THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

WILLIAM SOLLARS,
Grievant,

v. **DOCKET NO. 2009-0706-MonED**

MONONGALIA COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

Grievant, William Sollars, filed a grievance against his employer, the Monongalia County Board of Education, on November 19, 2008. The statement of grievance reads: "Grievant contends that Respondent misapplied the rotation of extra-duty assignments on three different occasions to Grievant's financial detriment.[1] Grievant alleges a violation of W. Va. Code 18A-4-8b & county policies and practices." As relief Grievant sought, "compensation for lost wages, i.e. 16 hours at the hourly rate of time and one-half of Grievant's regular hourly rate of pay."

A hearing was held at level one on February 24, 2009, and a level one decision denying the grievance was issued on March 12, 2009. Grievant appealed to level two on March 18, 2009, and a mediation session was held on June 5, 2009. Grievant appealed to level three on June 13, 2009. A level three hearing was held before the undersigned Administrative Law Judge on August 28, 2009, at the Grievance Board's Westover office. Grievant was represented by John Everett Roush, Esquire, West Virginia School Service

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[1] One of these instances occurred in September 2008. Respondent did not assert a timeliness defense.

Personnel Association, and Respondent was represented by Jason S. Long, Esquire, Dinsmore & Shohl, LLP. This matter became mature for decision on September 25, 2009, upon receipt of the last of the parties' written Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant believes he was denied three extra-duty assignments. First, Respondent filled the first extra-duty assignment of the new school year with the person directly above Grievant on the extra-duty rotation list, but then did not give Grievant the next assignment. Grievant had received the last trip of the preceding school year, while the person above him could not take that trip, but was not given a refusal because it was an emergency trip. This was the normal procedure for an emergency trip. However, regardless of whether it was an error to not give this person a refusal, Grievant was not next in line for the next assignment. In the second instance, Grievant's trip was canceled. He was not entitled to compensation for a trip that was canceled. Finally, Grievant complained that a third trip should have been placed on the extra-duty bid sheet for the week. However, Grievant was confused about the facts, and this trip was not requested in time to be placed on the bid sheet.

The following Findings of Fact are properly made from the record developed at levels one and three.

Findings of Fact

1. Grievant has been employed by the Monongalia County Board of Education ("MBOE") as a bus operator for 18 years.

2. Monongalia County has two bus garages, one in Blacksville, and the other in Morgantown, and each garage has its own extra-duty, seniority based, bus operator rotation list. Grievant works out of the Blacksville garage.

3. Every Monday morning during the school year, Paul Christopher, MBOE's Supervisor of Transportation, puts out a bid sheet with all the extra-duty trips listed for the following week. The extra-duty bid sheet for Blacksville trips is faxed to the Blacksville bus garage early in the morning, usually around 6:00 a.m. The bus operators on the extra-duty rotation list are allowed to choose which trips they prefer, listing their first, second, and third choices, and so on. The bus operators must return their bid sheets by Thursday at 10:00 a.m. If they do not put in a bid sheet, they receive a refusal on the rotation list. The Transportation Department then assigns the extra-duty runs based upon seniority from the rotation list.

4. If a request for a bus for an extra-duty trip is made after the bid sheet goes to the bus garages on Monday morning, that trip is not added to the bid sheet. Those late trips which can be assigned after the bid sheets are returned on Thursday morning, are assigned by seniority from the extra-duty rotation list. Those trips which come in late, but are to occur before the bid sheets are returned on Thursday morning, or before the trips can be assigned for the week, are considered emergency trips. For emergency trips, Mr. Christopher goes down the extra-duty rotation list by seniority until someone accepts the trip. The practice for some time has been that, if someone declines an emergency trip for any reason, that is not considered a refusal.

5. At the beginning of a new school year, the MBOE extra-duty rotation list picks up where it ended the preceding school year. The bus operators in Monongalia County approved this procedure.

6. At the end of the 2007-2008 school year, MBOE's Transportation Department received a request for an emergency trip from Clay-Batelle to Hovatter Zoo. Mr. Christopher went down the extra-duty rotation list, and the first driver to accept this trip was Grievant. Grievant made the trip, and was paid for the trip. This was the last extra-duty trip of the 2007-2008 school year. Kenny Statler, who is above Grievant on the extra-duty rotation list, declined this trip. Mr. Statler was not given a refusal for declining this trip.

7. The first extra-duty trip for the 2008-2009 school year went to Kenny Statler. Grievant was not offered the next trip, because he had taken the last trip the preceding school year, and was not next in line on the rotation list.

8. Mr. Christopher received a request for three buses for a trip to Notre Dame High School in Clarksburg, West Virginia, which was to occur on Saturday, November 1, 2008. Grievant was to take one of the buses, and he was the least senior of the three bus operators making this trip. When the trip was changed to Thursday night, October 29, 2008, Mr. Christopher called the person requesting the buses and told him he could not provide any buses because the bus operators would be getting back too late, and would not be allowed to drive their routes the next school day, and he did not have enough substitutes. The person requesting the buses said he did not have to have the third bus for the cheerleaders, and Grievant was advised that his trip was canceled. The other two buses made the trip.

9. After the bid sheet went out on Monday morning, November 10, 2008, Mr. Christopher received a request for two buses to travel to St. Marys for a football playoff game on November 14, 2008. Within two hours, the request for one of the buses had been canceled. Mr. Christopher followed the procedure he has always used to fill this assignment. He waited until the bid sheets were turned in on Thursday by the bus operators, filled the trips on the bid sheet, and then filled the St. Marys trip from the extra-duty rotation list by seniority, starting with the next person on the list after the week's trips on the bid sheet had been filled.

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 Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *See also 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). "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 argued that Respondent violated WEST VIRGINIA CODE § 18A-4-8b(f). Grievant did not, however, provide any enlightenment as to exactly how this statutory provision was violated. Respondent believes the proper procedure was followed in each of the three instances at issue.

Grievant essentially does not agree with the way MBOE assigns extra-duty trips. Extra-duty trips are trips which are "irregular jobs that occur periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips." W. VA. CODE § 18A-4-8b(f)(1). This CODE Section describes how extra-duty assignments are to be made, stating in § 8b(f)(2) that:

> (A) A service person 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.
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> (B) An alternative procedure for making extra-duty assignments within a particular classification category of employment may be used 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.

While this statutory provision provides the basis for the assignment of extra-duty trips, it does not address many of the practical issues encountered by a transportation department. One of these practical issues arises from the very nature of these trips. Because they are not recurring, they often arise without much warning. This statute does not address how a county board of education is supposed to deal with this problem. One of the ways MBOE, and other county transportation departments, deal with this is to put out a new bid sheet each week which lists only the trips which have been requested for the following week, and the bus operators bid on the assignments for the week. The assignments are filled, in order, from the extra-duty rotation list. The statute also does not address the practical problems which are encountered when a trip comes in at the last minute, or when a trip is canceled.

Grievant complained about three separate events. First, Grievant asserted that MBOE improperly began the extra-duty rotation list with Kenny Statler for the 2008-2009 school year. He asserted that Mr. Statler should have been given a refusal for the emergency trip to the Hovatter Zoo, but, if the extra-duty rotation list picked up with Mr. Statler at the beginning of the 2008-2009 school year, Grievant should have had the next trip, as he is after Mr. Statler on the list. Grievant did not demonstrate that MBOE was required to give Mr. Statler a refusal because he could not take an emergency trip, or that Grievant was next in line. Grievant took the last trip of the 2007-2008 school year, and whether MBOE gave Mr. Statler a refusal or not, Grievant was not next in line at the beginning of the 2008-2009 school year.

Second, Grievant complained because he was not allowed to take a trip to Notre Dame. While three buses were originally scheduled, one of the three was canceled. Grievant was the least senior, so it was proper that Grievant's trip be canceled. While Grievant complained about Respondent's reasoning in canceling one bus, while letting the other two go, this is not an issue. Both Mr. Christopher and the person requesting three buses agreed that only two buses would be needed, and only two were sent. Grievant argued three buses should have been sent to Notre Dame. There was no longer anyone for Grievant to transport, so why should a third bus have been sent? Grievant cannot claim entitlement to payment for a trip that never occurred.

Finally, Grievant complained about the assignment of a trip to St. Marys. Grievant testified that he was told about this trip on Thursday, November 13, 2008, and faxed the request to Mr. Christopher on that date, so Mr. Christopher should have put it on the bid sheet the following week, rather than holding it and filling it after the bid sheet trips were

filled. The problem, however, is that this trip took place on November 14, 2008, not November 21, 2008, as Grievant believed. Further, Mr. Christopher was notified about this trip on Monday morning, November 10, 2008, not on November 13, but still, after the bid sheets went out. Mr. Christopher could not have put this trip on the bid sheet. Mr. Christopher followed the procedure he has used in the past. He filled the assignment from the rotation list after all the trips on the bid sheet were filled. Grievant did not demonstrate that this procedure was improper, and indeed, it does not appear that Grievant had any complaint with the procedure used for bids that come in late. Rather, Grievant was simply confused about the facts.

The following Conclusions of Law support the Decision reached.

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 Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *See also 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). "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. Service personnel with the greatest amount of seniority "shall be given priority in accepting extra[-]duty assignments" on a rotating basis. W. VA. CODE § 18A-4-8b(f)(2)(A).

3. Grievant did not demonstrate that Respondent violated any statute, regulation, rule, policy, or procedure.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public 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 certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. *See also* 156 C.S.R. 1 § 6.20 (2008).

BRENDA L. GOULD
Administrative Law Judge

Date: November 9, 2009