CONNIE SAMPLES,

Grievant,

v. DOCKET NO. 98-41-391

RALEIGH COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

This grievance was initiated by Connie Samples (Grievant) against Raleigh County Board of Education (RCBE), alleging that she was improperly removed from a substitute assignment as a half-time cook. This grievance was denied at Level I by Immediate Supervisor David Severt on August 31, 1998. The grievance was denied at Level II by Superintendent Dwight D. Dials on or about October 6, 1998. Proceedings at Level III were bypassed pursuant to W. Va. Code § 18-28-4(c).

A Level IV hearing was held on November 30, 1998, before the undersigned Administrative Law Judge, at the Grievance Board's Beckley office. Grievant was represented by John Roush, Esq. of the West Virginia School Service Personnel Association, and RCBE was represented by Erwin Conrad, Esq. The parties were given until January 4, 1999, to submit proposed findings of fact and conclusions of law, and RCBE did so. This grievance became mature for decision at that time. The following Findings of Fact pertinent to resolution of this matter have been determined based upon a preponderance of the credible evidence of record.

FINDINGS OF FACT

1. At the beginning of the 1998-1999 school year, increased enrollment requiredan additional half-time cook at Independence High School (IHS).

2. RCBE used a new automated calling system (ACS) to contact substitute service personnel on its substitute list to fill the position.

3. The ACS had never before been used during the school year.

4. The ACS called Grievant and offered her the multi-day, half-time position. Grievant

accepted.

5. Before Grievant could report to work, another cook at IHS called her and told her not to report because the position had been filled.

6. Grievant was instead offered a single day position, which she declined.

7. A combination of human error and the new ACS resulted in Grievant being offered the position in error.

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); 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. 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 equally supports both sides, a party has not met its burden of proof. Id. Grievant alleges that she was improperly removed from a substitute assignment as a half-time cook. She seeks reimbursement of the wages and benefits she would have earned during the three week assignment, and interest.

Grievant argues that RCBE improperly placed employees from its preferred recall list at the head of its substitute list, when they should have been ranked on the substitute list solely by seniority. Grievant further argued that she was not offered the position as a result of confusion or mistake on RCBE's part. RCBE argues that Grievant was offered the position in error.

Although the record in this grievance is exceedingly confusing, (See footnote 1) the evidence demonstrates that Grievant was offered the position in error. When increased enrollment required an additional half-time cook at IHS, a total of three full-time cooks and one half- time cook was needed. To complicate matters, one of the full-time cooks at IHS was absent and required a substitute. These events happened on August 25 and August 26, 1998, on or about the first day of school, (See footnote 2) and RCBE was using its new automated calling system, which had never before been used during

the school year, to contact substitute service personnel. At this point, in the words of RCBE's counsel, “confusion arose.”

RCBE's Food Services Director, Mrs. Williamson, set out, on or about August 25, 1998, to replace the absent full-time cook. The ACS was checked to make sure that IHS had not registered any absences with it, and it was found that no absences had beenregistered with the system. Mrs. Williamson then filled the position, apparently without using the ACS. (See footnote 3)

The next day, the principal of IHS, David Severt, used the ACS to request one full- time cook (to replace the absent full-time cook) and one half-time cook (to cope with increased enrollment). Mrs. Williamson was not informed of this. The ACS set about filling these vacancies by telephoning substitutes on the substitute list, in order of their seniority. The system soon reached Grievant's name, and Grievant accepted the half-time position by entering her personal identification number. The ACS apparently also filled the vacant full-time position a second time. As RCBE's Director of Personnel Emily Meadows credibly testified, there was a failure of communication.

Thus, when Mr. Severt arrived at IHS on the first day of school, he found four full- time cooks, and learned that Grievant was on her way. Sensibly applying common knowledge regarding the effect too many cooks can have on food preparation, Principal Severt had one of the cooks telephone Grievant and tell her not to come to IHS. (See footnote 4) Grievant then called the ACS to decline the position, which made her eligible for new assignments. Unfortunately, her call also caused the ACS to conclude that the position was still open, so it dutifully continued calling and offering it to more substitutes. Yet another substitute cook accepted the position, who then also had to be advised that no opening actually existed. Confusion did more than arise, it positively reigned. To use a current phrase, mistakes were made, which were freely acknowledged at Levels II and IV by Ms. Meadows. A combination of human error and the new automated calling system resulted in Grievant, and others, being offered the position in error. Grievant presented no evidence to show that she was not offered the position in error. Unfortunately for Grievant, mistakes by RCBE's employees do not bind RCBE. Berry v. Boone County Bd. of Educ., Docket No. 97-03-305 (Apr. 13, 1998); Chilton v. Kanawha County Bd. of Educ., Docket No. 89-20- 114 (Aug. 7, 1989). Accordingly, Grievant's claim must fail. (See footnote 5)

So ends the tale of the too-many cooks. The following Conclusions of Law support the Decision reached.

CONCLUSIONS OF LAW

1. Grievant bears 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); 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. 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).

2. Mistakes by a county board of education's employees do not bind it. Berry v. Boone County Bd. of Educ., Docket No. 97-03-305 (Apr. 13, 1998); Chilton v. Kanawha County Bd. of Educ., Docket No. 89-20-114 (Aug. 7, 1989).

3. Grievant failed to prove, by a preponderance of the evidence, that she was improperly removed from a substitute assignment as a half-time cook.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Raleigh 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. Any appealing party must advise this office of the appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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ANDREW MAIER

ADMINISTRATIVE LAW JUDGE

Dated January 13, 1999

Footnote: 1 *As Superintendent Dials noted during the Level II hearing, "it's pretty clear that it's unclear."*

Footnote: 2 *The record contains conflicting evidence as to the exact days and dates on which these events occurred.*

Footnote: 3 *RCBE presented evidence to show that some principals and other personnel were circumventing the new system.*

Footnote: 4 *It was at this point that Grievant was offered a single day position, which she declined.*

Footnote: 5 *Because this conclusion is dispositive of this grievance, Grievant's claim that RCBE improperly placed employees from its preferred recall list at the head of its substitute list need not be considered.*