GENE PLISKA,

Grievant,

v. **DOCKET NO. 98-25-225**

MARSHALL COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Gene Pliska, challenges the reduction of some of his lunch periods from 60 to 30 minutes. This grievance was filed at level one on April 17, 1998, followed by a denial of the grievance by Principal Helen Kress on April 28, 1998. Grievant appealed to level two, where a hearing was held on June 11, 1998. The grievance was denied at that level by Nick Zervos, Superintendent, on July 2, 1998. Consideration at level three was waived, and Grievant appealed to level four on July 9, 1998. The parties agreed to submit this matter for consideration based upon the record developed below, and it became mature for decision upon receipt of the parties' written proposals on October 5, 1998. Grievant was represented by Owens Brown of the West Virginia Education Association, and Respondent was represented by its counsel, Howard Seufer.

The following findings of fact are made from a preponderance of the evidence of record.

Findings of Fact

1. Grievant is employed as an elementary school teacher by the Marshall County Board of Education ("Board"), with his duties divided between Central Elementary School and Sand Hill Elementary School. 2. At the beginning of the 1997-1998 school year, the principal of Central Elementary School distributed work schedules. Grievant's schedule included a daily thirty- minute duty free lunch period, except that, every third week, he received a one-hour duty free lunch period for every day of that week. (See footnote 1)

3. Principal Kress was hired in January of 1998 to replace the previous principal of Central

Elementary School. As part of her new position, Principal Kress decided to implement noon-time detention periods to deal with discipline problems at the school.

4. Four teachers were required to work noon detention, with two teachers assigned to each group of students. Principal Kress distributed schedules placing each teacher on one half hour of detention duty for each day of the week which he or she was scheduled for one-hour duty free lunch periods. (See footnote 2) Under this system, each teacher still retained at least a thirty minute lunch break after serving detention duty.

5. If less than seven students were in a room for detention on a particular day, only one teacher was required to serve detention duty that day. The teachers were to decide between themselves who would serve detention duty and who would be released.

6. Once the new detention duty schedule was implemented, Grievant served on three occasions. At all other times, he received the one-hour duty free lunch period for the week he was scheduled to have it. At no time has Grievant received less than thirty minutes duty free for lunch.

Discussion

Grievant contends that the board, acting through Principal Kress, had no authority to "unilaterally" reduce his one-hour lunch breaks. Duty-free lunch periods for full-time classroom teachers are provided for by W. Va. Code §18A-4-14(1), which states, in pertinent part:

> Every teacher . . . shall be provided a daily lunch recess of not less than thirty consecutive minutes, and such employee shall not be assigned any responsibilities during this recess. Such recess shall be included in the number of hours worked, and no county shall increase the number of hours to be worked by an employee as a result of such employee being granted a recess under the provisions of this section.

No portion of the statute provides employees any right to a lunch period exceeding thirty minutes. However, Grievant contends that another portion of the same statute supports his contentions, which provision states as follows:

> Nothing in this section shall be construed to prevent any teacher from exchanging his lunch recess or a planning period . . . for any compensation or benefit mutually agreed upon by the employee and the county superintendent of schools or his agent. . . .

Code §18A-4-14(3).

The undersigned does not understand why Grievant believes this portion of the statute supports his argument that Principal Kress was without authority to reduce some of his sixty-minute lunch breaks to thirty minutes. The provision cited deals with situations in which an employee agrees to give his statutory right to a lunch recess entirely, in exchange for another benefit, such as an earlier departure time from work. See Shaver/Johnson v. Greenbrier County Bd. of Educ., Docket No. 98-13-091 (July 29, 1998); Davis v. Mingo County Bd. of Educ., Docket No. 95-29-499 (May 31, 1996). The instant case does not involve any such situation. Grievant has still retained the thirty-minute lunchrecess he is guaranteed by statute, so there would be no need for any “bargain” involving an exchange of the statutory lunch period for another benefit.

Grievant contends that this portion of Code §18A-4-14(3) “implies that the grievant's lunch period has a material value and is a negotiable item.” Grievant's Findings of Fact and Conclusions of Law. However, this contention ignores the fact that Grievant simply has no right to greater than a thirty-minute lunch period, which he has been given. All that Principal Kress did was reduce some of the sixty-minute lunch periods given to teachers, and it is within a principal's authority to change teachers' schedules. See Midkiff v. Wayne County Bd. of Educ., Docket No. 90-50-406 (Mar. 13, 1991).

Grievant has failed to prove any wrongdoing on the part of the Board, and he is not entitled to any more than the thirty-minute lunch recess provided to teachers in Code §18A- 4-14(1).

The following conclusions of law support the decision reached.

Conclusions of Law

1. In non-disciplinary matters, Grievant bears the burden of proving each element of his grievance by a preponderance of the evidence. See W. Va. Code § 18-29- 6; Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997).

2. “Every teacher . . . shall be provided a daily lunch recess of not less than thirty consecutive minutes, and such employee shall not be assigned any responsibilities during this recess.” W. Va. Code §18A-4-14(1).

3. A school principal has the authority to change teachers' schedules. See Midkiff v. Wayne County Bd. of Educ., Docket No. 90-50-406 (Mar. 13, 1991).

4. Grievant has not proven by a preponderance of the evidence that the Boardviolated any

statute, policy, rule, regulation or written agreement in reducing some sixty- minute lunch periods to thirty minutes, when employees still retained at least a thirty-minute lunch period each day.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Marshall 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.

Date: October 28, 1998 _____

DENISE MANNING SPATAFORE

Administrative Law Judge

Footnote: 1

Although not clear from the record, it appears that, although Grievant's duties were divided between two schools, he was normally at Central Elementary School during the usual lunch period.

Footnote: 2

All teachers at Central Elementary received this benefit of one week of one-hour duty free lunch periods.