STACEY GRIMM,

Grievant,

v. **Docket No. 01-43-465**

RITCHIE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Stacey Grimm, employed as a teacher by the Ritchie County Board of Education (RCBE) filed a level one grievance on May 31, 2001, in which she alleged violations of W. Va. Code §§ 18A-4-7a and 18A-4-7b when she was denied seniority credit for the 1998-1999 school year. Grievant requested seniority for the 1998-1999 school year as relief. Grievant's immediate supervisor lacked authority to grant the grievance at level one, and the matter was denied by Dr. Richard N. Butler, Superintendent, following an evidentiary hearing at level two. Grievant elected to bypass consideration at level three, as is permitted by W. Va. Code § 18-29-4(c), and advanced her appeal to level four on August 3, 2001. Grievant, represented by William White, WVEA consultant, and RCBE, represented by Howard E. Seufer, Jr., Esq., of Bowles Rice McDavid Graff & Love, agreed to submit the grievance for decision at level four based upon the lower level record. The matter became mature for decision on October 1, 2000, the due date for the filing of proposed findings of fact and conclusions of law.

The facts of this matter are undisputed and may be set forth as the following formal findings of fact.

Findings of Fact

1. By contract dated April 28, 1998, Grievant was employed by RCBE as a day- to-day substitute teacher during the 1998-1999 school year. 2. By posting dated August 31, 1998, RCBE advertised a vacancy for a Title I Elementary Teacher to be employed on a part-time basis of approximately two and one- half hours per day.

3. Grievant was awarded the Title I teaching position effective September 14, 1998, but continued to work under the substitute employee contract.

4. Grievant was employed as a Title I teacher for a total of one hundred forty- three (143) days

during the 1998-1999 school year. Grievant was compensated for three hours of work per day, but received no benefits or seniority credit for this assignment.

5. Grievant was employed by RCBE as a regular, full-time teacher during the 1999-2000 and 2000-2001 school years.

6. Grievant's employment was not renewed in Spring 2001 as the result of a reduction in force; however, that action was rescinded on July 26, 2001.

7. RCBE employs three additional teachers certified in Elementary Education who are credited with the same amount of seniority as 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 §4.21 (2000); 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 LawDictionary (6th ed. 1991), Leichliter v. W. Va. Dept. of Health and Human Res., 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 argues that she is entitled to seniority credit for the one hundred forty-three days she worked during the 1998-1999 school year, on a prorated basis. Based on the standard work day of eight hours, Grievant's calculation at 0.375 x143 would entitle her to 53.625 days of seniority. In support of this claim, Grievant cites W. Va. Code § 18A-4-7a, which states in part that, "[e]mployment for a full employment term shall equal one year of seniority, but no employee may accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated."

RCBE asserts that Grievant was neither a "regular" or a "full-time" employee, as addressed in W. Va. Code § 18A-4-7a, nor was she employed for a "full employment term" which would entitle her to seniority as a part-time employee under the provisions of W. Va. Code § 18A-4-7b. Because Grievant did not meet the statutory conditions, RCBE argues she was not entitled to any regular

seniority for the 1998-1999 school year.

It appears that this specific issue has not been previously addressed by the Grievance Board. First, even through RCBE did not issue Grievant a regular, part-time employment contract for the 1998-1999 school year, both the posting and the Board minutes indicate the position was a regular, part-time assignment. There is no evidence that Grievant was assigned to the Title I position to substitute for another regular employee. Having determined that Grievant was a regular, part-time employee for a portion of the 1998-1999 school year, RCBE's assertion that Grievant is not entitled to regular seniority credit for that time would simply be unjust. Certainly, the legislature hasaddressed a number of employment situations, i.e., full-time but less than the complete school year, and part-time for the entire year, but has not yet specifically addressed part- time employees who do not complete the entire school year. The following excerpts do provide some guidelines for this situation.

W. Va. Code § 18A-4-7a (a) - "[a] professional employee shall begin to accrue seniority upon commencement of the employee's duties."

W. Va. Code § 18A-4-7a (b) - "[a]n employee shall receive seniority credit for each day the employee is professionally employed regardless of whether the employee receives pay for that day."

W. Va. Code § 18A-4-7a (i) - "[e]mployment for a full employment term shall equal one year of seniority, but no employee may accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated."

W. Va. Code § 18A-4-7b(e) - [a]ny professional employee employed for a full employment term but in a part-time position shall receive seniority credit for each day of employment prorated to the proportion of a full employment day the employee is required to work . . .a part-time employee shall be defined as an employee who is employed less than three and one-half hours per day."

Because seniority is an important factor throughout a teacher's career, it would be unreasonable to believe that the legislature intended to deprive part-time employees who work less than the full employment term of any credit. Under these circumstances,proration of both the number of days worked and the number of hours worked would be consistent with existing guidelines.

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

Conclusions of Law

1. 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 §4.21 (2000); 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.

2. Grievant was regularly employed by RCBE as a part-time teacher effective September 14, 1998.

3. Grievant is entitled to seniority earned as a result of her regular employment during the 1998-1999 school year, albeit on a prorated basis.

Accordingly, the grievance is **GRANTED**, and RCBE Ordered to adjust Grievant's seniority consistent with this decision.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Ritchie County and such appeal must be filed within thirty (30) days ofreceipt 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.

Date: October 29, 2001 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE