**LARRY PIERSON,**

**Grievant,**

**v.** **Docket No. 05-43-301**

**RITCHIE COUNTY BOARD OF EDUCATION,**

**Respondent.**

## DECISION

Larry Pierson ("Grievant"), a substitute employee of the Ritchie County Board of Education ("the Board"), initiated this grievance on June 29, 2005, alleging entitlement to experience credit for 35 years that he worked as a regular bus operator. The grievance was denied at level one on June 28, 2005, and a level two hearing was conducted on July 26, 2005. The grievance was denied in a level two decision dated August 24, 2005. Level three consideration was bypassed, and Grievant appealed to level four on August 29, 2005. After a level four hearing was scheduled, the parties agreed to submit this matter for a decision based upon the record developed below, accompanied by fact/law proposals, which were submitted by November 17, 2005, at which time the grievance became mature for consideration. (See footnote 1)

The following material facts are undisputed in this case.

## Findings of Fact

1. Grievant was employed by the Board as a regular bus operator for 35 years, and he retired from regular employment at the conclusion of the 2003-2004 school year. 2. Grievant was hired by the Board to work as a substitute bus operator for the 2004-2005 school year.

3. As a substitute bus operator, Grievant was paid for zero (0) years of employment, pursuant to the State minimum salary schedules contained in W. Va. Code § 18A-4-8a.

## 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.

Grievant contends that he is entitled to incremental pay credit for his 35 years of service as a regular bus operator. However, the Board has refused to grant him this credit, due to its belief that Grievant's retirement extinguished all of his previous “seniority” rights, which it contends includes years of employment.

The salary of substitute service employees is established, in part, by the provisions of W. Va. Code § 18A-4-15(d), which states:

> The salary of a substitute service employee shall be based upon his or her years of employment as defined in [§ 18A-4-8] and as provided in the state minimum pay scale set forth in [§ 18A-4-8a] and shall be in accordance with the salary schedule of persons regularly employed in the same position in the county in which he or she is employed.

In turn, W. Va. Code § 18A-4-8(i)(2) 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 support of its decision to deny Grievant credit for his previous years of employment as a regular bus operator, Respondent relies upon the Supreme Court of Appeals' opinion in McClung v. Board of Education, 213 W.Va., 606, 585 S.E.2d 240 (W. Va. 2003). In that case, the Court determined that an employee's retirement extinguished his right to retain a summer position he had held the previous summer, prior to his retirement. Although W. Va. Code § 18-5-39(f) provides that a service employee who holds a summer position has the option of retaining the same position during the succeeding summer, the Court found that, pursuant to the various statutes governing employee seniority, the employee's right to the position was a “seniority credit,” which was lost upon his retirement.

While Respondent contends that the same reasoning should be applied to an employee's salary increment based upon years of employment, the undersigned does not agree. The McClung decision was very clearly based upon the various laws which govern seniority, specifically the Court's holding in Hazelwood v. Mercer County Board of Education, 200 W. Va. 205, 433 S.E.2d 480 (1997), which stated that a service employee who voluntarily resigns his or her employment does not retain any of the seniority rights accumulated during that employment. As previously held by this Grievance Board,

experience credit which is attained for incremental pay purposes is separate and distinct from seniority; seniority is earned by way of accruing years of employment with a particular board of education and is used for other purposes. Blankenship v. Mingo County Bd. ofEduc., Docket No. 97-29-386 (Feb. 6, 1998); Wilson v. Monongalia County Bd. of Educ., Docket No. 92-30-306 (Jan. 7, 1993); Seckman v. Brooke County Bd. of Educ., Docket No. 91-05-251 (Nov. 27, 1991); Thompson v. Kanawha County Bd. of Educ., Docket No. 20-86- 366-1 (July 31, 1987).

"Years of employment," as defined above, includes time employed in "any" service personnel position for a board of education. There are no statutory restrictions placed upon this experience credit with regard to whether the employment was regular or substitute, and there is certainly no indication that retirement would extinguish a substitute's right to a salary credit based upon previous regular employment. "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, 184 W. Va. 75, 399 S.E.2d 657, n. 9 (W.Va. 1990), citing Hodge v. Ginsberg, 172 W. Va. 17, 303 S.E.2d 245 (W.Va. 1983). Experience credit is separate and distinct from seniority, and there is no legal basis for denying the credit when a regular employee retires and becomes a substitute.

The following conclusions of law are consistent with the foregoing.

## Conclusions of Law

1. 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. The salary of substitute service personnel is based upon their years of employment, which includes the number of years a service employee has been employed by a board of education in any position. W. Va. Code §§ 18A-4-8(i)(2) and 18A-4-15(d).

3. Experience credit which is attained for incremental pay purposes is separate and distinct from seniority; seniority is earned by way of accruing years of employment with a particular board of education and is used for other purposes. Blankenship v. Mingo County Bd. of Educ., Docket No. 97-

29-386 (Feb. 6, 1998); Wilson v. Monongalia County Bd. of Educ., Docket No. 92-30-306 (Jan. 7, 1993); Seckman v. Brooke County Bd. of Educ., Docket No. 91-05-251 (Nov. 27, 1991); Thompson v. Kanawha County Bd. of Educ., Docket No. 20-86-366-1 (July 31, 1987).

4. Grievant is entitled to a salary credit for the 35 years he worked as a regular employee, prior to his retirement.

Accordingly, this grievance is **GRANTED**, and Respondent is **ORDERED** to adjust Grievant's substitute salary to include credit for his previous 35 years of employment, with back pay to January of 2005 (See footnote 2) for all of his substitute work, plus interest at the statutory rate.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Ritchie 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 Educationand 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 16, 2005**

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**DENISE M. SPATAFORE**

**Administrative Law Judge**

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*Footnote: 1*

*Grievant was represented by counsel, John E. Roush, and Respondent was represented at level four by Richard S. Boothby, Esquire.*

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*Footnote: 2*

*The parties agreed at the level two hearing that, if Grievant were successful in this case, he should receive retroactive wages to January of 2005, when he discovered his entitlement to the experience credit.*