DINAH MAYNARD,

Grievant,

v. DOCKET NO. 99-55-228

WYOMING COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Dinah Maynard (Grievant), was employed by Respondent, Wyoming County Board of Education (WCBE), as a driver education and physical education teacher. Grievant alleges that WCBE terminated her employment in violation of W. Va. Code § 18A-2-2, and seeks reinstatement.

This grievance was denied at Level I on April 27, 1999. A Level II hearing was held on May 18, 1999. Grievant was represented by Anita R. Maxwell of the West Virginia Education Association, and WCBE was represented by Gregory W. Bailey, Esq. This grievance was denied at Level II, on May 26, 1999, by James R. McGrady. There is no record of any proceedings at Level III.

WCBE, through its counsel Gregory W. Bailey, Esq., moved on June 18, 1999, that the undersigned administrative law judge be recused from hearing this grievance. That Motion was denied by an Order dated July 28, 1999. The parties agreed that this grievance could be submitted based upon the record developed at the lower levels, and were given until December 5, 1999, to submit proposed findings of fact and conclusionsof law. This grievance became mature for decision on that date.

The facts in this grievance are not in dispute. Accordingly, the following facts are deemed established by a preponderance of the evidence.

FINDINGS OF FACT

1. Grievant was employed by WCBE as a driver education and physical education teacher at Baileysville High School (BHS) for seven years.

2. Grievant was the least-senior driver education and physical education teacher at BHS and in Wyoming County.

3. On March 10, 1999, Grievant received notice of her termination by WCBE, as part of a reduction in force necessitated by declining enrollment.

4. On March 29, 1999, WCBE voted to terminate Grievant's employment. Four members of the Board were present, with three voting to terminate Grievant.

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 § 4.19 (1996); Payne v. W. Va. Dep't of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). See W. Va. Code § 29-6A-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 & Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equallysupports both sides, a party has not met its burden of proof. Id.

Grievant alleges that WCBE terminated her employment in violation of W. Va. Code § 18A-2-2, which states, in pertinent part, "[t]he continuing contract of any teacher shall remain in full force and effect. . . . until terminated by a majority vote of the full membership of the board[.]" Grievant argues that, because only four board members were present when the board voted, by a vote of three to one, to terminate her employment, a majority vote of the full membership of the board did not occur. However, Grievant has cited no authority to support this view.

WCBE persuasively argues that the above-cited Code section was satisfied when three members of the five member Board voted to terminate Grievant, as three members constitute a majority of a five member body; that Grievant's view would produce absurd and untenable results by allowing one member's absence to prevent reductions in force, regardless of their necessity; and that W. Va. Code § 18-5-4 provides that "[a] majority of the members [of a county board of education] shall constitute a quorum necessary for the transaction of official business[,]" which happened here.

The undersigned has reviewed the numerous cases of this Grievance Board interpreting W. Va.

Code § 18A-2-2 and W. Va. Code § 18A-2-6, which both contain the “full membership” language relied upon by Grievant, as well as all opinions of the West Virginia Supreme Court of Appeals containing this language, without finding support for her position. See Fayette County Bd. of Educ. v. Lilly, 184 W. Va. 688, 403 S.E.2d 431 (1991)(teacher dismissal requiring board's “approval” under W. Va. Code § 18A-2-7 does not require formal vote by board). Accordingly, Grievant has failed to prove her claim by a preponderance of the evidence. Consistent with the foregoing discussion, the following Conclusions of Law are made in this matter.

CONCLUSIONS OF LAW

1. In a non-disciplinary grievance, the grievant has the burden of proving 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); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. W. Va. Code § 18A-2-2 requires that the continuing contract of any teacher remain in full force and effect. . . . until terminated by a majority vote of the full membership of the board.

3. Three members of WCBE, a majority of the full membership, voted to terminate Grievant's employment as required by W. Va. Code § 18A-2-2.

4. Grievant has failed to prove that her termination violated W. Va. Code § 18A-2-2.

Accordingly, this grievance is **DENIED**.

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

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ANDREW MAIER

ADMINISTRATIVE LAW JUDGE

Dated: December 23, 1999