REBECCA SPROUT,

Grievant,

v. **Docket No. 02-17-375**

HARRISON COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Rebecca Sprout ("Grievant") filed a level one grievance on April 10, 2000, alleging entitlement to a supplement for serving as yearbook sponsor at Gore Middle School since 1984. The grievance was denied at level one on April 13, 2000, and, following a hearing held on November 7, 2002, it was denied at level two on December 16, 2002. Level three consideration was waived, and Grievant appealed to level four on January 20, 2003. Pursuant to the request of the parties, this matter was placed in abeyance for an extended period of time, after which a level four hearing was held in Westover, West Virginia, on October 29, 2004. Grievant was represented by counsel, John E. Roush, and Respondent was represented by counsel, Sonya L. Sibold and Nancy W. Brown. This matter became mature for consideration upon receipt of the parties' fact/law proposals on December 1, 2004.

The following pertinent facts have been proven by a preponderance of the evidence of record.

Findings of Fact

___1. Grievant has been employed by Respondent as a secretary since 1970. Currently, she is assigned to Gore Middle School as a Secretary III/Accountant II. 2. Since approximately 1980, Grievant has assisted students at Gore Middle School with the yearbook.

3. When Grievant was first given the yearbook assignment, she was aware that it was considered volunteer work, for which she would receive no additional compensation.

4. Grievant performed the yearbook sponsor duties from 1980 through 1999 without

compensation over and above her regular salary. At the beginning of each school year, volunteers were requested to perform these duties, and Grievant agreed to do so when no teachers expressed interest in the position.

5. On September 23, 1999, the position of yearbook sponsor at Gore Middle School was posted for competitive bid. Grievant was the successful applicant for the position.

6. After being placed in the position pursuant to the 1999 posting, Grievant received an extracurricular contract and additional pay for her duties as yearbook sponsor.

7. Since approximately 1984, Respondent has posted and filled yearbook sponsor positions as extracurricular jobs. The job description for yearbook sponsor requires that the individual filling the position be a professional employee. (See footnote 1)

8. Upon discovering that a teacher at another Harrison County middle school had been receiving supplemental pay as yearbook sponsor for several years, Grievant inquired of the personnel office whether she could be paid for her previous service as yearbook sponsor. She did this by correspondence dated February 21, 2000. 9. After receiving no response to her request for compensation as yearbook sponsor, Grievant filed this grievance on April 13, 2000.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her 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 (2004); 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 Respondent's refusal to compensate her for her extracurricular duties as yearbook sponsor prior to 1999 constitutes a violation of the so- called “uniformity clause” of W. Va. Code § 18A-4-5b, which 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[.]” (See footnote 2) Accordingly, Grievant would be required to establish that she is not being uniformly compensated as compared to employees performing similar duties, i.e., other yearbook sponsors. See Tonelli v. Raleigh County Bd. of Educ., Docket No. 03-41-242 (Sept. 29, 2003).

However, as Respondent argues, this Grievance Board has held under similar circumstances that

an employee cannot voluntarily perform additional duties, then seek compensation for them at a later date. In Vencill v. Kanawha County Board of Education, Docket No. 93-20-196 (May 26, 1994), the grievant agreed to coach a girls' softball team,knowing that he would receive no compensation for his services, then requested compensation after the season had concluded. Because the evidence clearly established that the employee performed the services with no expectation of payment, there was no obligation placed upon the school board to compensate him after the fact. The same conclusion was reached with regard to a teacher who managed a tutoring program, knowing there would be no compensation for her extra duties, so the school board was not required to pay her for the work. Anderson v. Gilmer County Bd. of Educ., Docket No. 95- 11-197 (Aug. 1, 1995).

Extracurricular assignments are to be made only by mutual agreement of the employee and the superintendent as to terms, hours, and compensation, subject to board approval, and their provisions must be contained in a separate written contract. W. Va. Code § 18A-4-16. See Catron v. Mingo County Bd. of Educ., Docket No. 95-29-060 (July 11, 1995); Vencill, supra. Under the circumstances presented, there was no mutual agreement for Grievant to be compensated for extracurricular work. On the contrary, Grievant volunteered at the onset of each school year to perform the yearbook sponsor duties without compensation. She could have refused to perform these duties at any time, but testified that she wanted to see that the students were able to produce a yearbook, since it may not have been possible without a sponsor. While this is to be commended, Grievant may not request compensation for services she performed in the past on a volunteer basis, pursuant to the holdings set forth above.

The following conclusions of law support this decision.

Conclusions of Law

1. In a non-disciplinary matter, Grievant has the burden of proving her 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 (2004); 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. Extracurricular assignments are to be made only by mutual agreement of the employee and the superintendent as to terms, hours, and compensation, subject to board approval, and their provisions must be contained in a separate written contract. W. Va. Code § 18A-4-16. See Catron v.

Mingo County Bd. of Educ., Docket No. 95-29-060 (July 11, 1995); Vencill v. Kanawha County Board of Education, Docket No. 93-20-196 (May 26, 1994).

3. When an employee performs extra work voluntarily, with no expectation of compensation, the school board is not obligated to pay the employee for extracurricular work. Anderson v. Gilmer County Bd. of Educ., Docket No. 95-11-197 (Aug. 1, 1995); Vencill, supra.

4. Grievant voluntarily performed duties as yearbook sponsor at Gore Middle School from 1984 to 1999 with no expectation of payment; accordingly, she is not entitled to back pay for performing extracurricular work.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Harrison 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.

Date: January 10, 2005 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Apparently because Grievant was the only applicant interested in the position, the requirement of professional certification was not applied to her.

Footnote: 2

Although Respondent argued at level two that this grievance was untimely, this defense was not asserted at the level four hearing nor in Respondent's post-hearing submission. Accordingly, that argument is deemed to have been abandoned and will not be addressed.