JOAN MEREDITH,

Grievant,

v. Docket No. 00-27-247

MERCER COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Joan Meredith, grieves Mercer County Board of Education's ("MCBOE" or "Board") non-renewal of her probationary contract because of unsatisfactory evaluations. As relief Grievant seeks renewal of her probationary contract for the 2000- 2001 school year, the unsatisfactory evaluations removed from her personal file, and a letter of apology.

This grievance was denied at Levels I and II and waived at Level III. This case was appealed to Level IV on July 28, 2000. A Level IV hearing was held on December 5, 2000, and this case became mature for decision on January 17, 2001, after receipt of the parties' proposed findings of fact and conclusions of law. **(See footnote 1)**

After a detailed review of the record in its entirety, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. At the start of the 1999-2000 school year, Grievant was employed as a substitute secretary at Sun Valley School. She had taken and passed the competency examination. While Grievant was at Sun Valley, Sandra Stump, MCBOE's internal auditor,went to the school and showed Grievant how school secretaries are expected to handle the school's accounts.

2. A regular, full-time Secretary position was posted at Wade Elementary ("WE"). Grievant applied for and received the position.

3. Grievant started this position on or about October 5, 1999. Ms. Stump went to WE and again demonstrated to Grievant how to deal with the school's accounts.

4. WE's accounts were in balance at the end of July 1999.

5. From the beginning, Grievant had difficulty dealing with the regular school accounts and the Child Nutrition Program's account. Grievant also had difficulty with time management and other aspects of the position.

6. The school's principal, Sandra Puckett, discussed these issues with Grievant. She also briefly informed Superintendent Deborah Akers that Grievant was having some difficulties performing the duties of the position.

7. Karen Lambert, the Central Office Secretary in charge of the Child Nutrition Program, had to assist Grievant on a monthly basis to complete her Child Nutrition Program report.

8. The monthly accounting reports to the Central Office, were routinely inaccurate, and Ms. Stump was frequently required to assist Grievant with her accounting tasks. Grievant was unable to reconcile the accounts in October, November, and December. **(See footnote 2)**

9. In the Fall, Principal Puckett asked the Central Office for assistance in typing and sending out a report due to Grievant's inability to prepare the necessary report in a timely manner.

10. Principal Puckett evaluated Grievant on December 3, 1999. Grievant "Did Not Meet Standards" and was placed on an Improvement Plan.

11. This Improvement Plan was given to the Grievant at the time of the evaluation, and noted several areas of concern. They were: 1) inaccurate payroll forms; 2) inability to use the Windows and WVEIS computer programs effectively; and 3) inaccurate accounting in the school and Child Nutrition Program accounts, specifically failure to receipt all money, account for all checks, and maintain an up-to-date accounting record, in all areas, but especially in the area of the Child Nutrition Program.

12. Grievant went to another school for two half days in January for training from another Secretary.

13. Grievant's progress with her Improvement Plan was reviewed on January 25, 2000. Principal Puckett found some improvement, but noted there were still areas of concern. Deficiencies were still noted in the areas of accounting, the Child Nutrition Program, payroll, and the timely submission of reports.

14. On February 28, 2000, Grievant met with Principal Puckett to discuss her

Improvement Plan. Grievant had improved to the point she met standards, but Principal Puckett noted problems continued in the areas of time-management, accounting procedures and the Child Nutrition Program. 15. Also on February 28, 2000, Superintendent Akers sent Grievant a notice stating her termination would be recommended to the Board because of a reduction-in- force. Grievant was given the opportunity to request a hearing, but she chose not to do so. Grievant was either the least senior or the next to the least senior secretary in MCBOE's employ.

16. Grievant continued to experience problems with the accounting portion of her position, both with the school accounts and the Child Nutrition Program. Ms. Stump went to her supervisor, Treasurer James Leslie, to report the continuing problems and the failure of Grievant to improve with these tasks.

17. On March 6, 2000, Mr. Leslie wrote Grievant detailing a problem with the accounts of the Child Nutrition Program and requesting Grievant to submit a personal check for $173.00 to correct the error.

18. Mr. Leslie indicated the letter discussed in Finding of Fact 17 should be considered as a written reprimand.

19. Grievant did not grieve this written reprimand.

20. On March 8, 2000, Grievant wrote Mr. Leslie. Grievant refused to pay the requested amount as she felt it "would be admitting guilt in the matter" and she was not guilty. She requested a conference.

21. A conference was scheduled on March 14, 2000, but the morning of the conference, after everyone had arrived, Grievant informed Mr. Leslie she would be unable to meet because she did not have representation. 22. On March 16, 2000, Mr. Leslie wrote Grievant noting that since Grievant "declined to meet with him, he had directed Ms. Stump and Ms. Lambert to adjust entries so the necessary reports could be made. He directed Grievant that since she had admitted a mistake had been made "to provide resolution at the school level" by March 31, 2000.

23. On March 17, 2000, Mr. Leslie received a letter from Grievant's attorney, Anthony Veneri, explaining how he believed the mistakes had been made and noted erroneous receipts had been filled out. He gave Mr. Leslie recommendations as to how the current accounting

system could be improved and stated there were probably other methods Mr. Leslie could use to improve the system.

24. On March 23, 2000, Mr. Leslie responded to Mr. Veneri's letter, noting Mr. Veneri's misunderstandings about MCBOE's accounting system. Mr. Leslie noted it was Grievant who had written the receipts incorrectly, and who did not print the daily payment file for purposes of matching her money on hand with the receipts.

25. On March 29, 2000, Mr. Leslie wrote Grievant noting Ms. Stump had gone to WE to help her reconcile her February accounts and in the process had found several additional errors. He noted Grievant's continued errors placed the entire school system at risk for the loss of federal funds from the Child Nutrition Program. He requested a conference, as the problems could not be allowed to continue.

26. On March 30, 2000, after discussions with Superintendent Akers, Principal Puckett again evaluated Grievant and found she "Did Not Meet Standards".

27. On March 30, 2000, MCBOE voted to terminate Grievant's probationary contract for lack of need, due to a reduction-in-force. 28. On April 17, 2000, Grievant was placed on another Improvement Plan. Areas of deficiency were: 1) computer familiarity; 2) accounting inaccuracies; 3) multiple difficulties with the Child Nutrition Program including, inputting of inaccurate codes, inability to independently run-off and file the monthly report, and failure to run an accurate daily report. Grievant's failure to correct repeated accounting problems both with school funds and the Child Nutrition Program were seen as major problem areas. This Improvement Plan was to be in effect the remainder of the school year and to be reviewed at the beginning of the next school year.

29. Although Grievant testified to several errors she had made, she continued to deny that she had ever admitted she had made a mistake.

30. Grievant received more training and assistance than any other Secretary in MCBOE's system.

31. At the April 25, 2000 meeting of MCBOE, Grievant's contract was not one of the ones Superintendent Akers recommended and the Board approved for renewal.

32. Grievant did not receive notice of this failure to renew until she received a letter dated May 22, 2000. In this letter, Grievant was informed of her right to a hearing on the issue,

and she was asked to notify the Board of such request by June 6, 2000.

33. By letter dated May 23, 2000, Grievant requested a hearing on the issue and a statement of reasons for the failure to renew.

34. On June 13, 2000, in response to Grievant's request for a list of reasons, she was informed the failure to renew was "seniority resulting in a reduction in force and poor evaluations." 35. This hearing was scheduled and conducted on June 27, 2000. Grievant voiced no objections to the date of the hearing.

36. At the end of the non-renewal hearing, MCBOE voted there were substantive reasons for the non-renewal of Grievant's contract.

Issues and Arguments

Grievant argued she must be reinstated because MCBOE failed to give her notice of her non-renewal within ten days as required by W. Va. Code § 18A-2-8a. Grievant also argues the non-renewal action should have been taken under W. Va. Code § 18A-2-8, and was not. (See footnote 3) **Grievant also appeared to believe she had been accused of the misappropriation of funds. MCBOE was very clear that this was not an issue.**

MCBOE maintained the reduction-in-force was appropriate and conducted in a timely manner. After the reduction-in-force letter was sent, MCBOE noted Grievant continued to demonstrate her inability to perform the duties of the position, and Superintendent Akers decided not to put her name on the list to have her contract renewed. MCBOE asserted it was not necessary to follow W. Va. Code § 18A-2-8 here and cites to Baker v. Hancock County Board of Education, Docket No. 97-15-447 (May 5,1998), aff'd 543 S.E.2d 378, 2000 W. Va. Lexis 62 (June 28, 2000). (See footnote 4) **MCBOE agrees the notice of non-renewal was not timely given, but argues the error did not harm Grievant as she had already received notice she would not have the position for the following year, and she was afforded an opportunity for a hearing to ensure the non-renewal was not occurring for unfair reasons.**

Discussion

As the first order of business, it should be noted the West Virginia Supreme Court of Appeals held in Baker that the nonrenewal of a probationary contract at the end of the school

year, even for cause, is governed by W. Va. Code § 18A-2-8a, and W. Va. Code § 18A-2-8 does not apply. Baker WVSCA, supra; Baker GB, supra. (See footnote 5) **The rights and procedures applicable to probationary employees are discussed extensively in this Grievance Board's decision in Cordray v. Wood County Bd. of Educ., Docket No. 90-54- 267 (Jan. 31, 1991), but when a board of education, as in this case, "elects to merely not renew a probationary contract, it need only follow the provisions of Code § 18A-2-8a. . . ." Baker WVSCA, supra; Baker GB, supra.**

That Code Section provides:

> **The superintendent at a meeting of the board on or before the first Monday in May of each year shall provide in writing to the board a list of all probationary teachers that he recommends to be rehired for the next ensuingschool year. The board shall act upon the superintendent's recommendations at that meeting in accordance with section one of this article. The board at this same meeting shall also act upon the retention of other probationary employees as provided in sections four and five of this article. Any such probationary teacher or other probationary employee who is not rehired by the board at that meeting shall be notified in writing, by certified mail, return receipt requested, to such persons' last-known addresses within ten days following said board meeting, of their not having been rehired or not having been recommended for rehiring.**
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> **Any probationary teacher who receives notice that he has not been recommended for rehiring or other probationary employee who has not been reemployed may within ten days after receiving the written notice request a statement of the reasons for not having been rehired and may request a hearing before the board. Such hearing shall be held at the next regularly scheduled board of education meeting or a special meeting of the board called within thirty days of the request for hearing. At the hearing, the reasons for the nonrehiring must be shown.**

When a probationary contract is not renewed per the procedure set forth in Code § 18A-2-8a, the board is "not required to convene a pre-termination hearing because Grievant, in effect, was not terminated; rather, [her] contract, which is probationary and thus affords [her] no property interest in [her] employment, was not renewed." Cordray, supra (citing Belota v. Boone Co. Bd. of Educ., Docket No. 90-03-252 (Nov. 30, 1990); Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985)). Even if the reasons for non- renewal are disciplinary in nature, a probationary employee is not entitled to any protections beyond those provided for in W. Va. Code § 18A-2-8a. See WVSCA, supra; Baker GB, supra; Burrows v. Wood County Bd. of Educ., Docket No. 96-54-281 (Oct. 24, 1996).

Therefore, it must only be determined whether the provisions of the applicable statute, W. Va. Code § 18A-2-8a, were followed. In order to comply with that provision, a board of education should notify the employee of its decision by certified mail within tendays. Then, if the employee so requests, the Board must provide the reasons for the decision in writing and a hearing. Miller v. Bd. of Educ., 190 W. Va. 153, 437 S.E.2d 591 (1993).

Grievant argues the hearing was not held in a timely manner. Assuming Grievant's request for a hearing, dated May 23, 2000, was received on or about May the 25 or 26, 2000, then it was scheduled and held within thirty working days, on June 27, 2000. It should be noted Grievant did not object to the scheduling of the hearing.

Grievant also seems to argue that the June 16, 2000 letter was the first written notification that her contract was "terminated" for poor evaluations. Grievant appears to misunderstand W. Va. Code § 18A-2-8a. It is clear Grievant was aware she was having trouble completing the tasks she was required to perform. She had been placed on two Improvement Plans. Additionally, Grievant had received a written reprimand for failure to follow accounting directions and policies. (See footnote 6) **MCBOE did not terminate Grievant's contract, it merely decided not to renew the contract of a probationary employee who had demonstrated an inability to perform the duties of the position, and had failed to improve adequately with multiple on-the-job training sessions. Grievant received notice of the reasons for her termination in a timely manner after her request. Baker GB, supra.** (See footnote 7) **However, MCBOE did fail to give Grievant timely notice that her probationary contract was not renewed. The Board's meeting was on April 25, 2000, and Grievant did not receive notice of the nonrenewal until May 22, 2000, approximately a calendar month after the meeting and nineteen working days after the vote. All the parties agree this action did not follow the requirements of W. Va. Code § 18A-2-8a, which states notice is to be sent ten days following the Board meeting. It is noted Grievant did not bring up the issue of this late notice until the Level IV hearing, and MCBOE objected to amending the grievance.**

The Supreme Court's decision in Miller, supra, provides some helpful guidance in resolving what, if any, consequences should follow from the Board's delay. In discussing the reasons for the statute's requirements the Miller Court opined the reason for requiring such notice is so employees will "have an opportunity to respond in order to ensure that the

nonrenewal was not occurring for unfair reasons." 190 W. Va. at 158. Grievant received this opportunity and presented her side of the issue to the Board. MCBOE found no mistake in its prior decision, and it believed there were substantial reasons for not renewing Grievant's contract. At the non-renewal hearing, the multiple problems Grievant had in the position, and the steps MCBOE took to try and resolve them were presented to the Board.

"[A]n error which is not prejudicial to the complaining party is harmless and does not require reversal of the final judgment." Syl. Pt. 4, Burns v. Goff, 164 W.Va. 301, 262 S.E.2d 772 (1980). Although the Board did not give notice to Grievant of the non-renewal of her contract in a timely manner according to statute, Grievant has not demonstrated anyharm she has suffered by this delay, and, in fact, has at no point during this process ever contested the charges against her. (See footnote 8) **Further, she had already received notice she was being reduced-in-force. Accordingly, the delay in providing Grievant notice does not constitute sufficient cause for reversing the Board's decision as she has not shown substantial prejudice. Baker WVSCA, supra; Miller, supra.**

As stated above, Grievant has not contested the substance of the allegations. Accordingly, it is unnecessary to explore whether the reasons for the non-renewal were appropriate or justified. Nevertheless, it is well-established from all of the evidence of record that there were difficulties with Grievant's performance throughout the school year. She received two Improvement Plans which identified these problems, and identified the steps Grievant was to take in resolving her difficulties. Thus, MCBOE has provided a sufficient basis for the Board's decision. See Cordray, supra. (See footnote 9) **The undersigned Administrative Law Judge, based on the facts and circumstances of this case, does not believe Grievant was treated unfairly or that the reasons for the nonrenewal were arbitrary and capricious, but were indeed substantive in nature. In summary, the undersigned finds MCBOE substantially complied with all statutory and regulatory provisions applicable to Grievant's non-renewal. In accordance with the foregoing findings and discussion, the following Conclusions of Law are made.**

Conclusions of Law

1. When a board of education decides not to renew a probationary employee's contract

at the end of a school year, the provisions of W. Va. Code § 18A-2-8 do not apply. Cordray v. Wood County Bd. of Educ., Docket No. 90-54-267 (Jan. 31, 1991).

2. W. Va. Code § 18A-2-8a requires a county board of education to provide "after-the-fact" notice to a probationary employee that it has decided not to renew her contract within ten days of that decision. If the employee so requests, the board must provide the employee a list of reasons for the decision and a hearing on those reasons. Miller v. Bd. of Educ., 190 W. Va. 153, 437 S.E.2d 591 (1993).

3. The reason for requiring notice of non-renewal is so employees will "have an opportunity to respond in order to ensure that the nonrenewal was not occurring for unfair reasons." Miller, supra.

4. A probationary employee whose contract is not renewed has no property interest in her employment, is not entitled to due process of law, and does not have a right to a pre-termination hearing or notice. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985); Bd. of Regents v. Roth, 408 U.S. 564 (1972); Cordray, supra; Belota v. Boone County Bd. of Educ., Docket No. 90-03-252 (Nov. 30, 1990).

5. When a board of education elects to not renew a probationary contract at the end of the year, even "for cause", it is not required to follow the conditions of W. Va. Code§ 18A-2-8, it need only follow the provisions of W. Va. Code § 18A-2-8a. . . . Baker v. Hancock County Bd. of Educ., Docket No. 97-15-447 (May 5, 1998), aff'd 543 S.E.2d 378, 2000 W. Va. Lexis 62 (June 28, 2000).

6. "[A]n error which is not prejudicial to the complaining party is harmless and does not require reversal of the final judgment." Syl. Pt. 4, Burns v. Goff, 164 W. Va. 301, 262 S.E.2d 772 (1980). See Baker, supra.

7. A preponderance of the evidence in this case establishes that the MCBOE provided Grievant with all rights to which she was entitled under W. Va. Code § 18A-2-8a.

8. Grievant did not prove by a preponderance of the evidence that she was prejudiced by the Board's delay in providing late notice of the non-renewal of her probationary contract.

Accordingly, this grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of the Mercer 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 is required 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.

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JANIS I. REYNOLDS

Administrative Law Judge

Dated: January 31, 2001

Footnote: 1

Grievant was represented by Attorney J. W. Feuchtenberger, and Respondent was represented Attorney Kay Bayless.

Footnote: 2

Grievant maintained the accounts were incorrect when she came in October. This fact, if true, would not explain why the school's account continued to be incorrect.

Footnote: 3

Grievant also contended MCBOE's sole ground for dismissal was poor evaluations. Grievant came to this conclusion because MCBOE failed to present evidence at the non- renewal and Level II hearings about the reduction-in-force issue. It is noted Grievant informed the Board that she was not contesting the reduction-in-force issue. Grievant also testified at Level IV that she knew she was either the least senior or next to the least senior employee, and the reduction-in-force was not as issue. Additionally, it is noted Grievant had an opportunity to request a hearing before the Board on the reduction-in-force issue and did not. Accordingly, this issue will not be addressed further as the reduction-in-force was appropriate.

Footnote: 4

Throughout the rest of this Decision, the cited portions of the Baker Decisions will be noted as Baker GB, for the Grievance Board Decision, and Baker WVSCA, for quotations from the West Virginia Supreme Court of Appeals Decision.

Footnote: 5

However, if a board of education wishes to dismiss probationary employee for disciplinary reasons prior to

the end of the school year, then it must to proceed under W. Va. Code § 18A-2-8. Cordray, supra.

Footnote: 6

The same reasoning stated in Baker WVSCA, supra applies here. "There can be no question that a reasonable employee in [Grievant's] position would understand why the Board voted not to renew her contract."

Footnote: 7

W. Va. Code § 18A-2-8a does not place a time limitation upon the Board's response to the request for written reasons.

Footnote: 8

Grievant did however argued she did not receive sufficient training for the position, and it was MCBOE's responsibility to provide this training. Grievant maintained that because MCBOE did not provide her sufficient training, it should renew her probationary contract and provide her with further training, preferably in a classroom setting.

Footnote: 9

As discussed in Cordray, supra, there is no "for cause" standard for non-renewal of a probationary employee's contract, and a board of education need only show that there were substantive reasons for its decision.