

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**CHARLES RICE, et al.,  
Grievants,**

**v.**

**Docket No. 2017-2221-CONS**

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

**DECISION**

Grievants<sup>1</sup> are employed by Respondent, Wayne County Board of Education. On May 22, 2017, Grievants filed this grievance against Respondent stating, "Transportation employees lost their county vehicles, May 8 2017, while maintenance and school employees were allowed to continue driving their vehicles daily." For relief, Grievants seek "[r]eimbursement for mileage at the federal rate during the time transportation lost use of the vehicles and reinstate the use of county vehicles for transportation employees."

Following the September 13, 2017 level one conference, an unsigned level one decision was rendered on October 4, 2017, denying the grievance. Grievants appealed to level two on October 13, 2017. Following mediation, Grievants appealed to level three of the grievance process on January 23, 2018. A level three hearing was held on November 1, 2018, before the undersigned at the Grievance Board's Charleston, West Virginia office. Grievants, with the exception of Grievants Gibson and Little, who chose not to appear, appeared in person and were represented by Rod Stapler, WV School Service Personnel Association. Respondent appeared by Superintendent Todd Alexander and was represented by counsel, Leslie K. Tyree, Esquire. This matter

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<sup>1</sup> William Gibson, Darvon Little, Howard Meddings, Michael Newsome, Mark Queen, Charles Rice, and Randolph Thompson.

became mature for decision on December 10, 2018, upon final receipt of Grievants' written Proposed Findings of Fact and Conclusions of Law.<sup>2</sup>

### **Synopsis**

Grievants are employed by Respondent as mechanics within the transportation department. Grievants had previously been assigned the use of work vehicles to travel between their homes and work by a former superintendent as a reward. Grievants protest the decision of a different superintendent to remove the vehicles for financial reasons when employees in other departments had been allowed to retain vehicles. Grievants failed to prove that the decision to remove the vehicles was discrimination or favoritism, that they were otherwise entitled to a work vehicle by either of operation of law or policy, or that the superintendent's previous issuance of the vehicles as a reward entitled them to the continued use of the vehicles. Grievants did not assert in their original statement of grievance or present evidence that they had been denied reimbursement for use of their private vehicles in the course of their employment. Accordingly, the grievance is denied.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

### **Findings of Fact**

1. Grievants are employed by Respondent as mechanics within the transportation department.
2. Grievants work in the county bus garage.

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<sup>2</sup> By email dated December 10, 2018, Respondent, by counsel, notified the Grievance Board and Grievants that Respondent had elected not to file written Proposed Findings of Fact and Conclusions of Law.

3. At times, buses break down while out on the road and a mechanic must travel to the bus.

4. Under a previous superintendent, Grievants were each assigned a work vehicle and were permitted to use the vehicle to travel to and from their homes to work. The superintendent offered this as a reward for Grievants as he could not provide Grievants with a raise.

5. On May 8, 2017, due to financial considerations, Superintendent David Roach removed the assigned vehicles from Grievants but permitted maintenance department employees and certain central office employees to retain work vehicles.

6. Maintenance department employees are not assigned to work in a particular location, but are assigned to work per job at all locations within the county. No evidence was provided of the classifications or job duties of the central office employees.

### **Discussion**

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). “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. Dep’t of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff’d*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

It appears Grievants argue that the removal of the vehicles was discrimination or favoritism and that they were entitled to the vehicles because the former superintendent

had awarded the vehicles in lieu of raises. Grievants also assert they are entitled to “reimbursement for the use of their personal vehicles to do work for the county on their way to and from [their] work location in Wayne.”

“‘Discrimination’ means any differences in the treatment of similarly situated employees, unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees.” W. VA. CODE § 6C-2-2(d). “‘Favoritism’ means unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of a similarly situated employee unless the treatment is related to the actual job responsibilities of the employee or is agreed to in writing by the employee.” W. VA. CODE § 6C-2-2(h). “[A] similarly situated determination is necessarily factual in nature.” *Pritt v. West Virginia Div. of Corrections*, 218 W.Va. 739, 744, 630 S.E.2d 49, 54 (2006). *Hammond v. W. Va. DOT*, 229 W. Va. 108, 112, 727 S.E.2d 652, 656 (2012).

Grievants failed to prove they are being treated differently than any similarly-situated employee. Mechanics and maintenance workers are separate classifications that work in separate departments. Mechanics and maintenance workers do not perform the same job duties. Mechanics report to a central assigned work location and maintenance workers report to different locations throughout the county depending on the particular assigned work order. The two classifications are not similarly situated. No evidence was presented regarding the classification or job duties of the central office employees to determine whether they are similarly situated to Grievants. Therefore, Grievants cannot prove that the decision to remove the vehicles was discrimination or favoritism.

Grievants provided no argument or evidence they were specifically entitled to a work vehicle by either of operation of law or policy. Grievants assert they are entitled to the return of the vehicles because a former superintendent awarded the vehicles to Grievants “instead of raises.” Grievants presented no evidence that they were entitled to raises and then accepted the vehicles in place of the raise. The testimony offered was simply that the superintendent was pleased with Grievants’ work, wanted to reward them, but was unable to award raises. This was not a benefit to which Grievants had any entitlement but was simply a reward Respondent had no responsibility to continue.

In their Proposed Findings of Fact and Conclusions of Law assert Grievants “should be given reimbursement for the use of their personal vehicles to do work for the county on their way to and from [their] work location in Wayne.” The West Virginia Code does require county boards to “reimburse any school personnel for each mile traveled when the employee is required to use a personal motor vehicle in the course of employment.” W.VA. CODE § 18A-2-14. However, this is not an issue Grievants raised in their original statement nor did Grievants present proper evidence on this issue. The only testimony offered on this issue was by Grievant Meddings who stated he used his personal vehicle but had not requested reimbursement and Grievant Queen who stated he did not think mileage would be reimbursed because it has to be pre-approved. Grievant Queen did not testify the mileage reimbursement had actually been denied.

The following Conclusions of Law support the decision reached.

### **Conclusions of Law**

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. W. VA. CODE

ST. R. § 156-1-3 (2018). “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. Dep’t of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff’d*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

2. “‘Discrimination’ means any differences in the treatment of similarly situated employees, unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees.” W. VA. CODE § 6C-2-2(d). “‘Favoritism’ means unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of a similarly situated employee unless the treatment is related to the actual job responsibilities of the employee or is agreed to in writing by the employee.” W. VA. CODE § 6C-2-2(h).

3. Grievants failed to prove that the decision to remove the vehicles was discrimination or favoritism, that they were otherwise entitled to a work vehicle by either of operation of law or policy, or that the superintendent’s previous issuance of the vehicles as a reward entitled them to the continued use of the vehicles.

4. The West Virginia Code does require county boards to “reimburse any school personnel for each mile traveled when the employee is required to use a personal motor vehicle in the course of employment.” W.VA. CODE § 18A-2-14.

5. Grievants did not assert in their original statement of grievance or present evidence that they had been denied reimbursement for use of their private vehicles in the course of their employment.

Accordingly, the 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* W. VA. CODE ST. R. § 156-1-6.20 (2018).

**DATE: January 16, 2019**

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**Billie Thacker Catlett**  
**Chief Administrative Law Judge**