**NORMAN LILLY,**

**Grievant,**

**v. Docket No. 05-10-380**

**FAYETTE COUNTY BOARD OF EDUCATION,**

**Respondent.**

## D E C I S I O N

**Norman Lilly ("Grievant"), employed by the Fayette County Board of Education ("FCBE") as a bus operator, filed a level one grievance on May 16, 2005, in which he alleged a violation of W. Va. Code § 18A-4-8b, when two extra-duty assignments were posted as one. For relief, Grievant requested compensation for the second trip, and FCBE be required to make such assignments in compliance with the statute, with no deviations. On May 23, 2005, Grievant filed a second grievance alleging the violation had again occurred. Bryan Parsons, Principal of Fayetteville High School, lacked authority to grant the requested relief at level one. The grievances were consolidated for hearing at level two. Following a denial at that level, FCBE waived consideration at level three, and the grievance was advanced to level four on October 11, 2005. Grievant, represented by John E. Roush, Esq., of the West Virginia School Service Personnel Association, and FCBE counsel Erwin L. Conrad, agreed to submit the grievance for a decision based upon the lower-level record. Proposed findings of fact and conclusions of law were filed by the parties on or before November 15, 2005, and the matter was transferred to the undersigned by cover letter dated November 17, 2005.**

**The following facts derived from the level two record are undisputed, and may be set forth as the following findings of fact.**

### Findings of Fact

**1. Grievant has been employed by FCBE as a bus operator for twenty-four years.**

**2. During the 2004-2005 school year, Grievant held a mid-day, extracurricular run in addition to his regular morning and afternoon runs. This mid-day run started at 8:30 a.m. and concluded at 2:30 p.m.**

**3. On March 1, 2005, FCBE posted an extra-duty trip assignment to transport the**

**Fayetteville Middle School ("FMS") track team to Oak Hill High School on April 19, 2005. Depart time was 1:30 p.m., with a return time of 2:10 p.m. A second assignment, to return the team to FMS, was posted for the same date, with a depart time of 5:00 p.m. and a return time of 7:30 p.m.**

**4. Also on March 1, 2005, FMS posted two extra-duty assignments to again transport the track team from FMS to Oak Hill High School, and back, on May 13, 2005.**

**5. Principal Parsons held a meeting of the Fayetteville Area bus operators on February 27, 2004, at which time the track team assignments were discussed. Given the option as to whether they should be assigned as one or two runs, the bus operators voted to make the trips one assignment.**

**6. Brent Brash was properly awarded the assignments as his name was next on the rotational list for both runs.**

**7. Grievant does not immediately follow Mr. Brash on the rotational assignment list, and would not have been next offered the assignments, had they been filled as separately posted.**

**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. "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 and Human Res., Docket No. 92-HHR-486 (May 17, 1993).**

**Grievant argues that the vote by the bus operators at the Fayette transportation area was invalid because W. Va. Code § 18A-4-8b(f) requires approval of two thirds of all the employees in the classification countywide, and approval by the board of education, neither of which occurred in this instance. Because the vote was invalid, and because two assignments were posted, Grievant asserts that he was entitled to the second run, from Oak Hill to FMS, on both days cited. FCBE argues that the assignment was awarded as one run consistent with the majority vote of the bus operators.**

**W. Va. Code §18A-4-8b(f) provides, in pertinent part:**

**(f) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting service personnel with respect to extra-duty assignments shall be made in the following manner: An employee with the greatest length of service time in a particular category of employment shall be given priority in accepting extra duty assignments, followed by other fellow employees on a rotating basis according to the length of their service time until all such employees have had an opportunity to perform similar assignments. The cycle then shall be repeated: *Provided*, That an alternative procedure for making extra-duty assignments within a particular classification category of employment may be utilized if the alternative procedure is approved both by the county board and by an affirmative vote of two thirds of the employees within that classification category of employment. For the purpose of this section, "extra-duty assignments" are defined as irregular jobs that occurperiodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.**

**On September 8, 1998, FCBE adopted the following policy regarding assignment of extracurricular trips:**

**In accordance with WV Code 18A-4-16, on August 21, 1998, Fayette County Bus Operators voted 69-5 (3 absent) regarding the following assignment procedure for Extracurricular Trips:**

**Beginning with the 1998-99 school term, any newly occurring extracurricular trip will be assigned within centers as established.**

**Although not required to do so, FCBE allowed the Fayetteville Area bus operators to vote whether the transportation of the track team would be one assignment or two. On February 27, 2004, by a vote of five to one, with Grievant abstaining, the bus operators voted for one assignment, to make it similar to those for football and basketball games. The record does not include an explanation of why FCBE did not post the assignment consistent with this vote.**

**Nevertheless, Grievant's argument that all county bus operators were required to vote on the change is not persuasive. FCBE had divided the county into districts for the purpose of assigning extracurricular trips, and bus operators in the remaining area would have no interest in this matter. Because the evidence establishes that the runs were intended to be one, rather than two assignments, the postings were simply in error. This mistake should be corrected for the upcoming track season.**

**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 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. Grievant failed to prove that he was entitled to the two extra-duty runs.**

**Accordingly, the grievance is DENIED.**

**Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Fayette 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: JANUARY 24, 2006**

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**SUE KELLER**

**SENIOR ADMINISTRATIVE LAW JUDGE**