

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**MICHELLE SUE ALLEN,
Grievant,**

v.

DOCKET NO. 2017-1779-HarED

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

DECISION

This grievance was filed by Grievant, Michelle Sue Allen, on February 28, 2017, against her employer, the Harrison County Board of Education. The statement of grievance reads: “Was not fully compensated to waive my planning [period] per signed agreement. Violation of 18A-4-14(B) and (C).” As relief Grievant seeks “[p]ayment for the 8 deducted days.”

A conference was held at level one on March 14, 2017, and the grievance was denied at that level on March 27, 2017. Grievant appealed to level two on April 3, 2017, and a mediation session was held on April 25, 2017. Grievant appealed to level three on May 3, 2017. A level three hearing was held before the undersigned Administrative Law Judge on July 10, 2017, at the Grievance Board’s Westover office. Grievant was represented by Brad Hamilton, West Virginia Education Association, and Respondent was represented by Allison B. Williams, Esquire, Steptoe & Johnson, PLLC. This matter became mature for decision on August 25, 2017, on receipt of the last of the parties’ Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant agreed to give up her 90 minute planning period to teach a class, in exchange for additional compensation. The agreement Grievant signed stated she would be compensated in exchange for her planning period, and would be paid a set hourly rate to teach the course for a stated period of time during the fall semester. Grievant was not paid this hourly rate in exchange for her planning period on days she was absent on leave, but believed she was entitled to be compensated for these instructional periods because she had to prepare lesson plans. Grievant had not clarified this point prior to signing the agreement. The agreement Grievant signed is consistent with the statutory language which allows an employee to exchange her planning period for compensation. On days Grievant was absent, she had no planning period which she could exchange for compensation and was not entitled to any additional payment on those days.

The following Findings of Fact are properly made from the record developed at level three.

Findings of Fact

1. Grievant is employed by the Harrison County Board of Education ("HBOE") as a teacher at Robert C. Byrd High School.
2. After speaking with the Principal of Robert C. Byrd High School about teaching a Personal Finance course during the time set aside for her planning period, Grievant agreed to exchange her daily 90 minute planning period for compensation, and that she would teach the Personal Finance course during the time assigned for her planning period, from August 19, 2016, through December 22, 2016. Grievant, the

Principal of Robert C. Byrd High School, and the HBOE Superintendent of Schools signed a one-page form entitled "Request for duty-free lunch and/or planning period election," in order to put this agreement in place. The form indicates that Grievant is exchanging her "daily planning period for a total of 90 minutes, effective 8/19 to 12/22/16, not to exceed the current school year [for] [c]ompensation to teach an additional section of Personal Finance due to [illegible] program and over 50 did not receive on schedule and nearly no freshmen!" At the bottom of the form it states, "Hourly Rate \$25.52/HR. Board Agenda: 8/23/16." The daily rate for the 90 minute course is \$38.28.

3. The minutes of the August 23, 2016 meeting of the HBOE state with regard to Professional Recommendations for Grievant, "Business Education Teacher, Robert C. Byrd High, requests to waive ninety (90) minutes of her daily planning period, for compensation, to teach an extra class due to increased student enrollment, effective for the first semester only of the 2016-2017 school term."

4. Grievant took eight days off work during the fall of 2016, three for professional training, and five personal days. Grievant was not paid the hourly rate for teaching the Personal Finance course on these eight days, which amounts to a total of \$306.24. Grievant was not specifically told that she would not be paid this amount if she was absent from work for a day, and she became aware she was not being paid for these days only after another employee brought it to her attention and she made inquiries of the payroll personnel employed by HBOE. No one told Grievant that she would be compensated for exchanging her planning period if she was absent from work for the day. Grievant and the Principal of Robert C. Byrd High School did not discuss whether she would be paid when she was absent.

5. Respondent has entered into identical agreements with other teachers in Harrison County to teach courses during their planning periods. None of these teachers are paid the hourly rate for exchanging their planning periods on days they are absent and do not teach the course.

6. Employees who have agreed to exchange their duty-free lunch for lunch duty enter into a written agreement with Respondent which states they will be paid a lump sum for the semester or the year for this service.

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 she should have been paid for exchanging her planning period for teaching a course on days she was absent and did not in fact teach this course, because she thought this was the agreement, and she was responsible for preparing lesson plans for the course on those days she was not teaching the course. Respondent argued that the agreement approved by Respondent was for Grievant to be paid an hourly rate "to

teach” only, and that if she was not teaching, she was not to be paid for waiving her planning period.

WEST VIRGINIA CODE § 18A-4-14(b) states, in pertinent part:

Every teacher who is regularly employed for a period of time more than one half the class periods of the regular school day shall be provided at least one planning period within each school instructional day to be used to complete necessary preparations for the instruction of pupils. No teacher may be assigned any responsibilities during this period, and no county shall increase the number of hours to be worked by a teacher as a result of such teacher being granted a planning period subsequent to the adoption of this section (March 13, 1982).

WEST VIRGINIA CODE § 18A-4-14(c) states, in pertinent part:

Nothing in this section prevents any teacher from exchanging his or her lunch recess or a planning period . . . for any compensation or benefit mutually agreed upon by the employee and the county superintendent or his or her agent: Provided, That a teacher and the superintendent or his or her agent may not agree to terms which are different from those available to any other teacher granted rights under this section within the individual school or to terms which in any way discriminate among those teachers within the individual school . . .

The statutory language indicates that the teacher who enters into such an agreement is exchanging the planning period for compensation, and this is also what the agreement entered into between Respondent and Grievant states. It seems obvious that if a teacher is not at school, the teacher is not entitled to a planning period that day which can be exchanged. As to Grievant’s argument that she still had to prepare lesson plans, Grievant was obviously not using her planning period to prepare lesson plans for the extra course she was teaching, but was preparing those lesson plans during some other time for which she was being compensated by her salary, or on her own time. Grievant was not being paid additional money for the time she spent preparing lesson plans on days she did teach the course, and did not so argue. If she was not paid an hourly rate for the

preparation of lesson plans for days she taught the course, she cannot claim she was entitled to compensation for such for days she was not the instructor. Further, the agreement says nothing about paying Grievant an additional amount for preparation of lesson plans.

“It is the duty of the courts to construe contracts as they are made by the parties and to give full force and effect to the language used when it is clear, plain, simple and unambiguous. *Griffin v. Fairmont Coal Company*, 59 W. Va. 480, 53 S.E. 24, 2 L.R.A., N.S., 1115. When the terms of a written contract are clear and unambiguous, full force and effect will be given to the language used by the parties. *Strother v. McDowell County National Bank*, 113 W. Va. 75, 166 S.E. 818; *Babcock Coal and Coke Company v. Brackens Creek Coal Land Company*, 128 W. Va. 676, 37 S.E.2d 519, 163 A.L.R. 871; *Adkins v. Aetna Life Insurance Co.*, 130 W. Va. 362, 43 S.E.2d 372.” *Kanawha Banking & Trust Co. v. Gilbert*, 131 W. Va. 88; 46 S.E.2d 225 (1947). In this case, the language of the contract could be made more clear in hindsight, but it does track the statutory provision which allows an employee to exchange a planning period for compensation, stating that the compensation is in “exchange of daily planning period for a total of 90 minutes.” Grievant was entitled to compensation only on those days she actually was at work and gave up her planning period.

Grievant indicated she believed Respondent should make clear to teachers that they are not going to be paid for exchanging their planning period on days they are absent from work. Indeed, it is incumbent on all parties to an agreement to make sure it is clear what is being agreed to. While Respondent certainly should make sure an employee

understands what he or she is agreeing to, Grievant made an assumption that was inaccurate because she did not make sure she understood the agreement before signing it. Respondent's failure to discuss with Grievant all possible scenarios which might arise does not absolve Grievant of her own responsibility to make sure she understood what she was agreeing to.

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 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. "Every teacher who is regularly employed for a period of time more than one half the class periods of the regular school day shall be provided at least one planning period within each school instructional day to be used to complete necessary preparations for the instruction of pupils. No teacher may be assigned any responsibilities during this period" W. VA. CODE § 18A-4-14(b).

3. A teacher may agree to exchange her planning period for compensation. W. VA. CODE § 18A-4-14(c).

4. The agreement entered into by Respondent and Grievant was to compensate Grievant for exchanging her planning period for teaching a course during that time slot. If she was absent from work she had no planning period that day which could be exchanged for compensation, and was not entitled to compensation for a planning period for that day.

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).

Date: September 18, 2017

BRENDA L. GOULD
Deputy Chief Administrative Law Judge