THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

CATHERINE WILT,
Grievant,

v. **Docket No. 2012-0278-DHHR**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
WILLIAM R. SHARPE, JR. HOSPITAL,
Respondent.

DECISION

Grievant, Catherine Wilt, filed this grievance on September 12, 2011, alleging that Respondent violated an agreement to adjust employees' schedules to include time spent in grievance hearings as compensable time. Grievant seeks to be made whole, including any lost pay with interest. This grievance was denied at level one on June 28, 2012, by Christina M. Bailey, Grievance Evaluator. A level two mediation session was conducted on April 2, 2013. Grievant perfected her appeal to level three on April 4, 2013.

A level three hearing was scheduled to be conducted before the undersigned Administrative Law Judge on September 17, 2013; however, the parties requested that the case be submitted on the record developed at the level one hearing. This request was granted and the parties were given until October 17, 2013, to file any fact/law proposals. Grievant filed her proposals on October 16, 2013. Respondent did not file proposals. Grievant appeared by her representative, Gordon Simmons, UE Local 170, West Virginia Public Workers Union. Respondent appeared by its counsel, Harry C. Bruner, Jr., Assistant Attorney General. This matter is now mature for consideration.

Synopsis

Grievant challenges Respondent's disapproval of her request to be paid for time she spent at a mediation session related to a previous grievance. Grievant maintains that Respondent's former Human Resources Director assured employees that the time they spent at grievance proceedings would always be compensated, regardless of whether or not the proceeding was scheduled during the employees' regular work hours. Respondent's policy makes clear that grievance proceedings scheduled outside the employee's normally scheduled work hours are not compensable work time. No violation of any applicable statute related to scheduling of grievance proceedings was demonstrated. In addition, Grievant suffered no loss of pay to attend her mediation session. Accordingly, this grievance is denied.

The following findings of fact are based upon the record developed at level one.

Findings of Fact

1. Grievant has been employed as a Health Service Assistant at the William R. Sharpe, Jr. Hospital for ten years. This hospital is a psychiatric facility operated by the West Virginia Department of Health and Human Resources.

2. Grievant challenges Respondent's disapproval of her request to be paid for time she spent at a mediation session related to a previous grievance.

3. Grievant was not certain of the date of the proceeding in question.

4. The record established by a preponderance of the evidence that the proceeding was a level two mediation session conducted on August 15, 2011, at 1:30 p.m., in Westover, West Virginia.

5. Grievant's usual work schedule is 3:00 p.m. to 11:30 p.m.

6. Grievant maintains that Respondent's former Human Resources Director entered into an agreement which essentially provided that the time employees spent at proceedings would always be compensated, regardless of whether or not the proceeding was scheduled during the employees' regular work hours.

7. Grievant filed the instant grievance asserting she is entitled to receive additional payment for attendance at the mediation session.

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 Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *See also 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). "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 & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Respondent's Policy Memorandum 2102 governs hours of work and overtime. Section Z of this policy is entitled "Adjusting Grievances" and provides that:

> Time spent by employees in adjusting grievances between the employer and the employee during the time the employee is required to be in grievance conferences and hearings is hours worked. However, where grievance hearings are scheduled outside the employee/grievant's normal scheduled work hours, the time is not compensable worktime [sic].

WEST VIRGINIA CODE § 6C-2-3(o) states, in pertinent part, that "all proceedings shall be scheduled during regular work hours in a convenient location accessible to all parties." Respondent's Policy Memorandum 2102 defines business hours as 8:30 a.m. through 5:00 p.m., Monday through Friday. Additionally, WEST VIRGINIA CODE § 6C-2-3(p)(1) provides that "the grievant, witnesses, and an employee representative shall be granted reasonable and necessary time off during the working hours to attend grievance proceedings without loss of pay and without charge to annual or compensatory leave credits."

An agency's "interpretation of the provisions in its own internal policy is entitled to some deference by this Grievance Board, unless it is contrary to the plain meaning of the language, or is inherently unreasonable. *Dyer, et al., v. Lincoln County Bd. of Educ.*, Docket No. 95-22-494 (June 28, 1996) (citations omitted)." *Frame, et al., v. Dep't of Health and Human Res.*, Docket No. 00-HHR-240/330 (April 20, 2001). The quoted provision of the cited Policy 2102 requires little to no interpretation in that the language of the policy follows the statutory citations above concerning scheduling and attendance of grievance proceedings without loss of pay, and Respondent's interpretation is entitled to deference.

Grievant did not demonstrate that Respondent somehow abused its discretion by not compensating her for attendance at the mediation session. The record also establishes that Grievant suffered no loss of pay to attend her mediation session. It was Grievant's choice to pursue this matter, and her right to do so is recognized; however, she and Respondent must bear their relative burdens of scheduling involvement. Within the context of this case, that means, at least in part, that Grievant's participation in the mediation session occurred, appropriately so, on her personal time. The Grievance Board has previously addressed this issue and it is well settled that in the event a grievance

proceeding is scheduled outside an employee's normal scheduled work hours, time spent by the employee participating in the grievance proceeding is not compensable work time. *Frame v. Dep't of Health and Human Res./William R. Sharpe, Jr. Hospital*, Docket No. 2011-0877-DHHR (Feb. 29, 2012).

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *See also 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).

2. An agency's "interpretation of the provisions in its own internal policy is entitled to some deference by this Grievance Board, unless it is contrary to the plain meaning of the language, or is inherently unreasonable. *Dyer, et al., v. Lincoln County Bd. of Educ.*, Docket No. 95-22-494 (June 28, 1996) (citations omitted)." *Frame, et al., v. Dep't of Health and Human Res.*, Docket No. 00-HHR-240/330 (April 20, 2001).

3. If a grievance proceeding is scheduled outside an employee's normal scheduled work hours, time spent by the employee participating in the grievance proceeding is not compensable work time. *Thornquest v. Dep't of Health and Human Res./Pinecrest Hospital*, Docket No. 2009-1070-DHHR (Aug. 24, 2010); *Frame v. Dep't of Health and Human Res./William R. Sharpe, Jr. Hospital*, Docket No. 2011-0877-DHHR (Feb. 29, 2012).

4. Grievant has not established that she is entitled to compensation for time spent attending the August 15, 2011, mediation session.

Accordingly, this grievance is **DENIED.**

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public 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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (2008).

Date: November 19, 2013

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Ronald L. Reece
Administrative Law Judge