THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

JAMES LAWRENCE,
Grievant,

v. **Docket No. 2011-0793-BarED**

BARBOUR COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

Grievant, James Lawrence, filed this grievance on November 12, 2010, against his employer, the Barbour County Board of Education. He contends that he is entitled to a split shift pay for working an interrupted schedule. Grievant asserts that the Respondent is violating W. VA. CODE § 18A-4-8(f). Grievant seeks lost wages, that is, the 1/8th daily supplement, with interest to the maximum extent permitted by law. This grievance was denied at level one by Decision dated January 13, 2011. A level two mediation session was conducted on June 16, 2011. Appeal to level three was perfected on July 7, 2011. A level three hearing was conducted before the undersigned Administrative Law Judge on October 31, 2011. Grievant appeared in person and by his counsel, John Everett Roush, West Virginia School Service Personnel Association. Respondent appeared by its counsel, Gregory W. Bailey, Bowles Rice McDavid Graff & Love LLP. This case became mature for consideration upon receipt of the parties' proposed findings of fact and conclusions of law on November 29, 2011.

Synopsis

Grievant asserts that he should receive split shift pay for his duties as a bus operator and mechanic. Grievant is not entitled to split shift pay because maintenance of school buses falls within the transportation program of each county and, therefore, is not entitled to the additional compensation afforded by paragraph (f) of W. VA. CODE § 18A-4-8. In addition, Grievant does not hold one of the classifications listed in the statute providing for split shift pay.

The following findings of fact are based upon the record developed at level three.

Findings of Fact

1. Grievant is employed by Respondent as a Mechanic Assistant/Bus Operator. The immediate supervisor for the position is Supervisor of Transportation.

2. Grievant works from 6:00 a.m. to 8:00 a.m. as a bus operator. He is then off the clock until 11:30 a.m. when he begins work as a mechanic until 2:30 p.m. At approximately 2:35 p.m. he begins working as a bus operator, finishing at or around 4:45 p.m. Grievant described his duties as a Mechanic Assistant as one performing maintenance on school buses.

3. Carl Bolton, Supervisor of Transportation, indicated that he was Grievant's supervisor, and Grievant reported to no one else in terms of supervision. Mr. Bolton's job description includes supervising mechanics and bus operators.

4. Mr. Bolton clarified that the multi-classified position held by the Grievant existed for some time prior to the time Grievant assumed the position. While holding this same position, Mr. Bolton considered challenging his compensation, just as in the instant

case, but was advised by the West Virginia School Service Personnel Association that the compensation for the position was correct.

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. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); *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). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he 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 W. VA. CODE § 18A-4-8(f) is intended to grant the salary supplement to all service employees except those working exclusively as a bus operator or aides who work exclusively on buses. Grievant does not fit within those two exceptions and is entitled to the salary supplement. Respondent counters that the maintenance of school buses falls within the transportation program of each county and, therefore, is not entitled to the additional compensation afforded by paragraph (f) of W. VA. CODE § 18A-4-8. In addition, Grievant did not hold one of the classifications listed in the statute. For

reasons more fully set out below, the undersigned concludes that under the particular facts of this grievance, Respondent is correct.

W. VA. CODE § 18A-4-8(f) provides:

> A custodian, aide, maintenance, office and school lunch service person required to work a daily work schedule that is interrupted shall be paid additional compensation in accordance with this subsection.
>
> (1) A maintenance person means a person who holds a classification title other than in a custodial aide, school lunch, office or transportation category as provided in section one, article one of this chapter;
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> (2) A service person's schedule is considered to be interrupted if he or she does not work a continuous period in one day. Aides are not regarded as working an interrupted schedule when engaged exclusively in the duties of transporting students;
>
> (3) The additional compensation provided for in this subsection:
>
> (A) Is equal to at least one-eighth of a service person's total salary as provided by the state minimum pay scale and any county pay supplement; and
>
> (B) Is payable entirely from county board funds.

W. VA. CODE § 18A-4-8(f) does not list bus operators as one of the groups of employees who are to receive the split shift pay. In fact, Grievant's assignment involves the maintenance of school buses, and his classification falls within the "transportation category" and is excluded from the definition of "a maintenance person."

A similar issue was addressed in *Fleece v. Morgan County Bd. of Educ.*, Docket No. 99-32-090 (Aug. 13, 1999). The Grievant, a bus operator/truck driver, worked as a truck driver after completion of his morning bus run, and before he performed his afternoon run. The administrative law judge held, "Grievant does not qualify [for split pay] because the sole reason he works a split shift is to accommodate his bus operator duties and not to

facilitate his alternate classification . . ." (Citing *Gue v. Morgan County Bd. of Educ.*, Docket No. 93-32-288 (Apr. 8, 1994), affirmed Morgan County Circuit Court, Civil Appeal No. 94-P-14G (Feb. 24, 1995), appeal denied W. Va. Supreme Court of Appeals (Sept. 20, 1995.)).

The same reasoning applies to the instant case. W. VA. CODE § 18A-4-8(f) requires boards of education to give custodians, aides, maintenance persons, office and school lunch service persons additional compensation if their shifts are split. No such requirement is included for a mechanic working in the transportation category. As in *Fleece*, *supra*, the facts of this grievance established that the sole reason Grievant works a split shift is to accommodate his bus operator duties and he did not perform duties of a classification title outside the scope of the transportation category.

The following conclusions of law support the decision reached.

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. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); *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).

2. W. VA. CODE § 18A-4-8(f) requires boards of education to give custodians, aides, maintenance persons, office and school lunch service persons additional compensation if their shifts are split. No such requirement is included for a bus operator and for a mechanic working in the transportation category.

3. Grievant failed to establish facts by a preponderance of the evidence that would entitle him to the relief sought.

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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (eff. July 7, 2008).

Date: December 19, 2011

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Ronald L. Reece
Administrative Law Judge