DAVID FRANZ,

Grievant,

v. **Docket No. 03-12-199**

GRANT COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

David Franz ("Grievant") initiated this proceeding on May 6, 2003, challenging the elimination of his salary supplement. There was no response at level one, (See footnote 1) so Grievant appealed to level two on May 19, 2003. A level two hearing was held on June 26, 2003, and the grievance was denied in a decision dated July 1, 2003. Level three consideration was bypassed, and Grievant appealed to level four on July 9, 2003. After a level four hearing was scheduled, the parties agreed to submit this matter for a decision based upon the lower level record, supplemented by fact/law proposals. This matter became mature for consideration upon receipt of the parties' submissions on October 31, 2003. (See footnote 2)

The following findings of fact are made based upon a preponderance of the evidence of record.

Findings of Fact

1. Grievant has been employed by Respondent Grant County Board of Education ("GCBOE") as Chief Bus Mechanic since August 11, 1989. 2. Since his employment began, Grievant has received a salary supplement in addition to the minimum salary provided for by state statute.

3. Grievant's salary supplement was funded by county funds.

4. For several years, Respondent operated with the benefit of a voter-approved excess school levy. That levy was not renewed by the voters for the 2003-2004 school year, pursuant to a special election held on March 8, 2003.

5. The loss of the excess levy resulted in an annual loss of over $800,000 for Respondent.

6. The lost levy money was chiefly used for items such as utilities, maintenance and repair of facilities, and substitute teacher salaries.

7. Without the excess levy money, administrators for GCBOE were forced to balance their operating budget for the upcoming school year, using existing funds to cover some of the expenses previously paid for by levy funds. This resulted in numerous budget cuts, including elimination of positions, reductions of contract terms for some employees, and elimination of salary supplements for others.

8. Grievant was notified that his contract would be terminated in the spring of 2003, so that his prior contract could be replaced with a new one, which did not include the supplement.

9. Several professional employees of GCBOE, along with one other service employee, had salary supplements removed from their pay due to the loss of the levy.

10. The State Board of Education approved Respondent's elimination of salary supplements prior to their implementation.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his 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.

Grievant contends that elimination of his salary supplement violated the “non- relegation” clause contained in W. Va. Code § 18A-4-8(m), which states that a service employee may not, without his consent, be “relegated to any condition of employment which would result in a reduction of . . . salary, rate of pay, compensation or benefits” for the current fiscal year or the salary or compensation to which the employee would be entitled if he continued in the same position. Technically, Grievant is correct that the elimination of his salary supplement results in a violation of this provision.

However, as Respondent points out, another statute also applies to the current situation. W. Va. Code § 18A-4-5b, which deals directly with county supplemental salary schedules, contains the following provision:

> [I]n establishing such local salary schedules, no county shall reduce local funds allocated for salaries in effect on the first day of January, one thousand nine hundred ninety, and used in supplementing the state minimum salaries . . . . **unless forced to do so by defeat of a special levy**, or a loss in assessed values or events over which

> it has no control and for which the county board has received approval from the state board prior to making such reduction.

(Emphasis added.) Clearly, a county board of education is authorized to reduce county funds used for salary supplements when there is a loss of an excess levy or other events affect its budget over which it has no control. Under the in para materia rule of statutory construction, statutes which relate to the same subject matter must be read and applied together so that the Legislature's intent can be discerned from the whole of the enactment. Manchin v. Dunfee, 174 W. Va. 532, 327 S.E.2d 710 (1984); Farley v. Zapata Coal Corp., 167 W. Va. 630, 281 S.E.2d 238 (1981); Eastham v. Cabell County Bd. of Educ., Docket No. 92-06-397 (Apr. 16, 1993). Pursuant to this rule, the two statutes set forth above must be read not to conflict with one another. Although, pursuant to W. Va. Code § 18A-4-8(m), service employees are not to be subjected to salary reductions without their consent, W. Va. Code § 18A-4-5b must be construed as an exception to that rule. Accordingly, employee salaries may be adversely affected when an excess levy is lost, and supplements may be reduced or eliminated with state board approval, which was accomplished in this case. See Turner v. Grant County Bd. of Educ., Docket No. 12-86-257-3 (Dec. 31, 1986).

Grievant also contends that the recent Supreme Court decision in Crock v. Harrison County Board of Education, 211 W. Va. 40, 560 S.E.2d 515 (2002), supports the proposition that the non-relegation clause prohibits elimination of his supplement. However, Crock, supra, did not involve a situation in which loss of an excess levy was a factor, and the portion of the grievant's salary eliminated was an experience credit, rather than a supplement, so W. Va. Code § 18A-4-5b was not implicated. Therefore, Crock, supra, cannot be found to prohibit Respondent's elimination of Grievant's supplement after loss of the excess levy, as permitted by W. Va. Code § 18A-4-5b.

The following conclusions of law support the decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his 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. Local salary supplements may be reduced or eliminated by a county board of education, with

state board approval, when there is a loss of an excess school levy. W. Va. Code § 18A-4-5b; See Turner v. Grant County Bd. of Educ., Docket No. 12-86-257- 3 (Dec. 31, 1986).

3. Due to the loss of its excess levy, Respondent was permitted to reduce Grievant's salary supplement after receiving state board of education approval.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Grant 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: December 2, 2003 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Respondent is not pursuing a timeliness defense.

Footnote: 2

Grievant was represented by counsel, John E. Roush, and Respondent was represented by counsel, Dennis V. DiBenedetto.