

VICKIE AKERS & BRENDA BARLOW,

Grievants,

v.

DOCKET NO. 99-27-492

MERCER COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

This grievance was initiated by Vickie Akers, a regularly employed Teacher's Aide, and Brenda Barlow, a regularly employed Secretary III (Grievants), against Respondent Mercer County Board of Education (MCBE), alleging they are required to work seven and one-half hours per day, while other MCBE service personnel work only seven hours per day. Both Grievants work at Bluefield Middle School (BMS). This grievance was denied at Level I, by BMS Principal Stephen Akers, on October 18, 1999; and at Level II, by Assistant Superintendent Dr. Michael McPherson, on November 17, 1999. Proceedings at Level III were bypassed pursuant to W. Va. Code § 18-28-4(c).

A Level IV hearing was held on February 1, 2000, before the undersigned Administrative Law Judge, at the Grievance Board's Beckley office. Grievant was represented by John Roush, Esq. of the West Virginia School Service Personnel Association, and MCBE was represented by Kathryn Bayless, Esq. The parties were given until March 6, 2000, to submit proposed findings of fact and conclusions of law. Grievants did so, and this grievance became mature for decision on that date. The following Findings of Fact pertinent to resolution of this matter have been determined based upon a preponderance of the credible evidence of record.

FINDINGS OF FACT

1. Grievant Akers is a regularly employed Teacher's Aide, and Grievant Barlow is a regularly employed Secretary III, employed by MCBE at BMS.
2. Since approximately 1973, MCBE has required its Aides and Secretaries to work seven and one-half hour days, exclusive of lunch.

3. At the start of this school year, BMS received a new Principal, Stephen Akers, who advised Grievants of this requirement.
4. MCBE has not entered into an employment contract with school service personnel, specifying a seven-hour work day, since 1977.
5. Grievants' current contracts do not specify a seven hour work day.

DISCUSSION

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their 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. A preponderance of the evidence is defined as "evidence which is 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." Black's Law Dictionary (6th ed. 1991); Leichliter v. W. Va. Dep't of Health & Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. Id.

Grievants allege they are required to work seven and one-half hours per day, while other MCBE service personnel are required to work only seven hours per day, an alleged violation of the pay uniformity requirement of W. Va. Code § 18A-4-5b which provides that county boards of education must maintain uniformity of salaries and rates of pay for all school service personnel who perform like assignments and duties. [\(See footnote 1\)](#) Grievants seek retroactive compensation for the additional one-half hour per day they worked, and interest. Grievants' position in this grievance appears to be mere speculation, as they presented no documentary evidence or credible testimony, at any level, to show that other MCBE service personnel work only seven hours per day.

In sharp contrast, MCBE presented overwhelming documentary evidence, as well as uncontradicted credible testimony, to prove that since approximately 1973, MCBE policy has required its Aides and Secretaries to work seven and one-half hour days, exclusive of lunch; that MCBE entered into its last employment contract specifying a seven-hour work day in 1977; and that Grievants' current contracts do not specify a seven hour work day.

It appears from the record in this grievance that Grievants had worked seven hour days, in violation of MCBE policy, for many years before BMS received a new Principal, Stephen Akers, who advised Grievants of MCBE's policy. The uncontradicted and credible testimony of MCBE's witnesses established that Principal Akers' predecessor allowed Grievants a seven hour work day in error. Unfortunately for Grievants, mistakes by MCBE's employees do not bind MCBE. Samples v. Raleigh County Bd. of Educ., Docket No. 98-41-391 (Jan. 13, 1999); Chilton v. Kanawha County Bd. of Educ., Docket No. 89-20-114 (Aug. 7, 1989). Accordingly, Grievants' claim must fail.

The following Conclusions of Law support the Decision reached.

CONCLUSIONS OF LAW

1. Grievants bear the burden of proving their 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. A preponderance of the evidence is defined as "evidence which is 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." Black's Law Dictionary (6th ed. 1991); Leichliter v. W. Va. Dep't of Health & Human Resources, Docket No. 92-HHR-486 (May 17, 1993).
2. County boards of education must maintain uniformity of salaries and rates of pay for all school service personnel who perform like assignments and duties. W. Va. Code § 18A-4-5b.
3. Mistakes by a county board of education's employees do not bind it. Samples v. Raleigh County Bd. of Educ., Docket No. 98-41-391 (Jan. 13, 1999); Chilton v. Kanawha County Bd. of Educ., Docket No. 89-20-114 (Aug. 7, 1989).
4. Grievants failed to prove, by a preponderance of the evidence, a violation of the pay uniformity requirements of W. Va. Code § 18A-4-5b.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mercer 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. 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 record can be prepared and properly transmitted to the appropriate circuit court.

ANDREW MAIER
ADMINISTRATIVE LAW JUDGE

Dated April 26, 2000

[Footnote: 1](#)

1 It is noted that school service personnel who do not hold the same classifications are not performing like duties and assignments. Flint v. Harrison County Bd. of Educ., No. 25898 (Dec. 10, 1999).