THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

FRANCES DIANA HAINES,
Grievant,

v. **DOCKET NO. 2011-0484-HamED**

HAMPSHIRE COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

Grievant, Frances Diana Haines, filed a grievance against her employer, the Hampshire County Board of Education, on October 4, 2010. The statement of grievance reads: "Grievant contends that Respondent altered the method for assigning extraduty assignments in violation of W. Va. Code 18A-4-8b and local county practice/policy. As a result in this change Grievant was deprived of an assignment on September 26, 2010, the Capon Bridge Founder's Day shuttle assignment." As relief Grievant sought, "compensation for lost wages with interest."

A hearing was held at level one on October 18, 2010, and a level one decision denying the grievance was issued on November 5, 2010. Grievant appealed to level two on November 16, 2010, and a mediation session was held on February 28, 2011. Grievant appealed to level three on March 9, 2011. A level three hearing was held before the undersigned Administrative Law Judge on July 25, 2011, at 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 Denise M. Spatafore, Esquire, Dinsmore & Shohl, LLP. This matter became mature for decision on

August 26, 2011, upon receipt of the parties' written Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant believes she was denied an extra-duty assignment when Respondent changed its procedure for making extra-duty assignments. Both the old method used by Respondent and the new method used fulfilled the statutory requirement of assigning the trips by seniority on a rotating basis. Neither of these methods was an alternative procedure which required the approval of the bus operators.

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 Hampshire County Board of Education ("HBOE") as a bus operator for 30 years. She is the second most senior driver employed by HBOE.

2. Prior to the 2010-2011 school year, once a month a trip sheet for extra-duty assignments would be produced, and the bus operators in Hampshire County would indicate the trips in which they were interested. The secretary would assign the most senior driver the first trip on the list that he or she had indicated he or she wanted, then the second most senior driver would be assigned the first trip on the list he or she wanted, or the second trip on the list he or she wanted if the first trip was no longer available, and so on. This method of assignment took up a lot of the Transportation secretary's time, and could get to be quite complicated.

3. Sometime early in the 2010-2011 school year, the bus operators were advised that the method of assigning extra-duty trips had been changed. The new method of assignment to be used was that each trip would be offered in order through the seniority rotation of bus operators until a bus operator accepted it. Anyone declining an assignment would be placed at the end of the rotation list. This change in the method of assigning extra-duty assignments was not approved by the HBOE bus operators.

4. The first extra-duty assignment on the late September-October 2011 extra-duty list was the Founder's Day shuttle assignment on September 25, 2010, which was an all-day assignment on a Saturday. The most senior bus operator employed by HBOE was offered this trip and declined the assignment. Grievant was then offered this assignment and declined to accept it because of personal obligations that day.[1] Grievant's name was moved to the bottom of the rotation list.

5. Had HBOE put out a trip sheet and assigned trips as it had prior to the 2010-2011 school year, Grievant's first choice of assignments would have been the Sunday, September 26, 2010 Founder's Day shuttle assignment, which was also an all-day assignment. Grievant was not offered this assignment. The next driver on the rotation list who was offered and accepted this assignment worked 9 3/4 hours on September 26, 2010, performing this assignment.

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[1] Although the secretary for the Transportation Department testified that neither the most senior bus operator nor Grievant were offered this assignment, she had no specific recall of what transpired, but was basing her testimony on her reading of how she had marked assignments on the rotation list. Both Grievant and the most senior bus operator testified each had been offered this assignment based upon their recollection of events. The undersigned concludes that it is more likely than not that the secretary misread her notes. Regardless, however, of which actually occurred, the analysis of the law is the same.

Discussion

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 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 once Respondent adopted a particular method of making extra-duty assignments, it could not change this method without the approval of the bus operators. Respondent argued that either method used met the requirements of law that extra-duty trips be assigned by seniority off a rotation list.

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.

As Grievant seems to acknowledge, both methods which were used by HBOE for making extra-duty assignments were by seniority on a rotating basis, as required by law. Contrary to Grievant's assertions, however, the undersigned finds no legal requirement that bus operators must approve a change in the method of making assignments when both methods follow the statutory requirement that assignments be made by seniority from a rotation list. The statute does not say that a board of education cannot change from one method of a seniority based rotation list to another. The words used are "alternative procedure." An alternative procedure is a procedure which is different from the procedure prescribed by the statute. Neither of these methods was an alternative procedure for making assignments which required a two-thirds vote by the bus operators.[2]

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 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*

[2] The undersigned would note that after this grievance was filed, Respondent did listen to its bus operators' concerns on this issue, and asked them how they wanted these assignments to be made, and then put in place the procedure desired by the bus operators late in 2010.

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. A county board of education may make extra-duty assignments within a particular classification category of employment other than by seniority on a rotating basis, as prescribed by statute, "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." W. VA. CODE § 18A-4-8b(f)(2)(B).

4. No particular method of making extra-duty assignments by seniority on a rotating basis is prescribed by W. VA. CODE § 18A-4-8b(f)(2)(A).

5. Grievant did not demonstrate the Respondent had used an alternative procedure for making extra-duty assignments, which required approval by the bus operators.

6. 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: September 8, 2011