RICHARD LEACH,

Grievant,

v. **Docket No. 97-13-480**

GREENBRIER COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Richard Leach, Grievant, employed by the Greenbrier County Board of Education (Board) as a Supervisory Aide IV, filed a level one grievance on September 11, 1997, in which he alleged a violation of W. Va. Code §18A-4-8 when the Board failed to compensate him for prior teaching experience earned in Greenbrier County. After the grievance was denied at levels one and two, the Board waived consideration at level three, as is permitted under W. Va. Code §18-29-4(c), and the grievance was advanced to level four on October 30, 1997. The parties agreed that a decision could be made based upon the record, and were notified that any proposed findings of fact and conclusions of law should be submitted no later than November 17, 1997. (See footnote 1)

Board's counsel filed proposals on November 25, 1997. The following day, Grievant advised the Grievance Board that the Board's proposals were irrelevant because they did not reference the present grievance. On December 1, 1997, Board's counsel faxed revised proposals to the Grievance Board, under cover letter explaining that he had initially obtained the incorrect grievance file, and was unaware of the error until he received Grievant's response on December 1, 1997. Counsel noted that the deadline for submission had passed, but asked for indulgence considering the extenuating circumstances. By response received December 4, 1997, Grievant objected to the late submission noting that the Board had ample time to secure legal counsel and prepare, and that had he committedany procedural error the Board would request a dismissal. Grievant further noted that the level four decision was to be based on evidence from the lower levels, and requested that the submission be disregarded. Because the post-hearing submissions are simply a proposed statement of fact and conclusion, the delay was based on a mistake of which grievance was to be addressed, and Grievant suffered no harm by the late filing, it will be accepted and made part of the record.

A second procedural issue raised by Grievant appears to be whether the Board failed to timely respond at level three. In his level four appeal, Grievant states "[a] copy of Greenbrier County Board of Education letter to waive participation at Level III is included along with the envelope in which it arrived. Although the letter is dated October 20, 1997, the envelope shows it was not mailed until October 22, 1997, and it was not received by the grievant until October 23, 1997 after school." Because the level three appeal form is not dated, it is not possible to determine whether the Board responded within the timelines set forth in W. Va. Code §18-29-4.

Upon review of the record in its entirety, the following undisputed findings of fact are made.

Findings of Fact

1. Grievant is presently employed by the Greenbrier County Board of Education as a Supervisory Aide, a service personnel position, and is presently assigned to Lewisburg Elementary School.

2. Grievant has been employed in a service personnel capacity since the 1996-97 school year, and is credited with one year of experience.

3. Previously, Grievant was employed by the Greenbrier County Board of Education as a full-time teacher during the 1967-68 and 1968-69 school years, and from 1978-79 through 1987- 1988, for a total of twelve (12) years. At an undetermined time, Grievant allowed his teachingcertificate to expire.

4. Grievant's compensation is based upon his year of experience as a Supervisory Aide.

Discussion

Because this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R.1 §4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997). See W. Va. Code §18-29-6.

Grievant's position is simply that his compensation should be based not upon one year of experience as an aide, but should include the twelve (12) years he served as a teacher in Greenbrier County. He is careful to note that he does not believe the prior experience would be considered for seniority purposes, but argues that they must be considered for years of experience for pay purposes

under the language of W. Va. Code §18A-4-8. The portion of that provision upon which he relies defines "[y]ears of employment [as] the number of years which an employee classified as service personnel has been employed by a board in any position prior to or subsequent to the effective date of this section and including service in the armed forces of the United States, if the employee were employed at the time of his or her induction. . . ." Grievant asserts that an employee of the State Board of Education, unidentified by name, advised him that he was entitled to credit for his years of experience earned as teacher. In addition to what Grievant asserts is the plain language of the statute, he argues that the teaching experience is beneficial to his performance as a Supervisory Aide.

The Board argues that W. Va. Code §18A-4-8 addresses only service personnel and that the language refers to "the number of years which an employee classified as service personnel has been employed by a Board . . . ." The Board asserts that under Grievant's theory, a home economics teacher could claim teaching experience after transferring to a position of Electronics Technician, and that the absurdity of such a situation undermines his position and supports the contention that Code §18A-4-8 refers to "any" service personnel position. The Board also compares the language of Code §18A-4-8 with that of Code §18A-4-1, which addresses professional personnel. That section defines "years of experience" as the number of years the teacher has been employed in the teaching profession, including active work in educational positions other than the public schools and service in the armed forces, if the teacher was under contract to teach at the time of induction. It is the Board's position that because a former service employee cannot be granted years of experience credit for that work upon becoming a teacher, the converse would also be true. Also made part of the record was an interpretation of the State Superintendent of Schools, dated May 7, 1997, which advised that a professional employee may not retain seniority earned while a service employee. The interpretation continued to state that "service personnel seniority and professional personnel seniority cannot be combined."

While Grievant's argument is understandable given his situation, it is not supported by the evidence. Grievant's interpretation of Code §18A-4-8 is that a current service personnel employee is entitled to credit for all prior work in any position. The Board's interpretation that a service employee may only be credited for work in any service position is supported by the State Superintendent's interpretation. Under the West Virginia Supreme Court of Appeals' well-settled doctrine regarding

interpretation of statutes by bodies charged with their administration, a State Superintendent's opinion is entitled to great weight unless it is clearly erroneous. Lincoln County Bd. of Educ. v. Adkins, 188 W. Va. 430, 424 S.E.2d 775 (1992); Smith v. Bd. of Educ., 341 S.E.2d 685, 689-690 (W. Va. 1985); Harrison v. Logan County Bd. of Educ., Docket No. 95-23-459 (May31, 1996).

Additionally, the Board's position is supported when reading Code §§ 18A-4-8 and 18A-4-1 together. Section one clearly defines a professional employee's years of experience as the number of years employed in the teaching profession. It would be consistent to interpret section eight as defining a service employee's years of experience in a service position.

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

Conclusions of Law

1. In grievances which do not involve a disciplinary matter, Grievant has the burden of proving each element of his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R.1 §4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997). See W. Va. Code §18-29-6.

2. W. Va. Code §18A-4-8 defines “[y]ears of employment [as] the number of years which an employee classified as service personnel has been employed by a board in any position prior to or subsequent to the effective date of this section and including service in the armed forces of the United States, if the employee were employed at the time of his or her induction. . . .”

3. An interpretation of the State Superintendent of Schools relating to a provision of the laws applicable to West Virginia schools is entitled to great weight unless it is clearly erroneous. Lincoln County Bd. of Educ., v. Adkins, 188 W. Va. 430, 424 S.E.2d 775 (1992); Smith v. Bd. of Educ., 341 S.E.2d 685, 689-690 (W. Va. 1985); Harrison v. Logan County Bd. of Educ., Docket No. 95-23-459 (May 31, 1996).

4. Grievant has failed to prove that he is entitled to credit for years of employment ina professional capacity for purposes of salary calculation.

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the circuit court of Kanawha County or in the circuit court of Greenbrier 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. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

DATE: January 30, 1998 _____

SUE KELLER

Senior Administrative Law Judge

Footnote: 1

This matter was transferred to the undersigned for administrative reasons on January 8, 1998.