THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

VALERIE TIBBS,
Grievant,

v. **Docket No. 2012-0341-HanED**

HANCOCK COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

Grievant, Valerie Tibbs, filed this grievance on September 26, 2011, against her employer, Hancock County Board of Education. Grievant's unedited level one statement of grievance and relief sought states the following:

> I bid on bus 105 and schedule so that I could have a earlier finish time and a better route area, but at the start of the 2011-2012 school year Mr. Rienard had changed the schedule completely making it impossible to run within the time lines, and causing me to run into over time every day. I have two severe wheel chair student that have not came yet this year due to surgery but will be returning soon that will add at lest another 30min. to the run. I strongly feel that Mr. Rienard has done this for retaliation, Reprisal, sexual harassment being he took students off of two male drivers and assigned them on my schedule the very same students or area that they had for 2010-2011 school year and that Mr. Rienard changed them from a 5 3/4hr run to a 7 hr run.
> These actions are violation of 18A-2-8
> I am asking for my schedule to be but back to with in at lest its time lines on which I bid on and running to serve the same schools that was on the schedule when I received the bid. And all overtime that this has caused me paid.

This grievance was denied at level one following a hearing conducted on October 18, 2011. A level two mediation session was conducted on April 11, 2012. Grievant perfected her appeal to level three on May 4, 2012. A level three hearing was conducted

before the undersigned Administrative Law Judge on June 27, 2013, at the Grievance Board's Westover office location. Grievant appeared in person and by her representative, Owens L. Brown, West Virginia Education Association. Respondent appeared by its counsel, William T. Fahey, Office of the Hancock County Prosecuting Attorney. This matter became mature for consideration upon receipt of the last of the parties' proposed findings of fact and conclusions of law on August 14, 2013.

Synopsis

In the 2011-2012 school year, Respondent discovered that an additional fifty-one students had been classified as having special needs thereby increasing the transportation needs from ninety-nine students to one hundred fifty students. The result of this influx of students was a change in Grievant's schedule by Respondent's transportation department. While Grievant argued this was a clear act of reprisal, the record did not support such a conclusion.

The following findings of fact are based upon the record of this grievance.

Findings of Fact

1. Grievant is employed as a bus operator for the Hancock County Board of Education. She has twenty-eight years of experience.

2. In June of 2011, Grievant bid on a vacancy notice posting for Bus No. 105.

3. It is undisputed that at the time of the bid all bus operators in Hancock County were subject to transfer notice.

4. Grievant and seven other bus operators were involved in transporting special needs students throughout the county.

5. One week prior to the start of the 2011-2012 school year, it was discovered that an additional fifty-one students had been classified as having special needs. As a result of this influx of special needs students, transfers of job responsibility were undertaken by the transportation department resulting in changes in schedules.

6. The effect of the schedule change resulted in Grievant starting her work day fifty minutes later than anticipated and ending her work day fifty minutes later than anticipated.

7. During the 2011-2012 school year, Grievant submitted overtime requests for any time she worked over her contract hours and received compensation for those overtime hours.

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 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). "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 contends that the schedule change was an act of reprisal by the transportation director, Tim Reinard. Grievant asserts that "the problem that the Grievant is having with the director of transportation is well documented. Prior to the 2010/2011

school term the Grievant had file[d] a number [of] grievances alleging that the director of transportation was harassing her. There are also written documents that depicts [sic] a Level of hostility towards [sic] the Grievant."[1]

WEST VIRGINIA CODE § 6C-2-2(o) defines reprisal as "the retaliation of an employer toward a grievant, witness, representative or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it." To demonstrate a *prima facie* case of reprisal the Grievant must establish by a preponderance of the evidence the following elements:

> (1) that he engaged in protected activity (i.e., filing a grievance);
>
> (2) that he was subsequently treated in an adverse manner by the employer or an agent;
>
> (3) that the employer's official or agent had actual or constructive knowledge that the employee engaged in the protected activity; and
>
> (4) that there was a causal connection (consisting of an inference of a retaliatory motive) between the protected activity and the adverse treatment.

Vance v. Jefferson County Bd. of Educ., Docket No. 02-19-272 (Oct. 31, 2002); *Conner v. Barbour County Bd. of Educ.*, Docket Nos. 93-01-543/544 (Jan. 31, 1995). *See also Frank's Shoe Store v. W. Va. Human Rights Comm'n*, 179 W. Va. 53, 365 S.E.2d 251 (1986).

Based upon the facts of this case, Grievant has failed to establish a *prima facie* showing of reprisal. Respondent clearly had a legitimate reason for changing the bus schedules to account for the addition of fifty-one students being classified as special needs students. There was no evidence in the record of the case that tended to demonstrate a

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[1]Grievant's fact/law proposals, page 2.

retaliatory motive on the part of the transportation director. The schedule change came about as the result of the influx of special needs students which led to the transfer of responsibility for the seven bus operators involved in transporting these students throughout the county. In addition, the record established that Grievant was compensated for overtime hours outside her contract hours. No reprisal has been demonstrated in this grievance.

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. To demonstrate a *prima facie* case of reprisal the Grievant must establish by a preponderance of the evidence the following elements:

> (1) that he engaged in protected activity (i.e., filing a grievance);
>
> (2) that he was subsequently treated in an adverse manner by the employer or an agent;
>
> (3) that the employer's official or agent had actual or constructive knowledge that the employee engaged in the protected activity; and
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> (4) that there was a causal connection (consisting of an inference of a retaliatory motive) between the protected activity and the adverse treatment.

Vance v. Jefferson County Bd. of Educ., Docket No. 02-19-272 (Oct. 31, 2002); *Conner v. Barbour County Bd. of Educ.*, Docket Nos. 93-01-543/544 (Jan. 31, 1995). *See also*

Frank's Shoe Store v. W. Va. Human Rights Comm'n, 179 W. Va. 53, 365 S.E.2d 251 (1986).

3. Grievant failed to demonstrate that she has suffered any retaliation or reprisal.

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: September 20, 2013

Ronald L. Reece
Administrative Law Judge