THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

ANTHONY CLARK,

Grievant,

v. **Docket No. 07-40-058**

Sue Keller

Senior Administrative Law Judge

PUTNAM COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Anthony Clark ("Grievant"), employed by the Putnam County Board of Education ("PCBE") as a bus Operator and Area Bus Coordinator, filed a level one grievance on September 21, 2006 in which he alleged a violation of *W. Va. Code* § 18A-4-5b "by failing to provide uniform pay to area transportation coordinators." For relief, Grievant requested that he be paid the same as the coordinator for the Hurricane area, back pay and benefits. After the grievance was denied at levels one and two, Grievant elected to bypass consideration at level three, and filed a level four appeal on February 16, 2007. Grievant's representative, Bruce W. Boston, WVEA Organizational Development Specialist, and PCBE counsel Gregory W. Bailey, Esq., agreed to submit the grievance for decision based upon the lower-level record. The matter became mature for decision upon receipt of proposed findings of fact and conclusions of law filed on or before March 26, 2007.

Synopsis

___Grievant argues that he performs the same duties as another coordinator who is compensated at a higher rate, in violation of *W. Va. Code* § 18A-4-5b. PCBE asserts that the two positions are not similar and vary significantly in the volume of work, and the timerequired to complete the duties. Although Grievant performs the same duties as another coordinator, he does not work the same amount of time, and does not have the same amount of work to complete. Grievant failed to show

that PCBE engaged in a statutory violation, or that he was otherwise entitled to the higher compensation earned by another coordinator.

The following facts have been derived from a preponderance of the credible evidence made part of the level two record.

Findings of Fact

1. Grievant has been employed by PCBE as a bus operator at all times pertinent to this grievance.

2. PCBE employs four bus operators to also serve as Area Bus Coordinators in the Winfield, Poca, Buffalo, and Hurricane areas of the county. The job description for the Coordinators provides they are to perform the following duties:

To assist in the selection of bus operators, routing, and scheduling school buses for curricular and extracurricular trips.

To coordinate bus operator assignments due to absences by notifying the substitute service caller that a substitute bus operator is needed. (See footnote 1)

To relay information to bus operators from the Assistant Superintendent for Services or Director of Transportation.

To oversee and maintain records regarding uniforms for bus operators in the assigned area.

To communicate to the Director of Transportation any concerns expressed by bus operators in the assigned area.

To assist in the coordination of transportation-related school activities at the beginning and end of each school year.

To assist with principals' and parents' questions regarding bus numbers and bus stops.

To promote school bus safety by monitoring pre- and post- trip inspections performed by bus operators in assigned area.

To perform other duties as assigned by the Assistant Superintendent for Services or Director of Transportation.

3. PCBE employs approximately twenty bus operators and no bus aides in the Winfield area. Twenty-eight bus operators and seven aides are assigned to the Hurricane area.

4. In June 2006 PCBE administrators determined that due to the greater number of employees in the Hurricane area, and the higher volume of work involved, the coordinator in that area was entitled to additional compensation.

5. PCBE developed a formula to calculate supplemental pay for bus coordinators as follows Step 1 will be .18% of the monthly county salary table for a bus driver with zero years of experience. Step 2 will be .24% of the monthly county salary table for a bus driver with zero years of experience multiplied by the number of employees reported on their payroll as of September 15th each fiscal year.

PCBE Policy P. 9. 2a.

6. Applying this formula, PCBE compensates the bus coordinators in the Buffalo, Poca, and the Winfield areas for six additional hours per week for completion of the coordinator duties while the coordinator in the Hurricane area is granted ten hours per week.

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 he is entitled to the same compensation as the Hurricane coordinator, and relies on *W. Va. Code* § 18A-4-5b, which provides in part:

The county board of education may establish salary schedules which shall be in excess of the state minimums fixed by this article. These county schedules shall be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation of equipment or other requirements. Further, uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for

all persons regularly employed and performing like assignments and duties within the county.

Grievant asserts that all the coordinators were compensated equally until the 2006- 2007 school year, and that all the coordinators continue to perform the same duties and responsibilities. PCBE concurs that all the coordinators perform the same duties, but justifies the difference in compensation based upon the greater volume of work required in the Hurricane area.

Grievant erroneously relies on the holding in *Miller v. Boone County Board of Education*, Docket No. 93-03-110 (June 11, 1993), in which the board had implemented a graduated salary supplement within classifications based on skills and complexity ofassignments. By comparison, PCBE amended a salary scale based on the volume of work and the amount of time required to complete it. A salary adjustment based on volume and time has been upheld by the Grievance Board in *McClung v. Nicholas County Board of Education*, Docket No. 98-34-465 (Apr. 26, 1999). Grievant's concern is understandable, given that all coordinators were paid the same until this year. However, the situation is comparable to bus operators who accept extracurricular or extra-duty bus trips. The longer the trip, the more hours it takes to complete, the more the driver is compensated. Therefore, Grievant has failed to establish a violation of *W. Va. Code* § 18A-4-8b, or that he was otherwise entitled to the same compensation as the coordinator assigned to the Hurricane area.

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. Uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county. *W. Va. Code* § 18A-4-5b. 3. Grievant has failed to establish that his assignment is like that of another coordinator, entitling him to the same salary.

Accordingly, the 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 10, 2007

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

.Both Grievant and the Director of Transportation testified that the bus coordinators are no longer responsible for the assignment of substitutes in their areas.