

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**ANGELA K. LATTA and JEANIE CONNER,
Grievants,**

v.

Docket No. 2022-0696-CONS

**TAYLOR COUNTY BOARD OF EDUCATION,
Respondent.**

DECISION

Grievants, Angela K. Latta and Jeanie Conner, filed this grievance on or about February 23, 2022, against their employer, Taylor County Board of Education. The individual Statement of Grievance reads, "Grievant has been subjected to discrimination and favoritism in the assignment of additional paid work hours. Management discouraged Grievant from working and claiming additional hours when the work required them, and assured Grievant that any additional hours would be administered by a fair policy and practice, all the while a less senior employee has been continuously allowed to work and claim such hours." For relief, "Grievant seeks back pay with interest for an equivalent amount of hours allowed to the less senior employee along with any adjustments in benefits that would have accrued."

A level one conference was conducted on March 25, 2022, and the grievances were denied by Superintendent Christina Miller. These individual grievances were consolidated at the request of the parties. A level two mediation session was held on May 24, 2022. A level three evidentiary hearing was held before the undersigned on November 3, 2022, by Zoom video originating from the Grievance Board's Westover office. Grievants appeared in person and by their representatives Jack Rogers, American

Federation of Teachers-WV, and Gordon Simmons, West Virginia School Service Personnel. Respondent appeared by its counsel, Denise M. Spatafore, Dinsmore & Shohl LLP. This matter became mature for consideration upon receipt of the last of the parties' Findings of Fact and Conclusions of Law on December 5, 2022.

Synopsis

Grievants are employed by the Taylor County Board of Education as multiclassified service personnel. Grievants contend that they should have received the same opportunity as a coworker for overtime/extra duty work. Overtime assignments for service personnel are considered extra duty work to be rotated among employees in the particular job classification. For multiclassified employees, the work would only be distributed among employees with all the same classifications. Grievants were not in the same job classification for the purpose of distribution of overtime work. In order for a grievant to demonstrate entitlement to a position or compensation, it is necessary to establish that he or she was "next in line." Grievants failed to establish that they were "next in line" for any particular extra duty assignments. Accordingly, the grievance is denied.

The following Findings of Fact are based on the record of this case.

Findings of Fact

1. Grievant Angela Latta was employed by Respondent as an Executive Secretary/Accountant III/Computer Operator, pursuant to a posting dated August 26, 2009. Grievant Latta was reclassified to also include Coordinator in her multiclassified job title as approved by the Taylor County Board of Education effective July 1, 2018.

2. Grievant Latta's multiclassified job title since 2018 has been Coordinator/Executive Secretary/Accountant III/Computer Operator. She is assigned to Respondent's finance department with accounts payable responsibilities.

3. Grievant Conner has been employed as a Coordinator/Executive Secretary since 2019, assigned to the Assistant Superintendent to perform duties related to personnel services.

4. Elaine Gilbert was previously employed by Respondent as an Executive Secretary/Accountant III, beginning in 2018. She was assigned to payroll responsibilities in the finance office. Ms. Gilbert has resigned and is no longer employed by Respondent.

5. For a time between late 2018 and early 2022, Ms. Gilbert received a significant amount of pay for overtime work as requested and approved by her supervisor, the former finance director.

6. Because the overtime/extra duty work was particular to Ms. Gilbert's payroll duties, and due to her different classifications from Grievants, the overtime work was not offered to other secretaries, including Grievants.

7. Pursuant to West Virginia law, Grievants receive the highest pay grade of all job titles in their multiclassified job titles, which is Coordinator, in Pay Grade H. Ms. Gilbert did not hold the Coordinator classification, so she was compensated at Pay Grade G.

Discussion

This grievance does not involve a disciplinary matter. Consequently, Grievants bear the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2018);

Howell v. W. Va. Dep't of Health & Human Res., Docket No. 89-DHS-72 (Nov. 29, 1990).

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).

Grievants contend that they should have also received the same opportunity as Ms. Gilbert for overtime/extra duty work. Grievants were entitled to the opportunities that were afforded to Ms. Gilbert because they exceeded Ms. Gilbert's seniority in the secretarial classification. Grievants also contend that the extra work should have been posted for bid, and they should have received the assignments in accordance with the bidding process. The applicable law and facts of this case do not support either of these arguments. Grievants did not offer any evidence concerning discrimination and favoritism, nor did they argue these claims in their proposals. Accordingly, these claims are deemed abandoned and will not be addressed by the undersigned.

Concerning extra duty assignments, such as in the instant case, WEST VIRGINIA CODE § 18A-4-8b(f) requires that such assignments be offered to employees in the applicable classification pursuant to a seniority-based rotation. WEST VIRGINIA CODE § 18A-4-8b(f) states, in pertinent part, that a "service person with the greatest length of service time in a particular category of employment is given priority in accepting extra duty assignments, followed by other fellow employees on rotating basis according to the length of their service time until all employees have had an opportunity to perform similar assignments." *White v. Monongalia County Bd. of Educ.*, Docket No. 2008-0586-CONS (Dec. 16, 2008). Accordingly, even if the assignments were awarded in accordance with

the requirements applicable to extra duty work, they would not have been posted, but rotated among employees in the applicable job classification in seniority order.

In any event, the employees at issue in the instant case all have different multiclassified job titles. As the Grievance Board has previously ruled, an employee must be in the same job classification as the employee receiving extra work in order to be entitled to be called in rotation for those assignments. For multiclassified employees, the work would only be distributed among employees with all the same classifications, that is, the exact same multiclassified title. *Myers v. Monongalia County Bd. of Educ.*, Docket No. 2012-0674-MonED (Apr. 9, 2013). Ms. Conner's current classification title is Coordinator/Executive Secretary, and Ms. Latta's is Coordinator/Executive Secretary/Accountant III/Computer Operator. Ms. Gilbert was classified as Executive Secretary/Accountant III. Although the employees do share some of the same classifications, none of them hold the same multiclassification job title. Therefore, even if the extra work had been rotated among employees in the applicable classification, Secretary/Accountant III, neither Grievant would have been included.

Grievants appear to argue for full payment for all the overtime work assigned to Ms. Gilbert over a three-year period. It is well established that, even if an employee held the same classifications and were entitled to some of the extra work, "in order for a Grievant to demonstrate entitlement to a position or compensation, it is necessary to establish he was 'next in line.'" *Myers, supra; Jamison v. Monongalia County Bd. of Educ.*, Docket No. 06-30-338 (Jan. 20, 2006). The record contains no evidence indicating which assignments, if any, Grievants may or may not have accepted, even if they had been

asked. Payment for overtime hours worked by another employee would be totally speculative relief, to which Grievants are not entitled.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. This grievance does not involve a disciplinary matter. Consequently, Grievants bear the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2018); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). 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. Occasional assignments beyond normal work hours are considered extra duty work, to be distributed among employees in the applicable job classification in seniority order. W. VA. CODE § 18A-4-8b.

3. Multiclassified employees are only entitled to be placed in rotation for extra duty assignments within the same multiclassified job title. *Myers v. Monongalia County Bd. of Educ.*, Docket No. 2012-0674-MonED (Apr. 9, 2013).

4. “In order for a Grievant to demonstrate entitlement to a position or compensation, it is necessary to establish he was ‘next in line.’” *Myers, supra*; *Jamison v. Monongalia County Bd. of Educ.*, Docket No. 06-30-338 (Jan. 20, 2006). “When the relief sought by a grievant is speculative or premature, or otherwise legally insufficient, the claim must be denied.” *Clark v. Putnam County Bd. of Educ.*, Docket No. 97-40-313 (Apr. 30, 1998).

5. Grievants were not in the same job classification for the purpose of distribution of overtime work. In addition, Grievants did not establish that they were “next in line” for any particular extra duty assignments.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Intermediate Court of Appeals.¹ Any such appeal must be filed within thirty (30) days of receipt of this Dismissal Order. 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 named as a party to the appeal. However, the appealing party is required to serve a copy of the appeal petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b).

Date: January 23, 2023

Ronald L. Reece
Administrative Law Judge

¹On April 8, 2021, Senate Bill 275 was enacted, creating the Intermediate Court of Appeals. The act conferred jurisdiction to the Intermediate Court of Appeals over “[f]inal judgments, orders, or decisions of an agency or an administrative law judge entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County pursuant to §29A-5-4 or any other provision of this code[.]” W. VA. CODE § 51-11-4(b)(4). The West Virginia Public Employees Grievance Procedure provides that an appeal of a Grievance Board decision be made to the Circuit Court of Kanawha County. W. VA. CODE § 6C-2-5. Although Senate Bill 275 did not specifically amend W. VA. CODE § 6C-2-5, it appears an appeal of a decision of the Public Employees Grievance Board now lies with the Intermediate Court of Appeals.