CHERYL WILLIAMS,

Grievant,

v. **Docket No. 05-30-411**

MONONGALIA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Cheryl Williams ("Grievant"), employed by the Monongalia County Board of Education ("MCBE") as a bus operator, filed an undated level one grievance on September 16, 2005, stating that she had incorrectly been designated as refusing an extra-curricular assignment when the bid sheets were not collected from the Blacksville garage for a timely delivery in the central office. For relief, Grievant requested compensation for the trip she would have received, and for Blacksville trips to be "handled personally." (See footnote 1) After the grievance was denied at levels one and two, appeal to level four was made on November 8, 2005.

An evidentiary hearing to supplement the lower-level record was conducted in the Grievance Board's Westover office on March 6, 2006. Grievant was represented by John E. Roush, Esq., of the West Virginia School Service Personnel Association, and MCBE was represented by Jennifer S. Caradine, Esq., of Kay Casto & Chaney, PLLC. The grievance became mature for decision upon receipt of proposed findings of fact and conclusions of law filed by the parties on or before April 14, 2006.

The following facts essential to this grievance have been derived from the credible evidence made part of the record.

Findings of Fact

1. Grievant has been employed by MCBE for approximately nine years, and has been assigned as a bus operator at the Blacksville garage at all times pertinent to this grievance. (See footnote 2)

2. On Mondays, MCBE issues a weekly listing of extra-curricular assignments one week in advance. Bus operators who wish to bid on any of the assignments must submit a trip pick sheet to the central garage by no later than Thursday at 10:00 a.m. Because of the distance between the garages, a fax machine was installed in the Blacksville garage to facilitate the bidding process. This

machine confirms when the message is received.

3. Grievant bid on all four extra-curricular assignments posted for the week of September 12, 2005. She elected to place the trip pick sheets in interdepartmental mail rather than fax them to the central office.

4. MCBE's courier was absent from work on Thursday, September 8, 2005. MCBE does not employ a substitute for this employee, and the trip pick sheets were not delivered until Friday, September 9, 2005.

5. Because the trip pick sheets were not received by the deadline, Grievant was designated as a “refusal” for that rotation.

6. Even if Grievant's trip pick sheets had been timely received by the central garage, she would not have received any of the assignments for that week, since they were all awarded to more senior bus operators. 7. Had Grievant not been designated as refusing an assignment the week of September 12, 2005, she would have been first to select the following week.

8. Grievant completed an emergency extra-curricular assignment during the week of September 19, 2005, but it was not as lucrative as another assignment that week. (See footnote 3)

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 (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).

Grievant argues that she properly followed past practice when she submitted her trip pick sheets by interdepartmental mail, and they would have been received in a timely manner but for MCBE's failure to assign a substitute employee to complete mail delivery. MCBE asserts that it is Grievant's responsibility to have the trip sheets returned by the designated time, and that Grievant failed to do so.

As noted by Grievant, *W. Va. Code* § 18A-4-8b(f) requires that these irregular runs be awarded on a rotating basis according to seniority. MCBE acted accordingly, based on the information

available at the time the assignments were made. Grievant could have,and should have, faxed her trip sheet to the central office. While sending it by interdepartmental mail is acceptable, events may occur which delay delivery. MCBE schedules interdepartmental mail delivery as a convenience, but the bottom line is that bus operators bear the responsibility of getting their trip sheets delivered in a timely manner. Certainly, MCBE has made that feasible with the installation of a fax machine. It should not be required to bear the consequences incurred by those employees who decline to use it. Further, MCBE acted in good faith by offering Grievant an emergency the assignment the following week. Grievant does not establish the difference in the wages she and Ms. Oseky earned that week.

W. Va. Code § 18A-29-2(a) defines "grievance" as

any claim by one or more affected employees alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules, regulations or written agreements under which such employees work, including any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination; any discriminatory or otherwise aggrieved application of unwritten policies or practices of the board; any specifically identified incident of harassment or favoritism; or any action, policy or practice constituting a substantial detriment to or interference with effective classroom instruction, job performance or the health and safety of students or employees.

The essence of Grievant's argument is that MCBE was negligent in not hiring a substitute courier to deliver the mail. However, such decisions are discretionary, and given that a fax machine was available to facilitate the delivery, Grievant has not proven MCBE violated any statute, rule, or regulation, and has otherwise failed to state a claim for which relief may be granted.

In addition to the foregoing findings of fact and discussion, it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. 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 (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. Grievant has not proven MCBE violated any statute, rule, or regulation, and has otherwise failed to state a claim for which relief may be granted.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Monongalia 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 theGrievance 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: MAY 30, 2006

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Originally, four employees were listed on the grievance form. The issue was resolved for two of the individuals prior to level two, and Rhonda Owens did not appeal to level four.

Footnote: 2

MCBE maintains two bus garages, one in Morgantown and the other in Blacksville, to accommodate the western end of the county.

Footnote: 3

Grievant has amended her requested relief to the difference in compensation between the assignment she completed and that awarded to Ida Oseky.