CARL BOLTON,

Grievant,

v. **Docket No. 04-01-206**

BARBOUR COUNTY BOARD OF EDUCATION,

Respondent,

and

REXELL FREEMAN and GLENN FISHER,

Intervenors.

DECISION

Carl Bolton ("Grievant"), employed by Respondent as a bus operator, initiated this proceeding on March 26, 2004, alleging he has been deprived of extra-duty bus driving assignments which have been awarded to Intervenor Glenn Fisher. He seeks compensation for the trips he did not receive, plus benefits and interest. The grievance was denied at level one on April 6, 2004. (See footnote 1) A level two hearing was conducted on June 11, 2004, and the grievance was denied in a decision dated June 25, 2004. Level three consideration was bypassed, and Grievant appealed to level four on July 5, 2004. A level four hearing was conducted in Elkins, West Virginia, on October 20, 2004. Grievant was represented by counsel, John E. Roush; Respondent was represented by counsel, Howard E. Seufer, Jr.; Intervenor Glenn Fisher was represented by William White of WVEA; andIntervenor Rexell Freeman did not appear. (See footnote 2) This matter became mature for consideration upon receipt of the parties' fact/law proposals on November 19, 2004.

The following facts have been proven by a preponderance of the evidence.

Findings of Fact

1. Grievant is employed by Respondent as a regular, full-time bus operator.

2. Intervenor Rexell Freeman is also employed as a regular, full-time bus operator.

3. Intervenor Glenn Fisher is employed by Respondent and is multi-classified as a bus operator and custodian.

4. Mr. Fisher was on disciplinary suspension for a lengthy period during calendar year 2003. He returned to work in January of 2004, and executed an employment contract with Respondent, providing for his employment as a bus operator for the school year commencing on July 1, 2003.

5. Respondent and Mr. Fisher negotiated a settlement agreement prior to his return to work in early 2004. This agreement provided, in part, that he would be employed as a bus operator and custodian, but that he would not be returned to the bus run he had previously driven. The agreement also provided that Mr. Fisher would be allowed to fill in as a substitute bus operator as needed, until he could successfully bid on a full-time run. He did not obtain a permanent bus assignment prior to the end of the 2003-2004 school year.

6. Throughout the second semester of the 2003-2004 school year, Mr. Fisherworked as a custodian and a bus operator. He substituted for other drivers, when needed, but was paid at his regular, full-time rate when he did so.

7. Extra duty trips in Barbour County are distributed pursuant to a practice agreed upon by the bus drivers. Pursuant to this procedure, a “trip meeting” is held every Thursday, during which the extra duty trips for the following week are distributed to the drivers who attend, in order of seniority.

8. Because he was employed as a regular bus operator, Mr. Fisher was allowed to participate in trip meetings and was awarded extra duty trips during March, April, and May of 2004. Grievant was present at many of these meetings, also, and Mr. Fisher's participation in the rotation affected which runs Grievant received.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his claims 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.

The crux of Grievant's (and Intervenor Freeman's) complaint is that Mr. Fisher should not have

been treated as a regular bus operator, because he was not assigned to a regular run. Therefore, Mr. Fisher should not have been allowed to participate in the rotation system for assigning extra duty runs, which would have given Grievant different (and he believes better) choices among those assignments. Grievant argues that Mr. Fisher was a substitute bus driver, and substitute employees are not entitled to take extra duty assignments, unless no regular employee is available to take the assignment. SeeW. Va. Code § 18A-4-15(a).

As Respondent has noted, this Grievance Board has reached the opposite conclusion when presented with a similar factual situation. Virtually the same argument was made in McElroy v. Monongalia County Board of Education, Docket No. 99-30-214 (Feb. 14, 2000), when the grievants protested the fact that multi-classified mechanics/bus operators were given extra duty assignments. As in the instant case, the grievants argued that these employees only functioned as substitute bus operators, with their main job functions being related to mechanic duties, and that they should not be eligible for extra duty assignments. In rejecting this argument, the administrative law judge stated "[w]hile the multi-classified employees do not hold a daily bus run, and fill in when no regular or substitute bus operators are available, this limited assignment does not affect their status as regular employees." It is well settled that county boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986).

Accordingly, the undersigned finds that Grievant has failed to provide any reason why Mr. Fisher should not be treated as a regular employee or that he should be ineligible for extra duty assignments. The following conclusions of law support this decision.

Conclusions of Law

1. In a non-disciplinary matter, Grievant has the burden of proving his claims 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., DocketNo. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

2. Multi-classified employees are considered regular, full-time employees in each classification; therefore, Intervenor Fisher was not a substitute bus operator, and he was entitled to

extra duty assignments. See McElroy v. Monongalia County Bd. of Educ., Docket No. 99-30-214 (Feb. 14, 2000).

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Barbour 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 Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: December 8, 2004 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Rexell Freeman and Glenn Fisher separately requested to intervene in this grievance prior to the issuance of the level one decision.

Footnote: 2

Intervenor Freeman appeared at the level two hearing and represented himself.