

**YVONNE SUSAN BROWNING and**

**EDITH BARTLETT,**

**Grievants,**

**v.**

**Docket No. 99-13-494**

**GREENBRIER COUNTY BOARD OF EDUCATION,**

**Respondent.**

### **DECISION**

Grievants, Yvonne Susan Browning and Edith Bartlett, filed this grievance against the Greenbrier County Board of Education ("GBOE") on or about October 4, 1999. [\(See footnote 1\)](#) The statement of grievance reads:

We are hereby filing a grievance which centers around several issues, all of which relate directly to our E.C.E. [\(See footnote 2\)](#) Aide job description.

First, it is our contention that several items within the job description are being taken out of context. We contend the job description is specifically for use within the realm of E.C.E. Aide. Our principal contends he may put us at any job he chooses, within the school. In any classroom, the office, kitchen/cafeteria, even janitorial services.

It is our contention that the daily requirement that we maintain records, supervise and assist students from the entire student body during the implementation of the USDA Breakfast Program, is in violation of the E.C.E. aide job description.

Breakfast Duty at Alderson Elementary should fall under Extra Curricular assignments, as we are required to report to work at 7:20 a.m. when we are on breakfast duty. Mr. McClintic tells us that on the days we are on breakfast duty our work day is 7:20 a.m. until 2:50 p.m. On days we do not have breakfast duty, our hours are 7:30 a.m. until 3:00 p.m.

Further, we believe the job description item #44: 'Perform such duties as may be assigned by the classroom teacher or school principal,' is not applicable because of its arbitrary and vague nature. Under this clause, if it is put in practice outside the realm of E.C.E. Aide, we could, for example, be required by the principal to shovel sidewalks after a snowfall.

We do not wish to do breakfast duty and feel we should have the right to decline this duty.

As relief, Grievants seek the right to decline breakfast duty, and a clarification of their job description.

The following Findings of Fact are made from the evidence presented at Level II.

### **FINDINGS OF FACT**

1. Grievants are employed by GBOE as Supervisory Kindergarten Aides at Alderson Elementary School. They are employed for seven and a half hours a day. Their working hours are 7:30 a.m. to 3:00 p.m. one month, and 7:20 a.m. to 2:50 p.m. [\(See footnote 3\)](#) the next month when they have breakfast duty. They have breakfast duty every other month, rotating with two other Aides. Their breakfast duty ends at 8:00 a.m., whether all the students are finished eating or not, and other employees complete the tasks remaining after that time.

2. Two Aides have breakfast duty at a time, with one marking on a list which children eat breakfast, and the other wiping tables, cleaning up spills, and assisting children. If the custodian is available, he cleans up spills on the floor; otherwise the Aides do this also. Approximately 130 students participate in the breakfast program.

3. Grievant Bartlett was first employed at Alderson Elementary in 1995. The principal at that time, Mary Jones, asked her if she would work breakfast duty, which would require her to begin her workday at 7:20 a.m., rather than 7:30 a.m. She agreed to do so, and in exchange, Ms. Jones let her leave early, at 2:50 p.m. rather than 3:00 p.m., on days she did not have bus duty, and she received free breakfast and free lunch. She and Grievant Browning took turns on bus duty. She no longer receives free breakfast or free lunch, as GBOE has determined that it is not allowed to provide her with free meals.

4. GBOE has a job description for E.C.E. Aides. It includes as duties of the position, "Assist in the cafeteria," "Assist with the breakfast program," "Assist with eating, resting," "Collect money," and "Foster desirable eating habits." The job description does not state that an E.C.E. Aide will only work

with Kindergarten children.

5. Grievant Bartlett has never been required to leave the Kindergarten room to assist other teachers or perform other duties. Grievant Browning has assisted in non-Kindergarten classrooms when a teacher has had to leave early; however, she did not testify and it is unknown whether she agreed to do this, or was ordered to do so by the principal.

### **DISCUSSION**

Grievants bear the burden of proving the elements of their grievance by a preponderance of the evidence. Tibbs v. Mercer County Bd. of Educ., Docket No. 96-27-074 (Oct. 31, 1996). Grievants contend that marking children's names off the list is a food service duty. They also believe breakfast duty should be an extracurricular duty, as they must begin their workday at 7:20 a.m., rather than 7:30 a.m., on those days they have duty, and they should be compensated accordingly. Grievant Bartlett testified that bus aides who come in ten minutes early to meet a bus are compensated for this time. She did not state whether these aides are allowed to leave 10 minutes early, or whether this otherwise extends their work hours. Grievants acknowledge that their job description specifically includes as a duty assisting with the breakfast program, but they believe this has been taken out of context because the breakfast program was different when the job description was written, in that Kindergarten children ate at a different time from the other children, and the Aide and teacher assisted only Kindergarten children with breakfast.

Respondent argued breakfast duty has not extended Grievants' workday. They work seven and one-half hours regardless of whether they have breakfast duty. Respondent also pointed out that the job description includes breakfast duty as part of Grievants' job duties. Finally, Respondent argued that Aides who have breakfast duty in Greenbrier County are compensated for that by being designated as Supervisory Aides, which entitles them to compensation in a higher pay grade. Respondent asserted in its argument that this designation was made after another group of grievants lost their grievance challenging their breakfast duty assignment. However, Respondent presented no testimony or documentary evidence to support these assertions, and they will not be further addressed.

W.Va. Code § 18A-4-16 provides with regard to extracurricular assignments that they

shall be made only by mutual agreement of the employee and the superintendent, or designated representative, subject to board approval. Extracurricular duties shall

mean, but not be limited to, any activities that occur at times other than regularly scheduled working hours, which include the instructing, coaching, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly scheduled basis: Provided, That all school service personnel assignments shall be considered extracurricular assignments, except such assignments as are considered either regular positions, as provided by section eight [18A-4-8] of this article, or extra-duty assignments, as provided by section eight-b [§ 18A-4-8b] of this article.

This Grievance Board has found thirty minutes of breakfast duty before the regular school day, added to duties of an administrator when no one applied for a posted assignment, to be an extracurricular assignment, and that the administrator was entitled to additional pay of \$2.00 per day, as was paid to service personnel and teachers performing these duties at other schools in the county. Baker v. Lincoln County Bd. of Educ., Docket No. 99-22-167 (Aug. 11, 1999). However, in Norman v. Greenbrier County Board of Education, Docket No. 96-33-263 (April 15, 1997), the grievants, who were Aides working breakfast duty, were found to not be entitled to additional compensation for breakfast duty. Like the Grievants here, they arrived at work ten minutes earlier on breakfast duty days and were allowed to leave ten minutes earlier. However, the grievants did not argue breakfast duty was an extracurricular assignment, but rather based their claim on discriminatory treatment, as teachers received additional pay when they had breakfast duty. While that decision did not specifically address whether the breakfast duty was an extracurricular assignment, it noted that the grievants conceded breakfast duty did not alter or extend their workday. Likewise in Workman v. Clay County Board of Education, Docket No. 95-08-170 (July 14, 1995), whether the assignment extended the grievant's workday was noted. Workman, however, again involved a claim of discrimination, and did not address whether the requirement that the grievant come to work early to assist a student off a bus was an extracurricular assignment. The grievant in that case was allowed to take time off to compensate for having to arrive early.

The undersigned concludes that Grievants work a flexible schedule, and the ten minutes of the 40 minute breakfast period (until 8:00 a.m.), from 7:20 a.m. to 7:30 a.m. is within their regularly scheduled working hours, as it has been for several years, and does not extend their working hours. Accordingly, under the facts of this case, breakfast duty is not an extracurricular assignment, and Grievants are not entitled to additional pay for the 10 minutes from 7:20 a.m. to 7:30 a.m. The fact that Grievant Bartlett chooses to work beyond 2:50 p.m. on days she has breakfast duty because she believes the teacher needs some help is of no moment in this grievance, as her work

schedule calls for her to complete her workday at 2:50 p.m.

It is clear that breakfast duty, whether it be marking off the children's names, or assisting them as they eat, including cleaning up their spills, falls within the job duties of an E.C.E. Aide in Greenbrier County. [\(See footnote 4\)](#) The job description does not limit Grievants' breakfast duties to assisting Kindergarten students. Grievants did not present the postings for their positions, or any other evidence, which would support a finding that it is unlawful for their breakfast duties to include supervising and assisting children who are not in Kindergarten. Inasmuch as only two Aides are required for breakfast duty, and many of the children are in Kindergarten, it is reasonable for Grievants to assist children other than those in Kindergarten, rather than require a third Aide to work with the older children.

Grievant Bartlett also stated she wants a clarification of whether Principal Robert McClintic can remove her from the Kindergarten class and assign her to other duties at any time, as he has told her he can do, although this has not occurred. Such a clarification would be an advisory opinion. Advisory opinions are not issued by the Grievance Board. [Owens v. Lincoln County Bd. of Educ.](#), Docket No. 97-22-121 (Feb. 11, 1998). The following Conclusions of Law support the Decision reached.

### **CONCLUSIONS OF LAW**

1. The burden of proof is upon Grievants to prove the elements of their grievance by a preponderance of the evidence. [Tibbs v. Mercer County Bd. of Educ.](#), Docket No. 96-27-074 (Oct. 31, 1996).
2. [W. Va. Code](#) § 18A-4-16 provides that extracurricular assignments are activities that occur at times other than regularly scheduled working hours.
3. Grievants work a flexible schedule. Breakfast duty does not occur at times other than their regularly scheduled work hours, and does not extend their workday.
4. GBOE's job description for E.C.E. Aide includes as one of the duties breakfast duty. It does not limit this duty to assisting and supervising only Kindergarten students.
5. Grievants have not demonstrated that GBOE has violated any law, rule, regulation, or policy by requiring them to work breakfast duty, and to assist and supervise students other than Kindergarten students.
6. This Grievance Board does not issue advisory opinions. [Owens v. Lincoln County Bd. of](#)

Educ., Docket No. 97-22-121 (Feb. 11, 1998).

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Greenbrier County. Any 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

**BRENDA L. GOULD**

**Administrative Law Judge**

**Dated: February 14, 2000**

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**Footnote: 1**

*The grievance was denied at Level I on October 7, 1999. Grievants appealed to Level II, where a hearing was held on October 22, 1999. A decision denying the grievance was issued on November 10, 1999. Grievants waived Level III, appealing to Level IV on November 18, 1999. The parties agreed that this grievance could be decided based upon the record developed at Level II. Grievants were represented by Gary E. Archer, and Respondent was represented by Erwin L. Conrad, Esquire. Respondent submitted post-hearing written argument on January 25, 2000, and this matter became mature for decision on January 28, 2000, upon receipt of the Level II transcript, exhibits, and decision. Grievants declined to submit written argument.*

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**Footnote: 2**

*The acronym, E.C.E., stands for Early Childhood Education.*

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**Footnote: 3**

*Grievant Bartlett stated she does not leave by 2:50 p.m. on a "regular basis," although she did not indicate that anyone has told her she must stay past 2:50 p.m. She simply stated this is a busy time of the day, and if a parent is talking to the teacher, someone needs to supervise the children.*

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**Footnote: 4**

*Grievants did not argue that the job description was inconsistent with the statutory definition of an Aide, and this*

***issue will not be addressed. The undersigned will note, however, that W. Va. Code § 18A-4-8 defines Aide broadly.***