BRADY McCLEESE

Grievant,

v. **Docket No. 97-23-442**

LOGAN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Brady McCleese (Grievant), currently a Foreman/Inventory/Mechanic employed by Respondent Logan County Board of Education (LCBE), filed a grievance pursuant to W. Va. Code §§ 18-29-1, et seq., alleging that he had not been receiving full supplemental pay benefits. The grievance was advanced to Level II where an evidentiary hearing was conducted on March 11, 1997. Subsequently, by correspondence dated January 9, 1997, the grievance was denied at Level II by LCBE Assistant Superintendent Brenda Skibo, the Superintendent's designee. The grievance was advanced to Level III where an evidentiary hearing was conducted on August 26, 1997. Subsequently, the grievance was denied at Level III by LCBE. Grievant was informed of this decision by correspondence from Superintendent Ray Woolsey dated August 27, 1997. Thereafter, Grievant requested that a decision be made at Level IV on the evidence presented at levels I through III. This matter became mature for decision on October 28, 1997. The following Findings of Fact pertinent to resolution of this matter have been determined based upon a preponderance of the credible evidence of record, including the transcripts (See footnote 1) of the Level II and Level III hearings and documentary evidence admitted at Levels I, II and III.

FINDINGS OF FACT

1. Grievant was employed by the Logan County Board of Education in the school service personnel classification of Mechanic/Foreman.

2. Grievant received a $100.00 per month pay supplement above his base pay as a mechanic for also serving as a foreman.

3. On May 30, 1996, Grievant successfully bid on Job Posting #443, a school service position as a Foreman/Inventory/Mechanic. This position included a $200.00 per month pay supplement.

4. The LCBE had recently consolidated 3 school bus maintenance facilities into one.

5. This consolidation substantially increased Grievant's workload.

6. The grievant was known by the LCBE as a good employee who was honest, dependable, and hardworking.

7. Prior to bidding on the new position, Grievant met with John Meyers, then Superintendent for the LCBE, to discuss the supplemental pay he might receive at the new position. Grievant was informed that, because he was already receiving a supplement of$100.00 per month, he would receive only an additional $100.00, for a total pay supplement in the new position of $200.00 per month. Level III Hearing Trans., at 15,16. 8. Any other employee, whether receiving a pay supplement or not, awarded the new position described in Job Posting #443 would have received a pay supplement totaling $200.00 per month.

9. Grievant has received the pay supplement, totaling $200.00 per month, associated with Job Posting #443 and the position of Foreman/Inventory/Mechanic.

10. Grievant filed a grievance complaining that he had not been receiving full supplemental pay benefits. Grievant argued that he was entitled to both the $100.00 pay supplement from his former position as a Mechanic/Foreman, and the $200.00 pay supplement from his new position as a Foreman/Inventory/Mechanic.

11. Grievant does not specify any statute or policy allegedly violated by the LCBE in this matter.

DISCUSSION

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); 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). See W. Va. Code § 18-29-6.

Grievant asserts that he has not been receiving full supplemental pay benefits due him as a Foreman/inventory/mechanic. Grievant argues that he is entitled to both the$100.00 pay supplement from his former position as a Mechanic/Foreman, and the $200.00 pay supplement from his new

position as a Foreman/Inventory/Mechanic.

Grievant's contentions are without merit. When Grievant vacated his position as a Mechanic/Foreman, he surrendered the rights, benefits and privileges, including the base and supplemental pay, that pertained to it. When Grievant accepted the position of Foreman/Inventory/Mechanic, he accepted the rights, benefits and privileges, including the base and supplemental pay, that pertained to it. Grievant stands in the place of any other person accepting the position of Foreman/Inventory/Mechanic. He is entitled to his base pay and a pay supplement of $200.00 per month.

Consistent with the foregoing discussion, the following Conclusions of Law are made in this matter.

CONCLUSIONS OF LAW

1. In a non-disciplinary grievance, the grievant has the burden of proving each element of his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); 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). See W. Va. Code § 18-29-6.

2. County school boards are authorized to employ such service personnel as is deemed necessary for meeting the needs of the county school system. W. Va. Code § 18A-2-5.

3. Grievant failed to establish by a preponderance of the evidence that the Logan County Board of Education violated any statute or policy in this matter.

Accordingly, this Grievance is hereby **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Logan County and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

ANDREW MAIER

ADMINISTRATIVE LAW JUDGE

Dated: March 25, 1998

Footnote: 1

Apparently, two Level II hearings were held, with the transcript of the first hearing being lost. The parties therefore held a second Level II hearing. The transcript of the second hearing is in the record.