THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

CAROLYN FRAME,
Grievant,

v. **Docket No. 2011-0877-DHHR**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
WILLIAM R. SHARPE, JR. HOSPITAL,
Respondent.

DECISION

_____Carolyn Frame, Grievant, filed this grievance on December 13, 2010, against her employer, William R. Sharpe, Jr. Hospital/Department of Health and Human Resources, alleging that, "Respondent failed to schedule a level one hearing during Grievant's assigned work hours." Grievant seeks, "to be made whole, including payment of comp time."

This grievance was dismissed at level one by correspondence dated December 22, 2010. Level two mediation was conducted on May 25, 2011. Appeal to level three was perfected on June 22, 2011. A level three hearing was scheduled to be conducted on December 9, 2011; however, the parties requested that the hearing be cancelled and that they be permitted to submit proposed Findings of Fact and Conclusions of Law on January 17, 2012. This request was granted by the undersigned. In addition, Respondent's Motion to Dismiss was taken under advisement at that time. The parties were asked to argue timeliness and the merits of the grievance in their proposals. Grievant appeared by her representative, Gordon Simmons, UE Local 170. Respondent appeared by its counsel,

Michael E. Bevers, Assistant Attorney General. The matter became mature for consideration upon receipt of the last of the fact/law proposals on January 18, 2012.

Synopsis

Grievant challenges Respondent's disapproval of her request to be paid for the time she spent at a level one grievance hearing related to a previous grievance. Respondent's policy makes clear that grievance hearings scheduled outside the employee's normally scheduled work hours are not compensable work time. The proceeding was scheduled by Respondent's level one designee during regular business hours. No objection to the hearing date was made by Grievant nor was a request to schedule during her work hours made prior to the hearing. No violation of any applicable statute related to scheduling of grievance hearings was demonstrated. In addition, Grievant suffered no loss of pay to attend her hearing. Accordingly, this grievance is denied.

The following Findings of Fact are based upon the limited record and the parties' proposals.

Findings of Fact

1. Grievant is employed as a housekeeper at the William R. Sharpe, Jr. Hospital, operated by the Department of Health and Human Resources.

2. The above-styled grievance refers to a prior grievance received by Respondent's Grievance Management Unit on September 27, 2010, challenging an Employee Performance Appraisal. The Grievance Board consolidated that grievance with two other grievances and docketed the matter as *Lena Mae Bowman, et al. v. Department*

of Health and Human Resources/William R. Sharpe, Jr. Hospital, Docket No. 2011-0422-CONS.

3. Respondent's Grievance Management Unit mailed a level one hearing notice to Grievant and her representative on September 30, 2010. Grievant did not object to scheduling the level one hearing on December 9, 2010, a day in which she was not scheduled to be working.

4. Grievant appeared for the level one hearing on December 10, 2009. Grievant subsequently asked to be compensated for the time spent at the hearing. Respondent informed Grievant that she would not be compensated for the time spent in the hearing because she was not scheduled to work at that time.

5. Grievant filed the instant grievance asserting she is entitled to receive additional payment or comp time for attendance at the hearing.

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).

This grievance arises out of a level one grievance hearing, addressing a prior grievance, that was conducted on December 9, 2010. Grievant was off work on that day, but appeared at the hearing with her representative as scheduled. Grievant was subsequently informed that she would not be compensated for the time spent in the grievance hearing. Grievant then initiated the present action.

Grievant argues that Respondent's hours of hospital operation demonstrate the impracticality of continually rescheduling hearings until all parties are available during scheduled work time. This action not only defeats the statute's stated purpose of the timely resolution of grievances, it also opens the door to yet another means by which Respondent can obstruct the exercise of statutory rights, by manipulating schedules to endlessly delay hearings. While the undersigned acknowledges that this is a somewhat interesting argument, it is not supported by the very same statutory provisions relied upon.

Respondent's Policy Memorandum 2102 governs hours of work and overtime. Section Z of this policy is entitled "Adjusting Grievances" and provides that:

> Time spent by employees in adjusting grievances between the employer and the employee during the time the employee is required to be in grievance conferences and hearings is hours worked. However, where grievance hearings are scheduled outside the employee/grievant's normal scheduled work hours, the time is not compensable worktime [sic].

WEST VIRGINIA CODE § 6C-2-3(o) states, in pertinent part, that "all proceedings shall be scheduled during regular work hours in a convenient location accessible to all parties." Respondent's Policy Memorandum 2102 defines business hours as 8:30 a.m. through 5:00 p.m., Monday through Friday. Additionally, WEST VIRGINIA CODE § 6C-2-3(p)(1) provides that "the grievant, witnesses, and an employee representative shall be granted reasonable

and necessary time off during the working hours to attend grievance proceedings without loss of pay and without charge to annual or compensatory leave credits."

An agency's "interpretation of the provisions in its own internal policy is entitled to some deference by this Grievance Board, unless it is contrary to the plain meaning of the language, or is inherently unreasonable. *Dyer, et al., v. Lincoln County Bd. of Educ.*, Docket No. 95-22-494 (June 28, 1996) (citations omitted)." *Frame, et al., v. Dep't of Health and Human Res.*, Docket No. 00-HHR-240/330 (April 20, 2001). The quoted provision of the cited Policy 2102 requires little to no interpretation in that the language of the policy follows the statutory citations above concerning scheduling and attendance of grievance proceedings without loss of pay, and Respondent's interpretation is entitled to deference.

Grievant did not demonstrate that Respondent somehow abused its discretion by not compensating her for attendance at the level one hearing. Grievant's situation could have been avoided had the Respondent's designee been notified prior to the time of the level one hearing that the day and time scheduled occurred when the employee was not working. It appears from the record that Grievant's representative was consulted regarding the date and time of Grievant's hearing. By way of a request for a continuance, Grievant could have asked that the hearing be held on a day that she was scheduled to work.

The record also establishes that Grievant suffered no loss of pay to attend her grievance hearing. It was Grievant's choice to pursue this matter, and her right to do so is recognized and not criticized in the least; however, she and Respondent must bear their relative burdens of scheduling involvement. Within the context of this case, that means, at least in part, that Grievant's participation in the level one hearing occurred, appropriately so, on her personal time.

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. 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. An agency's "interpretation of the provisions in its own internal policy is entitled to some deference by this Grievance Board, unless it is contrary to the plain meaning of the language, or is inherently unreasonable. *Dyer, et al., v. Lincoln County Bd. of Educ.*, Docket No. 95-22-494 (June 28, 1996) (citations omitted)." *Frame, et al., v. Dep't of Health and Human Res.*, Docket No. 00-HHR-240/330 (April 20, 2001).

3. If a grievance conference or hearing is scheduled outside an employee's normal scheduled work hours, time spent by the employee participating in the grievance conference or hearing is not compensable work time. *Thornquest v. Dep't of Health and Human Res./Pinecrest Hospital*, Docket No. 2009-1070-DHHR (Aug. 24, 2010).

4. Grievant has not established that she is entitled to compensation for time spent attending the December 9, 2010, level one hearing.

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 (2008).

Date: February 29, 2012

_____

Ronald L. Reece
Administrative Law Judge