ELIZABETH BRADLEY,

Grievant,

v. **Docket No. 01-40-065**

PUTNAM COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Elizabeth Bradley, employed by the Putnam County Board of Education (PCBOE) as a bus operator, filed a grievance at level two on December 7, 2000, in which she alleged she was subject to harassment in violation of W. Va. Code § 18-29-3(n). (See footnote 1) For relief, Grievant requested the "violations to cease and proper action be taken against violators." The relief was amended at the level two hearing to include reinstatement of fifteen and one-half days of sick leave she used as a result of stress arising from this situation. The grievance was denied at level two, and PCBOE waived consideration of the matter, as is permitted by W. Va. Code § 18-29-4(c). Appeal was made to level four on February 27, 2001, at which time the parties agreed to submit the matter for decision based upon the record, supplemented with proposed findings of fact and conclusions of law. The grievance became mature for decision upon receipt of those proposals on March 29, 2001. (See footnote 2)

The following facts are derived from the level two transcript and decision.

Findings of Fact

1. Grievant has been employed by PCBOE for more than twenty-three years, holding the classification title of bus operator throughout that period of time.

2. In addition to her duties as bus operator, Grievant was also the Area Bus Coordinator for the George Washington/Buffalo area of the county from 1999 until her resignation from that position in November 2000.

3. While a Coordinator, Grievant experienced several unpleasant incidents with other bus operators. She discussed these matters with Cecil Dolin, Director of Transportation, and Assistant Superintendent Paul Callahan.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.21 (2000); 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 and Human Res., 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.

W. Va. Code § 18-29-2(n) defines "harassment" as "repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession." In order establish harassment, agrievant must show a pattern of conduct, rather than a single improper act. See Hall v. W. Va. Dep't of Transp., Docket No. 96-DOH-433 (Sept. 12, 1997); Phares v. W. Va. Dep't of Public Safety, Docket No. 91-CORR-275 (Dec. 31, 1991).

At level two, Grievant stated that while acting as Area Coordinator, her mail was opened at the bus lounge, substitute bus operators were questioned about her comments regarding other drivers, and monthly reports for which she was responsible disappeared from her mailbox. She also recalled that after painting and decorating the lounge over Christmas break, she was accosted by a co-worker who said that it should have been voted on, that she was exposed to conversation of a sexual nature between other employees which were offensive to her, and she received reports that other employees were making negative comments about her to students and parents.

Grievant complained that she had also been harassed by PCBOE administrators when she was assigned an excessive number of students on her run, when the Transportation Director suggested that she retire, and when Superintendent Sam Sentelle suggested that she file a complaint with a Magistrate or the Sheriff, when she brought the incidents to their attention.

PCBOE asserts that while Grievant has experienced difficulties with her co-workers which she perceives to be an annoyance, she has failed to prove that she has been subject to harassment as defined by statute. Additionally, Grievant stated at level two that she had not continued to experience these difficulties since she returned to work in December.

An employer has a responsibility to stop the harassment of one employee by one or more other employees. White v. Monongalia County Bd. of Educ., Docket No. 93-30-371 (Mar. 31, 1994). Grievant's testimony establishes that she was subject to repeated or continual irritation and annoyance by two male bus operators in particular, who did not respect her and challenged her on many issues. However, conflicts and disagreements between employees occur frequently in the workplace, and not all such matters require the intervention of management. In the present matter, Grievant testified that one of the individuals has since transferred to another area, and that she has experienced no further difficulty since she resigned as Coordinator. It is unfortunate that Grievant felt she must resign, but it appears that by doing so she has eliminated most, if not all, the conflict. At least one incident, the sexual banter in the lounge, did not involve Grievant, and while she found it offensive, it cannot be determined that its purpose was to annoy or irritate her.

It is not particularly clear why Grievant was initially assigned to transport so many students while another driver had comparatively fewer charges, but she states that changes were made after discussing the situation with the Transportation Director and her WVEA representative. Again, this example was not part of any continuous or ongoing actions by the Transportation Director, and does not constitute harassment. Finally, while Grievant does not perceive that she was given any assistance by the administrators, and suggesting that she retire or file a criminal complaint certainly was not constructive, Assistant Superintendent Callahan testified that he advised her multiple times to place her complaints in writing to establish a record, and she did not follow that advice. In conclusion, it appears that the situation with Grievant's co-workers has been resolved, and the evidence does not support a finding of harassment by the administrators. In reference to Grievant's request that fifteen and one-half days of sick leave be reinstated, it is noted that she did not present a doctor's statement of her diagnosis and prognosis, or to confirm that she was to stay at home for any period of time. Absent some evidence of this nature, Grievant's request cannot be granted.

In addition to the foregoing findings of fact and discussion, it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State

Employees Grievance Bd. 156 C.S.R. 1 §4.21 (2000); 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. W. Va. Code § 18-29-2(n) defines "harassment" as "repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession."

3. An employer has a responsibility to stop the harassment of one employee by one or more other employees. White v. Monongalia County Bd. of Educ., Docket No. 93- 30-371 (Mar. 31, 1994).

4. Due to intervening factors any harassment by co-workers has ceased, and no meaningful relief may be granted.

5. Grievant has failed to prove that she was subject to harassment by PCBOE administrators. 6. Grievant has failed to prove that a fifteen and one-half day absence was due to stress at work, or was directed by a physician.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Putnam 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.

Date: April 9, 2001 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

At Grievant's request, review at level one was waived.

Footnote: 2

Grievant was represented by Susan Hubbard, WVEA Univserv Consultant, and PCBOE was represented by John A.

Grafton, Esq.