KAREN STROTHER and REBECCA KNIGHT,

Grievants,

v. Docket No. 02-17-112

HARRISON COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, Karen Strother and Rebecca Knight, employed by the Harrison County Board of Education (HCBE) as Coordinator/Secretaries, filed level one grievances on April 30, 2001, in which they alleged they were denied the appropriate salary supplement when a new schedule was approved on April 3. For relief, Grievants request the Level C Coordinator supplement, effective from the date it was awarded to other employees. The record does not include a level one decision. The grievance was denied at level two, and HCBE declined to review the matter at level three. Appeal was made to level four on April 23, 2002, and an evidentiary hearing was conducted on October 29 and November 22, 2002. Kathleen Abate, Esq., represented Grievants, and Basil R. Legg, Jr., Esq., represented HCBE. The matter became mature for decision upon receipt of proposed findings of fact and conclusions of law filed by the parties on or before February 23, 2003.

The following facts are derived from the record in its entirety.

Findings of Fact

1. Grievant Karen Strother was first employed by HCBE as a Secretary III in 1984. She successfully bid upon the position of Certification Analysis and RecordsCoordinator in January 1992, and has held the multiclassified title of Coordinator/Secretary III since that time.

2. Grievant Strother's duties include: processing new professional personnel files; verifying experience and certification of teachers for salary increases and other matters; issuing contracts; updating computer records; assisting with the production of letters of

assignment and salary notification; and maintaining substitute teacher lists and files. She also advises the administration regarding individuals' certification and seniority during a reduction in force, and the necessary certification when positions are posted. She obtains waivers for teachers assigned out of field, and attends state and regional meetings for certification officers.

3. Grievant Rebecca Knight was initially employed by HCBE on May 6, 1992, as a Secretary III. Grievant Knight was reclassified effective April 2, 1996, as Coordinator of Personnel Computer Operations/Secretary IIIA. She has held that multiclassification continuously since that time.

4. Grievant Knight's duties include: operating the WVEIS computer program; producing and maintaining files for all service personnel; verifying experience and maintaining service personnel seniority lists; issuing contracts for extracurricular assignments; attending state/regional meetings; assisting with letters of transfer, assignment, and salary notification; and advising the superintendent regarding the posting of positions.

5. To correct an improper practice whereby certain service personnel had been compensated based upon the professional personnel salary supplement list, a supplemental salary schedule for service personnel was implemented by HCBE in April2001. This schedule provided, in pertinent part, that the following classifications would receive the stated supplements:

Director/Coordinator Level A - $17,500, plus 31% supplemental index (See footnote 1) **;**

Director/Coordinator Level B - $11,000, plus 23% supplemental index;

Director/Coordinator Level C - $11,000, plus 15% supplemental index;

and,

Coordinator/Secretary - $3200 per twelve month contract, plus $15 per day of employment.

6. This revised supplemental salary schedule did not change Grievants' salaries since they were already receiving the stated amount for the Coordinator/Secretary classification.

7. The Director/Coordinator of Finance performs accounting duties for HCBE, including accounts receivable and payable, issuing payroll checks, maintaining financial personnel records, preparing tax reports, and assisting in the administration, supervision, and training

of the financial staff. This employee is not multiclassified, and was awarded a Level C salary supplement, which increased her salary by $64. This individual has historically earned significantly more than Grievants.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their 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); Toney v. Lincoln County Bd. of Educ., Docket No. 99-22-046 (Apr. 23, 1999); Bowen v. Kanawha County Bd. of Educ., Docket No. 99-20-039 (Mar. 30, 1999); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997). See W. Va. Code § 18-29-6. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden Id.

Grievants allege they do not perform Secretarial duties but rather, their responsibilities are similar to those of the Director of Finance, therefore, HCBE's failure to assign them as Directors/Coordinators, Level C on the revised pay scale, results in discrimination and favoritism. The Board asserts that Grievants were not treated in a discriminatory fashion because unlike the other Directors/Coordinators, they are multiclassified.

W. Va. Code § 18A-4-5b provides that "uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county[.]" This provision has been interpreted to mean that boards of education are required only to provide uniform benefits and compensation to similarly situated employees, meaning those who have "like classifications, ranks, assignments, duties and actual working days." Airhart v. Wood County Bd. of Educ., ___ W. Va. ___, 569 S.E.2d 422 (2002); Covert v. Putnam County Bd. of Educ., Docket No. 99-40-463 (Feb. 29, 2000); Stanley v. Hancock County Bd. of Educ., Docket No. 95-15-217 (Sept. 29, 1995). Grievants seeking to enforce the uniformity provisions must establish that their

duties and assignments are like those of the employees to whom they are attempting to compare themselves. Locket v. Fayette County Bd. of Educ., Docket No. 01-10-477 (Dec. 28, 2001); Adkins v. Lincoln County Bd. of Educ., Docket No. 97-22-165 (Sept. 24, 1997).

The evidence establishes that Grievants are unquestionably multiclassified. Although both Grievants testified that they do not function as secretaries, neither has attempted to correct her classification. Additionally, Frank Devono, Acting Supervisor of Personnel, testified at level two that Grievants do perform secretaril duties, including answering the phone, maintaining files, reports, and lists, and typing contracts. By comparison, the Director of Finance is responsible for the compilation of information and production of tax reports and other financial documents. Her position requires a Bachelors Degree, and involves an advanced degree of complexity and problem solving. The scope of her work potentially impacts the entire school system.

Grievants have not demonstrated they are entitled to the Director's supplement, as they do not serve as Directors on a full-time basis like the Directors who receive the supplement, and in fact, have duties which the other Directors do not have. Thus, their duties are not like those of other Directors. See Weimer -Godwin v. Upshur County Bd. of Educ., 179 W. Va. 423, 369 S.E.2d 726 (1988).

For similar reasons, Grievants have not proven discrimination and favoritism. Discrimination is defined by W. Va. Code §18-29-2(m) as "any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees." W. Va. Code §18-29-2(o) defines favoritism as "unfair treatment of an employee as demonstrated by preferential, exceptionalor advantageous treatment of another or other employees." In order to establish a prima facie case of discrimination or favoritism, grievants must establish the following:

(a)that they are similarly situated, in a pertinent way, to one or more other employee(s);

(b)that they have, to their detriment, been treated by their employer in a manner that the other employee(s) has/have not, in a significant particular; and,

(c)that such differences were unrelated to actual job responsibilities of the grievants and/or the other employee(s) and were not agreed to by the grievant in writing.

Steele v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989); See Flint v. Bd. of Educ., 207 W. Va. 251, 531 S.E.2d 76 (1999). Once the grievants establish a prima facie case of discrimination, the burden shifts to the employer to demonstrate a legitimate, nondiscriminatory reason to substantiate its actions. Thereafter, grievants may show that the offered reasons are pretextual. Deal v. Mason County Bd. of Educ., Docket No. 96-26-106 (Aug. 30, 1996). See Tex. Dep't of Community Affairs v. Burdine, 450 U.S. 248 (1981); Frank's Shoe Store v. W. Va. Human Rights Comm'n, 178 W. Va. 53, 365 S.E.2d 251 (1986); Conner v. Barbour County Bd. of Educ., Docket Nos. 93-01-543/544 (Jan. 31, 1995).

Grievants cannot make a prima facie case of discrimination or favoritism pursuant to the above standard since the evidence establishes that they are not similarly situated to the Director of Finance.

Consistent with the foregoing, the following conclusions of law are made.

Conclusions of Law 1. In a non-disciplinary matter, Grievants have the burden of proving their claims 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. W. Va. Code § 18A-4-5b provides that "uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county[.]"

3. Grievants do not serve as Directors on a full-time basis like the Directors who receive the supplement, andin fact, have secretarial duties which the other Directors do not have. Thus, their duties are not like those of other Directors. Hypes v. Nicholas County Bd. of Educ., Docket No. 02-34-105 (June 11, 2002); Locket v. Fayette County Bd. of Educ., Docket No. 01-10-477 (Dec. 28, 2001); Adkins v. Lincoln County Bd. of Educ., Docket No. 97-22-165 (Sept. 24, 1997).

4. Discrimination is defined by W. Va. Code §18-29-2(m) as "any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees."

5. W. Va. Code §18-29-2(o) defines favoritism as "unfair treatment of an employee as

demonstrated by preferential, exceptional or advantageous treatment of another or other employees."

6. In order to establish a prima facie case of discrimination or favoritism, grievants must establish the following:(a)that they are similarly situated, in a pertinent way, to one or more otheremployee(s);

(b)that they have, to their detriment, been treated by their employer in a manner that the other employee(s) has/have not, in a significant particular; and,

(c)that such differences were unrelated to actual job responsibilities of the grievants and/or the other employee(s) and were not agreed to by the grievant in writing.

Steele v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989); See Flint v. Bd. of Educ., 207 W. Va. 251,531 S.E.2d 76 (1999).

7. Grievants have failed to establish a prima facie case of discrimination or favoritism.

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Harrison 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 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: MARCH 31, 2003 SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1 The supplemental index is not clearly defined in the record, but Respondent Exhibit One notes that "[t]he specified supplemental index percentage is multiplied by appropriate pay grade level, including years

of service and length of employment term to arrive at the total supplement."