

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**RANDALL MYERS,
Grievant,**

v.

Docket No. 2018-0971-LewED

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

DECISION

Grievant, Randall Myers, filed this action on February 14, 2018, challenging a determination made by the Consolidated Public Retirement Board regarding a fringe benefit previously granted to him by the Lewis County Board of Education for use of a vehicle. Following a conference, this grievance was denied at Level One by decision dated March 20, 2018. A Level Two mediation session was conducted on June 12, 2018. Grievant perfected his appeal to Level Three on June 29, 2018. A Level Three evidentiary hearing was conducted before the undersigned on April 1, 2019, at the Westover office of the Grievance Board. Grievant appeared in person, and by his representative, Susan Lattimar Adkins, WV Professional Educators. 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' fact/law proposals on June 5, 2019.

Synopsis

Grievant was employed by Respondent for many years as Attendance Director. Grievant was granted the use of a Board-owned vehicle to use in the course of his job duties in the county. Beginning in October of 2003, he received approval to also use the

vehicle for his daily commute between home and work. Respondent's treasurer included the monetary value of the vehicle use benefit in Grievant's monthly compensation calculation, including contributions to the Teachers' Retirement System. The Consolidated Public Retirement Board overruled this action by Respondent and Grievant, unsuccessfully, appealed. The Public Employees Grievance Board has no jurisdiction over Grievant's dispute with a decision of the Consolidated Public Retirement Board regarding his benefits, and there is no relief that may be granted in this matter.

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

Findings of Fact

1. Grievant was employed by Respondent for many years as Attendance Director. Grievant retired from his position on June 30, 2018.

2. Grievant was granted the use of a Board-owned vehicle to use in the course of his job duties in the county. Beginning in October of 2003, he received approval to also use the vehicle for his daily commute between home and work.

3. Respondent's treasurer, Monika Weldon, included the monetary value of the vehicle use benefit in Grievant's monthly compensation calculation, including contributions to the Teachers' Retirement System by both Respondent and Grievant.

4. In 2015, Ms. Weldon learned that, pursuant to applicable law, school employees' vehicle use was not to be calculated as compensation for retirement purposes. She contacted the Consolidated Public Retirement Board to ask how the situation should be corrected. She was advised by Retirement Board personnel that, because vehicle use could not legally be considered as part of retirement wages, this constituted over-reporting of Grievant's salary for the period from 2003 through 2015. Ms.

Weldon was advised to submit a correction request form to the Retirement Board, resulting in refunds to both Respondent and Grievant of all contributions made that represented the vehicle benefit's value.

5. On April 6, 2016, Ms. Weldon sent a written notification to Grievant regarding the erroneous retirement contributions for vehicle use, along with supporting documentation explaining the information.

6. On June 3, 2016, the Retirement Board notified Grievant that it would be modifying his gross salary amounts for the years 2003 through 2015, due to the incorrect inclusion of the monetary value of the vehicle fringe benefit in his gross salary during those years.

7. After receiving this notice, on June 27, 2016, Grievant appeared before the Board of Education at a regular meeting and requested that they take action to reverse the decision of the Retirement Board. At that meeting, Respondent voted to reinstate Grievant's vehicle use benefit as part of his retirement wages, directing Ms. Weldon to describe it as "supplemental salary" and contact the Retirement Board regarding reinstatement of the contributions.

8. Ms. Weldon contacted the Retirement Board regarding the Board of Education's directive, and she was advised that the Board of Education had no authority to override the decision of the Retirement Board. She was told that Grievant had a right to appeal the Retirement Board's decision, which would be the only avenue to challenge the decision.

9. Grievant appealed the Retirement Board's decision regarding the vehicle use benefit and appeared before a hearing officer on November 22, 2016. The hearing

officer issued a decision, which was adopted by the Retirement Board on January 26, 2017, finding that the reduction of Grievant's gross salary by the amount of the monetary value attributable to his use of a county-owned vehicle was correct. The hearing officer also found that "[t]he action by the Lewis County Board of Education . . . to have the [vehicle use value] deemed 'supplemental salary' and, therefore, part of his gross salary for purposes of [retirement contributions] is contrary to the definition of gross salary . . . and, therefore, not binding." Respondent's Exhibit No. 1.

10. Grievant appealed the decision of the Retirement Board to both circuit court and West Virginia Supreme Court of Appeals, without success.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2018); *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). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he 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).

It is understandable that Grievant is not pleased that his retirement benefits had to be changed as a result of this error by Respondent; however, his request for relief is unavailable. As stated in the final decision from the Retirement Board, Grievant's retirement wages had to be corrected to comply with applicable law, and the Board of Education does not have authority to override a legal decision made by the agency responsible for administration of retirement benefits. Grievant has requested that the Board of Education be directed to comply with the previous action regarding use of a county vehicle being considered a salary supplement, which would directly contradict the ruling of the Retirement Board. This decision was litigated through circuit court and the West Virginia Supreme Court of Appeals to no avail.

Concerning the undersigned's authority in this matter, this issue is precluded from consideration by the Grievance Board, pursuant to WEST VIRGINIA CODE § 6C-2-2(i), which provides that "[g]rievance does not mean any pension matter or other issue relating to public employees insurance . . . , retirement or any other matter in which the authority to act is not vested with the employer." Grievant's dispute is not with a decision made by Respondent, but with the Retirement Board, which is a matter specifically excluded from the undersigned's jurisdiction.

As established by statute, any matter in which authority to act is not vested with the state department, board, commission, or agency utilizing the services of the grievant is not grievable. *Brining v. Div. of Corrections*, Docket No. 05-CORR-284 (Dec. 7, 2005); *Rainey v. Div. of Motor Vehicles*, Docket No. 2008-0278-DOT (Mar. 11, 2008). The jurisdiction of the Public Employees Grievance Board is limited to the grant of authority provided in WEST VIRGINIA CODE §§ 6C-2-1, *et seq.* The grievance procedure is only

available to the grievant to challenge the actions taken by his employer. *Posey v. W. Va. Univ.*, Docket No. 2009-0745-WVU (Apr. 10, 2008).

Accordingly, because Respondent has no authority regarding the disputed decision made by the Retirement Board regarding Grievant's retirement benefits, a matter specifically excluded from the grievance procedure, this grievance is denied. The undersigned has no authority to grant the requested relief in this case.

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 his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2018); *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. "‘Grievance’ does not mean any pension matter or other issue relating to public employees insurance . . . , retirement or any other matter in which the authority to act is not vested with the employer." W. VA. CODE § 6C-2-2(i).

3. As established by statute, any matter in which authority to act is not vested with the state department, board, commission, or agency utilizing the services of the grievant is not grievable. *Brining v. Div. of Corrections*, Docket No. 05-CORR-284 (Dec. 7, 2005); *Rainey v. Div. of Motor Vehicles*, Docket No. 2008-0278-DOT (Mar. 11, 2008).

4. The undersigned has no jurisdiction over Grievant's dispute with a decision of the Consolidated Public Retirement Board regarding his benefits, and there is no relief that may be granted in this matter.

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 WEST VIRGINIA 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 (2018).

Date: June 11, 2019

Ronald L. Reece
Administrative Law Judge