THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

ALBERT HILLBERRY, et al.,
Grievants,

v. **Docket No. 2010-1568-CONS**

DIVISION OF HIGHWAYS,
Respondent.

DECISION

Grievants, Albert Hillberry, Dwayne Miller, and Billy Lane filed this grievance against their employer, Division of Highways, on or about June 14, 2010.[1] They complained that they were ordered to start their work day ten minutes early each day to attend a meeting. They seek pay for this time since it was ordered to start. This grievance was denied at level one by Decision dated August 16, 2010. Appeal to level two was perfected on August 20, 2010. A level two mediation session was conducted on May 17, 2011. Appeal to level three was perfected on that same day. The case was scheduled for a level three hearing on February 10, 2012; however, the parties agreed to submit the case on the record developed at level one. Grievants appeared by their representative, Gordon Simmons, UE Local 170. Respondent appeared by its attorney, Jason C. Workman. This matter became mature for consideration upon receipt of the last of the parties' proposed findings of fact and conclusions of law on March 15, 2012.

Synopsis

Grievants allege that they worked an extra ten minutes every day for the past two

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[1]Mr. Miller withdrew his grievance on August 4, 2011.

years as a result of being directed to report to work at 6:50 a.m. Grievants failed to meet their burden of proof and demonstrate that they, in fact, worked ten minutes more per day over that period. The grievance is denied.

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

Findings of Fact

1. Grievants are classified as Transportation Crew Supervisor 1, they are crew leaders for the Marion County Division of Highways ("DOH").

2. The Marion County DOH scheduled crew leader meetings ten minutes before the general employees began work starting the spring of 2007 and ending in July 2010. The meetings were to organize the crew assignments based upon whom and how many individuals were working that day and what equipment was available.

3. The Grievants were informed to work eight hours a day, and would work from 6:50 a.m. to 3:20 p.m.

4. During the snow removal and ice control season, between November and April, the organization did not have the morning meetings. The meetings, the other part of the relevant time, would begin later than 6:50 a.m. if one of the crew leaders were late on that particular day.

5. Each of the Grievants signed a daily time sheet and a pay-period time sheet certifying his work time was accurate each day and before receiving his paycheck.

6. The Grievants would leave early on the days that there were morning meetings. Grievants confirmed that they left early on occasions of morning meetings.

Discussion

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).

Nothing in the record of this grievance supports the allegation that Grievants worked an additional ten minutes per day over the claimed period of time. Grievants testified at level one that when the meetings first began, their supervisor permitted them to leave at 3:20 p.m., ten minutes earlier than the end of the work day. The record established that employees, including the Grievants, would routinely leave the workplace by 3:25 p.m., unless there was an emergency situation. In addition, DOH established that the Grievants did not dispute, and, in fact, affirmed their time by signing daily time sheets and time reports showing eight hours of work on those days when the ten-minute meetings were held. Grievants did not prove that they worked longer than an eight-hour day when morning meetings were held.

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).

2. Grievants did not prove by preponderance of the evidence that they worked longer than an eight-hour day when morning meetings were held. As a result, Grievants did not prove by a preponderance of the evidence that they were paid incorrectly.

According, 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 (2008).

Date: May 25, 2012

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Ronald L. Reece
Administrative Law Judge