employed by Respondent as a bus operator. 2. Prior to the 2004-2005 school year, the Division of Motor Vehicles ("DMV") maintained an office in Kingwood, West Virginia, where Preston County bus operators could renew their CDLs. That office is now closed.

3. On December 20, 2004, Grievant traveled to Morgantown, West Virginia, to renew his CDL. He made the trip again on May 26, 2005, to add the "S" endorsement to his license. The distance Grievant traveled on each occasion was approximately 38 miles, round trip.

4. Shortly after the May trip to Morgantown, Grievant submitted a travel reimbursement form to the central office, and the request was denied.

5. When the DMV office was in Kingwood, Grievant never requested mileage reimbursement for his travel there, even though it was a greater distance from his home to that office than it is to Morgantown.

6. None of Respondent's employees have ever been reimbursed for mileage related to obtaining certifications or licenses connected to their job duties.

7. Respondent's Policy 8-6 requires that out-of-county travel be approved by the Superintendent in advance.

Discussion

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 (2004); 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. Much of Grievant's argument here is based upon the provisions of W. Va. Code § 18A-2-4, which provides that, “If a [CDL] is required as a condition of employment for any school employee . . ., the cost shall be paid in full by the employer.” According to Grievant, the cost of traveling to the location where the license must be obtained is included in “the cost” of the CDL and should consequently be paid by his employer. He also cites the decision in Sexton v. Boone County Board of Education, Docket No. 94-03-044 (June 22, 1994), which held that a custodian assigned to two different schools was entitled to mileage reimbursement for the distance traveled between the schools each workday.

As pointed out by Respondent, the Sexton decision does not support Grievant's position. Grievant's travel was not required as part of his daily job duties, so Sexton does not support the premise that reimbursement for travel related to licenses and certifications is required. Additionally, as held by this Grievance Board in Teller v. Hancock County Board of Education, Docket No. 97-15-457 (May 27, 1998), “school boards are not required to 'incur the costs, in the form of unproductive work hours, reimbursement or the like, of the qualifying minimal training or continuing education of any employee.' [Also,] 'workers are commonly required not only to finance any qualifying or continuing education relative to their jobs, but also to obtain said training on their own time.'” (citing Zirkle v. Hancock County Bd. of Educ., Docket No. 94-15-441 (Feb. 24, 1995)). Although Teller involved a

request for extra compensation, rather than expense reimbursement, its reasoning is informative and applicable to the instant case.

As to Grievant's interpretation of W. Va. Code § 18A-2-4, Respondent asserts that, by paying for the actual cost of the license and related testing, it has fully complied with the statute. The undersigned agrees. To infer that the “cost” of the license should includeindividualized expenses like mileage goes far beyond the unambiguous language of this provision. There is no basis for the assumption that the cost of a CDL license should include anything more than the fees associated with the license itself.

Accordingly, the undersigned finds that there is no basis in statute, policy, regulation or otherwise that would require Respondent to reimburse Grievant's mileage expenses for traveling to the DMV. As with its other employees, Respondent has no obligation to incur Grievant's expenses associated with renewing his CDL, other than the cost of the license itself, as required by statute. Certainly, many employees must travel to various locations to obtain training, licenses and certifications, and there is no basis for requiring boards of education to incur the cost of these ancillary expenses. Therefore, Grievant has failed to meet his burden of proof in this case.

The following conclusions of law support this decision.

Conclusions of Law

1. In a non-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 (2004); 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. “If a [CDL] is required as a condition of employment for any school employee . . ., the cost shall be paid in full by the employer.” W. Va. Code § 18A-2-4.

3. “[S]chool boards are not required to 'incur the costs, in the form of unproductive work hours, reimbursement or the like, of the qualifying minimal training or continuing education of any employee.' “ Teller v. Hancock County Bd. of Educ., DocketNo. 97-15-457 (May 27, 1998) (citing Zirkle v. Hancock County Bd. of Educ., Docket No. 94-15-441 (Feb. 24, 1995)).

4. There is no legal requirement that a board of education reimburse an employee for mileage

traveled to renew a commercial driver's license.

Accordingly, this grievance is **DENIED**.

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

Date: December 2, 2005

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DENISE M. SPATAFORE

Administrative Law Judge