JAMES A. LEWIS,

Grievant,

v. **Docket No. 06-40-080**

PUTNAM COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

James A. Lewis ("Grievant") initiated this proceeding on January 6, 2006, alleging he should have been selected for an extra duty assignment that was given to a half-time bus operator. He seeks as relief to be compensated for five hours of extra duty pay. After denials at the lower levels, Grievant appealed to level four on March 3, 2006. The parties elected to submit this matter for a decision based upon the record developed below, accompanied by fact/law proposals, which were filed on April 3, 2006. (See footnote 1) This grievance was assigned to the undersigned administrative law judge on April 6, 2006.

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

Findings of Fact

1. Grievant is employed by Respondent as a warehouse clerk/truck driver. He is assigned to the warehouse and spends much of his work time assembling supply orders to be delivered to the county's schools. 2. On December 21, 2005, Respondent needed one of the warehouse trucks to travel to Portsmouth, Ohio, to pick up a greenhouse and deliver it to Buffalo Elementary School.

3. Brad Hodges, Director of Administrative Services, inquired regarding the availability of a warehouse employee to make the trip. On that particular day, there were only two employees working in the warehouse, and their supervisor informed Mr. Hodges that he needed both of those employees to perform their regular duties.

4. Mr. Hodges decided that the Portsmouth trip needed to be made during regular working

hours, so that employees at the school would be present to unload the greenhouse.

5. Mr. Hodges selected Diane Torman to make the trip to Portsmouth. Although currently employed as a bus operator, she had previously been employed by Respondent in the warehouse and had experience driving the truck used. Since her current position was as an afternoon bus operator, Ms. Torman was able to perform the Portsmouth trip between the hours of 6:30 a.m. and 11:30 a.m.

6. Because Ms. Torman does not normally work during the morning hours, she received extra compensation for this trip.

7. Grievant normally works in the warehouse from 7:30 a.m. to 3:30 p.m.

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 (2004); *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 it was improper for Respondent to give this assignment to someone who was not classified as a truck driver. He believes he should have been selected to make the trip, and he requests to be compensated at the extra duty trip rate. Respondent counters that it was necessary for the trip to be made during Grievant's regular work hours so that, even if he had performed the assignment, he would be entitled to no additional pay.

"Extra duty assignments" are defined by W. Va. Code § 18A-4-8b(f) as "irregular jobs that occur periodically or occasionally," and include such examples as "field trips, athletic events, proms, banquets and band festival trips." In turn, W. Va. Code § 18A-4-8a provides that extra-duty assignments will be paid at an hourly rate based on the employee's salary and assigned according to seniority.

Indeed, W. Va. Code § 18A-4-8b(f) does make reference to such assignments being offered to employees in "a particular classification category," indicating that the assignment should be given to an employee in a pertinent category of employment. Thus, an assignment to drive a truck to transport and deliver school items should logically be given to a truck driver, which is a title held by Grievant

and not by Ms. Torman.

Nevertheless, Grievant cannot establish any entitlement to relief in this case. As discussed in *Corbin v. Hampshire County Board of Education*, Docket No. 02-14-263 (Jan. 22, 2003), when an employee performs extra assignments that occur within his or her regular working hours, there is no entitlement to any additional compensation. As held in previous cases, “field trips which occur . . . within the employee's regular work day . . . arenot 'extra-duty assignments.'” *Cole v. Putnam County Bd. of Educ.*, Docket No. 00-40-331 (March 2, 2001) (citing cases). Accordingly, while the Portsmouth, Ohio, trip involved here did constitute an extra duty assignment for Ms. Torman, it would not have been extra duty for Grievant.

Grievant has also argued that the assignment could have been performed in the evening hours, after he completed his warehouse duties, which would have made the assignment extra duty for him. However, it is well-recognized that county boards of education have substantial discretion in matters related to hiring, assignment, transfer, and promotion of school personnel, and that discretion must be tempered in a manner that is reasonably exercised, in the best interest of the schools, and in a manner which is not arbitrary and capricious. Syl. Pt. 3, *Dillon v. Bd. of Educ.*, 177 W. Va. 145, 351 S.E.2d 58 (1986).

“Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. *See Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996)." *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregardof facts and circumstances of the case." *Eads*, *supra* (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). "While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of a board of education. *See generally*, *Harrison v. Ginsberg*, 169 W. Va. 162, 286 S.E.2d 276, 283 (1982)." *Trimboli*, *supra*, *Blake v. Kanawha County Bd. of Educ.*,

Docket No. 01-20-470 (Oct. 29, 2001).

It was not unreasonable for Respondent to assign this particular trip to someone who could perform it during regular school hours, so that employees at the school could be present to unload and place the greenhouse in the desired location. Accordingly, it was not an abuse of discretion to assign the trip to be performed during the morning hours, during which Grievant was performing his regular duties. Grievant has established no entitlement to any extra compensation for the trip at issue.

The following conclusions of law support this decision.

Conclusions of Law

1. 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 (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. Extra assignments "which occur . . . within the employee's regular work day . . . are not 'extra-duty assignments.'" *Cole v. Putnam County Bd. of Educ.*, Docket No. 00- 40-331 (March 2, 2001) (citing cases).

3. The assignment at issue occurred during Grievant's regular working hours, so, even if he had performed it, he would not be entitled to any additional compensation.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Putnam 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: April 26, 2006

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DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Grievant was represented by Susan Hubbard of the West Virginia Education Association, and Respondent was represented by counsel, Gregory W. Bailey.