THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

SHEILA KAY STATLER,
Grievant,

v. **DOCKET NO. 2011-0296-MonED**

MONONGALIA COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

This grievance was filed on September 9, 2010, by Grievant, Sheila Kay Statler, against her employer, the Monongalia County Board of Education. Her statement of grievance reads:

> Grievant contends that Respondent is assigning bus operator extraduty assignments by area rather than county wide without approval of two-thirds approval [sic] by the bus operators. Grievant alleges a violation of W. Va. Code 18A-4-8b.

The relief sought by Grievant "assignment of all extraduty assignments (long and short) on a county wide basis."

A hearing was held at level one on September 29, 2010, and a decision denying the grievance at that level was issued on October 22, 2010. Grievant appealed to level two on October 29, 2010, and a mediation session was held at level two on February 4, 2011. Grievant appealed to level three on March 11, 2011, and a level three hearing was held before the undersigned Administrative Law Judge on October 24, 2011, in the Grievance Board's Westover office. Grievant was represented by John Everett Roush, Esquire, West Virginia School Service Personnel Association, and Respondent was represented by

Jennifer S. Caradine, Esquire, Dinsmore & Shohl, LLP. This matter became mature for decision on November 28, 2011, upon receipt of the last of the parties' Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant asserted that the procedure used by Respondent for at least the last 20 years to make extra-duty assignments was not properly approved by the bus operators or the board of education. The preponderance of the evidence put forth at the level three hearing demonstrated that an alternative procedure for making extra-duty assignments was properly approved in 1993, and that it remains in effect and continues to be the procedure used by MBOE.

The following Findings of Fact are made based on the evidence presented 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 20 years.

2. Bus operators in Monongalia County are assigned to one of two bus garages, either the Morgantown garage, or the Blacksville garage, based on the location of their regular bus routes. Grievant is currently assigned to the Blacksville bus garage, although she was previously assigned to the Morgantown bus garage. More extra-duty assignments originate out of the Morgantown bus garage than the Blacksville bus garage.

3. Sometime shortly before February 23, 1993, the MBOE bus operators approved an alternative procedure for making extra-duty assignments, by a two-thirds vote.

The alternative procedure approved by the bus operators provided that, among other things, the two bus garages would operate as separate areas for the purposes of awarding extra-duty assignments. That is, only bus operators assigned to the bus garage from which the assignment originated would be eligible for the assignment. This alternative procedure was reduced to writing as Monongalia County File: EEADB,[1] and it was on the MBOE agenda for the February 23, 1993 board meeting for approval. The current version of this written procedure, now referred to as Monongalia County Procedure File: 5-09, shows that it was revised on this date. The alternative procedure for making extra-duty assignments was approved by MBOE on February 23, 1993.

4. During the entire period that Grievant has been an MBOE bus operator, extra-duty assignments have been awarded by seniority within the bus garage where the assignment originated.

5. In August 2010, MBOE Superintendent Frank Devono spoke with the MBOE bus operators about how they preferred to have extra-duty assignments made. A vote was taken on whether the policy of making these assignments out of the two separate garages should be changed so that these assignments would be made based on overall seniority in the county. This proposal did not garner a two-thirds majority vote.

Discussion

Grievant has the burden of proving her grievance by a preponderance of the evidence. *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997);

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[1] This version of the procedure is not clearly written, but Grievant did not dispute that the intent was to make extra-duty assignments by seniority in each bus garage. The newer version of the procedure makes this clear.

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). Where the evidence equally supports both sides, the employee has not met her burden. *Id*.

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.
>
> (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.

An alternative procedure may only be utilized if it is approved by both the board of education and two thirds of the bus operators. *See Mullins v. Hancock County Bd. of Educ.,* Docket No. 07-15-324 (Feb. 29, 2008).

Grievant asserts that the procedure used by MBOE for at least 20 years of making extra-duty assignments by seniority in the bus garage to which the employee is assigned was never properly approved. Grievant had no problem with this procedure when she was

assigned to the Morgantown bus garage. Grievant argued that Respondent did not prove "what transpired regarding this issue in 1993."

Respondent admits that the minutes of the February 23, 1993 board meeting cannot be found, but points out that its records do show that the issue was on the board's agenda, the procedure applicable to extra-duty assignments shows that it was revised on this date, and this is the procedure that has been used since at least that time. The undersigned finds that this is sufficient to support a finding that it is more likely than not that the alternative procedure for making extra-duty assignments by seniority in the bus garage from which the assignment originates was properly approved by both a two-thirds vote of the bus operators and the board of education. Until the bus operators approve a different method of assignment by a two-thirds vote, and it is adopted by the board of education, this will remain the procedure.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. Grievant has the burden of proving her grievance by a preponderance of the evidence. *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. Extra-duty assignments are made by classification category based on countywide seniority following a rotation, unless an 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." W. VA. CODE § 18A-4-8b(f)(2).

3. An alternative procedure for making extra-duty assignments was properly approved by the bus operators and the board of education in 1993, and remains in effect.

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: December 16, 2011