ELIZABETH SNYDER,

Grievant,

v. Docket No. 05-30-217

MONONGALIA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Elizabeth Snyder ("Grievant"), employed by the Monongalia County Board of Education ("MCBE") as a bus operator, filed a level one grievance on February 23, 2005, challenging her nonselection for an extracurricular run. The grievance was denied at levels one and two. Grievant elected to bypass level three, as is permitted by W. Va. Code § 18- 29-4(c), and advanced her grievance to level four on June 23, 2005. An evidentiary hearing was conducted on September 13, 2005, at which time Grievant was represented by John E. Roush, Esq., of the West Virginia School Service Personnel Association, and MCBE was represented by counsel Harry M. Rubenstein, Jason Long, and Jennifer S. Caradine, of Kay Casto & Chaney. The grievance became mature for decision upon receipt of proposed findings of fact and conclusions of law filed by the parties on or before October 14, 2005.

The following facts have been derived from a preponderance of the credible evidence admitted into the record at level two and level four.

Findings of Fact

1. Grievant has been employed by MCBE as a bus operator for nineteen years.

2. During the 2003-2004 school year, Grievant held an extracurricular contract for which she transported special education/preschool (Headstart) students to and from Easton Elementary School. 3. The Easton program was expanded to a full-day program beginning with the 2004-2005 school year, thus, there was no need for transportation to school or home in the middle of the day, and Grievant's extracurricular assignment was unnecessary.

4. On January 24, 2005, MCBE posted an extracurricular position for a bus operator to transport students to Easton Elementary School. This run was created to transport severely

impaired students to a newly-developed program.

5. Illa Powroznik-Hess was awarded the assignment, based on seniority.

Discussion

Grievant argues that she was entitled to the assignment because it was substantially the same run she had previously held. MCBE asserts that the position was properly posted and filled as part of a new program. 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 (2004); 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 preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. Id.

Grievant bases her claim that she is entitled to retain the mid-day Easton run which she had held the previous year, pursuant to W. Va. Code § 18A-4-16(6), which states:An employee who was employed in any service personnel extracurricular assignment during the previous school year shall have the option of retaining the assignment if it continues to exist in any succeeding school year. A county board of education may terminate any school service personnel extracurricular assignment for lack of need pursuant to section seven, article two of this chapter. If an extracurricular contract has been terminated and is reestablished in any succeeding school year, it shall be offered to the employee who held the assignment at the time of its termination. If the employee declines the assignment, the extracurricular assignment shall be posted and filled pursuant to section eight-b of this article.

While the evidence establishes that a mid-day run to Easton school was created in 2005, it does not support a finding that it was the re-establishment of the assignment held by Grievant the previous year. There is no dispute that the Headstart program for which Grievant transported the students is no longer in existence. The assignment posted in January 2005 was for the transportation of elementary students from one Riverside School to a newly-created program at Easton. Because the students, the program, and the geographic region

were different from Grievant's assignment the prior year, MCBE's determination that this was a new position was not erroneous. As a new run, W. Va. Code § 18A-4-8b MCBE properly filled the position based on "seniority, qualifications and evaluations of past service."

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. If an extracurricular contract has been terminated and is reestablished in any succeeding school year, it shall be offered to the employee who held the assignment at the time of its termination. W. Va. Code § 18A-4-16(6).

3. Grievant has failed to prove by a preponderance of the evidence that the assignment posted in January 2005 was the reestablished run she held in 2003-2004.

4. MCBE correctly posted and filled the new assignment based on "seniority, qualifications and evaluations of past service," as is required by W. Va. Code § 18A-4-8b.

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Monongalia 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 isrequired 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: NOVEMBER 29, 2005

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE