RONNIE BANKS, et al.,

Grievant,

v. Docket No. 05-22-125

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent,

D E C I S I O N

Grievants, Ronnie Banks, Reba Banks, and Mark Miller are employed as bus operators by the Lincoln County Board of Education ("LCBOE"). They filed this grievance on December 4, 2004, asserting:

> **Grievants are currently employed as regular bus operators. Grievants performed extraduty assignments on a Friday night that extended beyond midnight into Saturday. Respondent paid Grievants only for the actual time worked as opposed to the three hours pay which was the previous practice in the county. Grievants contends [sic] that the board of education violated West Virginia Code §§ 18A-4-8, 18A-4-8a and past county practice.**
>
> **Relief sought: Grievants seeks [sic] compensation for the difference in the three hours pay and the amount they were actually paid and to receive three hours pay for similar occurrences in the future.**

The grievance was denied at Levels I and II, and waived at Level III. Grievants appealed to Level IV on April 14, 2005. Although a Level IV hearing was originally scheduled for May 5, 2005, the parties agreed to submit the case on the record. This case became mature for decision on May 16, 2005, after receipt of the parties' proposed findings of fact and conclusions of law. (See footnote 1)

Issues and Arguments

Grievants assert they are entitled to three hours of additional compensation because they worked until after midnight from the trip they started the prior day. This payment of three hours for time worked after midnight was LCBOE's past practice. Grievants allege LCBOE

violated W. Va. Code §§ 18A-4-8(e) and 18A-4-8a (See footnote 2) when Respondent failed to pay them for a full day.

Respondent asserts there was no violation of W. Va. Code § 18A-4-8(e), and cites a recent State Superintendent's Opinion to support its reasoning and the Level II outcome. Respondent contends Grievants were only entitled to the time they worked, as they were completing their assignments from the prior day, and, thus, only reported to work one day. Respondent also cited to the recent Decision of Redman v. Jackson County Board of Education, Docket No. 04-18-366 (March 8, 2005), that found the State Superintendent's Opinion was entitled to great weight unless it was clearly wrong.

After a detailed review of the record in its entirety, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievants are employed as regular bus operators.

2. LCBOE's past practice was to pay bus operators for three hours even if they worked only worked a few minutes past midnight in completing their run from the prior day. 3. In October of 2004, LCBOE received notice of an opinion by State Superintendent David Stewart dated September 30, 2004. This opinion noted a bus operator who worked from one evening to early the next morning, only reported to work once, did not report to work on two separate days, and would only be entitled to the hours worked, as it was "one continuous work shift."

4. Superintendent William Grizzell notified the Finance Office shortly thereafter that the State Superintendent's Opinion would be followed.

5. Grievants each accepted and completed extracurricular assignments that started one day and were completed shortly after midnight of the next day. Grievant Reba Banks completed her run at approximately 12:15 p.m., Grievant Miller completed his run at approximately 12:30 p.m., and Grievant Ronnie Banks completed his run at approximately 12:45 p.m.

6. LCBOE paid each Grievant for the time worked, and shortly thereafter this grievance was filed.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their 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. "The preponderance standard generally requires proof that a reasonable person wouldaccept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health & Human Res., Docket No. 92-HHR-486 (May 17, 1993).

This case involves the language of W. Va. Code § 18A-4-8(e). This Code Section states:

> **If an employee whose regular work week is scheduled from Monday through Friday agrees to perform any work assignments on a Saturday or Sunday, the employee shall be paid for at least one-half day of work for each day he or she reports for work, and if the employee works more than three and one-half hours on any Saturday or Sunday, he or she shall be paid for at least a full day of work for each day.**

(Emphasis added).

Grievants assert they should receive three hours of compensation for their less than one hour of work because of LCBOE's past practice and cite W. Va. Code § 18A-4-8(e) as support for this argument. (See footnote 3)

In his September 30, 2004 opinion, State Superintendent Stewart discussed the issues raised by this grievance and interpreted W. Va. Code § 18A-4-8(e). He found that if a driver reported to work on a given day, but the shift continued on to the next calendar day the driver had only reported to work once, did not report to work on two separate days, and would only be entitled to the hours worked, as it was "one continuous work shift." He noted that if the bus operator had reported to work for four hours on both a Saturday and Sunday, the outcome would be different, and the employee would be entitled to a full day's wages for both days. W. Va. Code § 18-3-6 authorizes formal opinions by the Superintendent of Schools in the following terms: "At the request in writing of any citizen, teacher, school official, county or state officer, the state superintendent of schools shall give his interpretation of the meaning of any part of the school law or of the rules of the state board of education." "Under the West

Virginia Supreme Court of Appeals' well-settled doctrine regarding interpretation of statutes by bodies charged with their administration, a State Superintendent's opinion is entitled to great weight unless it is clearly erroneous. Lincoln County Bd. of Educ. v. Adkins, 188 W. Va. 430, 424 S.E. 2d 775 (1992); Smith v. Bd. of Educ., 341 S.E.2d 685, 689-690 (W. Va. 1985); Jerden v. Lewis County Bd. of Educ., Docket No. 93-21-349 (Aug. 19, 1994). See Chafin v. Boone County Bd. of Educ., Docket No. 93-03-034 (July 7, 1993); Skeens v. Lincoln County Bd. of Educ., Docket No. 89-22-496 (Oct. 24, 1989)." Harrison v. Logan County Bd. of Educ., Docket No. 95-23-459 (May 31, 1996).

After a review of the State Superintendent's Opinion and the applicable statute, the undersigned is unable to conclude the opinion of the State Superintendent of Schools is clearly wrong. Additionally, Grievants did not address the State Superintendent's opinion in their proposed Findings of Fact and Conclusions of Law, or present any law that would support concluding the State Superintendent's opinion on this issue to be clearlyerroneous. (See footnote 4) **See Hanner v. Fayette County Bd. of Educ., Docket No. 95-10-288 (Oct. 12, 1995).**

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their 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. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health & Human Res., Docket No. 92-HHR-486 (May 17, 1993).

2. The State Superintendent's opinion interpreting a provision of the laws applicable to the West Virginia schools is entitled to great weight unless it is clearly erroneous. Lincoln County Bd. of Educ. v. Adkins, 188 W. Va. 430, 424 S.E.2d 775 (1992); Harrison v. Logan County Bd. of Educ., Docket No. 95-23-459 (May 31, 1996).

3. The State Superintendent's opinion finding a bus operator, who reports to work on one day, but continues at work and completes the assignment the next day,reported to work only once and was only entitled to the hours worked on the second day, (as well as the appropriate compensation for the first day) is not clearly erroneous.

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

JANIS I. REYNOLDS

ADMINISTRATIVE LAW JUDGE

Dated: May 19, 2005

Footnote: 1

Grievants Ronnie and Reba Banks were represented by John Roush, Esq., from the West Virginia School Service Personnel Association, Grievant Miller represented himself, and Respondent was represented by William Grizzell, LCBOE Superintendent.

Footnote: 2

It was not clarified by Grievants how W. Va. Code §18A-4-8a (See footnote 5) was violated, and this allegation will not be addressed further.

Footnote: 3

The undersigned Administrative Law Judge notes the statute refers to three and one half hours, and LCBOE's past practice was to pay for three hours.

Footnote: 4

Grievant did cite an old Grievance Board case, Stevens v. Tyler County Bd. of Educ., Docket No. 94-48-067 (Feb. 7, 1995). This case was not applicable, as it dealt with a different issue and involved the bus operators' approval of another method of payment for extra-duty assignments. Additionally, it should be noted the Stevens case was denied and was issued long before the Superintendent's opinion discussed in this Decision.

Footnote: 5

It was not clarified by Grievants how this Code Section was violated, and it will not be addressed further.