NANCY MINNEY,

Grievant,

v. Docket No. 05-11-072

GILMER COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Nancy Minney ("Grievant"), employed by the Gilmer County Board of Education ("GCBE") as a Secretary, filed a level one grievance on November 16, 2004, in which she alleged violations of GCBE Policy 4219.11, W. Va. Code § 18A-4-8, Senate Bill 121, and favoritism, when she was denied prior service credit. (See footnote 1) **The grievance was denied at levels one, two, and three. Grievant appealed to level four on March 2, 2005. An evidentiary hearing was conducted on August 25, 2005, at which time Grievant was represented by John E. Roush, Esq., of the West Virginia State Service Personnel Association, and GCBE was represented by Kimberly Croyle, Esq., of Bowles Rice McDavid Graff & Love. The grievance became mature for decision upon receipt of proposed findings of fact and conclusions of law on September 30, 2005.**

The following facts have been derived from a preponderance of the evidence admitted at levels two and four.

Findings of Fact

1. Grievant was first employed by GCBE in 1992 as a substitute secretary. In 1997 she was assigned as a substitute aide, until 1999, when she became a regular employee assigned as a Secretary III/Executive Secretary. Grievant's employment was terminated as the result of a reduction in force in 2003. 2. During the 2003-2004 school year, Grievant was employed by Glenville State College, but placed as an aide at Gilmer County High School.

3. Grievant was re-employed by GCBE as an Executive Secretary effective the 2004-2005 school year.

4. From 1972 to 1985, Grievant was employed by Langford Sanitation as Office Manager. Her duties in this position included bookkeeping, completing the payroll, billing, and

establishing route runs.

5. By letter dated September 16, 2004, Grievant requested that she be given prior work experience for the years she was employed by Langford Sanitation Service.

6. Two other employees of GCBE received prior experience credit a significant period of time after they were hired.

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 (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. "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 & Human Res., Docket No. 92-HHR-486 (May 17, 1993). Grievant argues that she should receive the twelve years of prior experience credit for three reasons. First, after having had her employment as an aide and a Secretary II terminated, she was initially employed as an Executive Secretary for the 2004-2005 schoolyear. She reasons the return to GCBE could be considered her initial employment for purposes of the policy. Second, the granting of the credit to employees outside the time frame results in a violation of the uniformity clause in W. Va. Code § 18A-4-5b. Third, Grievant argues that the year she was employed by Glenville State College should be considered experience gained in a school system, for which there is no time limit under the terms of the policy.

GCBE argues that it has applied Policy 4219.11 uniformly, distinguishing the two individuals cited by Grievant. GCBE denies that any past practice has been established to award experience credit beyond the time lines of the policy, and asserts that Grievant has failed to establish that her employment at Langford Sanitation constituted experience related to her present duties as secretary.

GCBE Policy 4219.11, “Prior Service Credit,” provides that credit will be given for experience credit earned in a school system. “Related experience, not gained with a school system, will be considered on an individual basis and only at the time of employment.”

Grievant concedes that she did not request the credit either at the time she was employed as a substitute, or as a regular employee. This strict time limitation would be harsh if an individual is not made aware that the prior service can be credited; however, Grievant's spouse was Superintendent for a time in Gilmer County, and would reasonably have been expected to advise Grievant regarding this matter. Further, Grievant testified that she talked about this matter at school in 1999, the year she was hired as a regular employee, but did not pursue the credit at that time. Grievant's one year of workexperience for GCBE through Glenville was as an Aide, duties which are not related to her duties as Executive Secretary.

Neither does the evidence support Grievant's claim of entitlement under the uniformity provision of W. Va. Code § 18A-4-5b, which states:

The county board of education may establish salary schedules which shall be in excess of state minimums fixed by this article.

These county schedules shall be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation of equipment or other requirements. Further, 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.

Grievant provided the names of two employees who had been granted prior experience credit years after they were hired by GCBE. These individuals were shown to be exceptions by GCBE. The first employee had actually been granted credit at the time of hiring, but it had not been included in the payroll calculations. The oversight was not identified for a period of years, but was merely a correction, and not a deviation from the policy. The second employee was granted the prior experience credit several years after he was hired, over the recommendation of the Superintendent. No reason was given for the action. In this instance, Grievant has established a violation of both the uniformity provision, and GCBE policy. The appropriate relief in this situation would be for GCBE to correct the violation, not to engage in a second improper act.

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 (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. Grievant failed to prove by a preponderance of the evidence that she is now entitled to prior experience credit under the provisions of GCBE Policy 4219.11.

3. Grievant has proven GCBE violated the uniformity provision of W. Va. Code § 18A-4-5b, when it awarded prior experience credit to another employee many years after he was employed; however, this violation does not entitle Grievant to the relief requested.

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Gilmer 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: NOVEMBER 18, 2005

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1 ***Senate Bill 121 was not identified, and cannot be addressed.***