MARY HEDRICK, et al.,

Grievants,

v. **Docket No. 05-HHR-226**

WEST VIRGINIA DEPARTMENT OF

HEALTH AND HUMAN RESOURCES/

BUREAU FOR CHILD SUPPORT ENFORCEMENT

and DIVISION OF PERSONNEL,

Respondent.

D E C I S I O N

On May 5, 2005, Grievants, Mary Hedrick, Susan Dennis, Karleana Meeks, Aline Workman, Saundra Daugherty, and William Stephens filed this grievance with their employer, the Department of Health and Human Resources ("HHR")/Bureau for Child Support Enforcement ("BCSE"). Grievants assert they should be reclassified within Health and Human Resources Specialist series because other employees in BSCE have been reclassified within this series. The relief sought is "To be reclassified appropriately within the DHHR Specialist series: the series of best fit."

This grievance was dismissed at Level III on June 9, 2005, and Grievants filed to Level IV on June 28, 2005. At Level IV, Respondents filed a Motion to Dismiss on August 22, 2005, and a pre-hearing telephonic conference was held on September 21, 2005, to discuss this Motion. This case became mature for decision on October 18, 2005, the day for the submission of proposed findings of fact and conclusions of law. (See footnote 1)

Issues and Arguments

Respondents assert Grievants signed a settlement agreement effective March 3, 2005, by which they were reclassified to Child Support Specialists 3, and at that time they agreed to dismiss "any and all other claims." Respondents maintain this grievance is barred by that settlement agreement.

Grievants assert multiple arguments and basically argue they have been discriminated against because other units and their employees within BSCE have been treated more favorably. These employees have been reclassified within Health and Human Resources Specialists series, and

Grievants have not been. Grievants also maintain they were lied to by the Division of Personnel.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact. Because of its long history, some background on the grievance will be set forth.

Findings of Fact

1. There have been numerous changes in classifications within BCSE in the past several years, and additional classifications have been developed. Grievants were reclassified from Health and Human Resources Specialist to a new classification, Child Support Specialists 2, in August 2003. BCSE asked to reallocate Child Support Specialists 2 to Child Support Specialists 3 in December 2003. This request was denied by the Division of Personnel on April 14, 2004, as it found the Child Support Specialists 3 classification was not the best fit for Grievants' duties. Grievants remained classified as Child Support Specialists 2.

2. On April 16, 2004, Grievants filed their first grievance, alleging they were misclassified as Child Support Specialists 2 and seeking reallocation to Child SupportSpecialists 3, Pay Grade 13, or Health and Human Resources Specialist, Pay Grade 13. (Hedrick I). At the Level III hearing in this grievance, Grievants amended the relief sought to request reallocation to Health and Human Resources Specialists, Senior, Pay Grade 15. This request to amend the relief was agreed to by all parties.

3. This grievance was denied at Level III by Decision dated December 6, 2004. The Level III Grievance Evaluator found,"[t]he HHR Specialist series was not then [2003], and is not now, the "best fit" for the duties that Grievants perform." Hedrick I.

4. Grievants appealed to Level IV in a timely manner. A settlement agreement was reached by all the parties on March 5, 2005. This "binding" settlement agreement stated in pertinent part:

> NOW THEREFORE, for good and valuable consideration and the mutual covenants contained herein, the Grievants and the Respondents agree as follows:
>
> 1. Respondent Division of Personnel agrees to recommend to the state Personnel Board that the Grievants be reallocated to the Child Support Specialists III [classification] at Pay Grade 13.

> 2. Respondent DHHR agrees to give Grievants a five percent (5%) salary increase effective January 1, 2004, and pay Grievants back pay from January 1, 2004 to the effective date of the Grievants' reallocation.
>
> 3. Grievants shall dismiss with prejudice this grievance and any and all other claims against the Respondents arising from the facts and circumstances of this grievance.
>
> . . .
>
> 5. Grievants acknowledge they have read this Settlement Agreement and Release and have had a reasonable time to consider this Settlement. Grievants further acknowledge that they understand all the terms of this settlement agreement and have voluntarily agreed to this settlement agreement and release.
>
> 6. Grievants and Respondent expressly acknowledge that the entire agreement is contained in this Settlement Agreement and Releaseand no representations, promises, or inducements have been made by or to Grievants other than as appear in this Settlement Agreement and Release.

5. Grievants are currently classified as Child Support Specialists 3, Pay Grade 13.

6. After finding out BCSE employees in some other units were reallocated to the Health and Human Resources Specialist series, Grievants, on May 5, 2005, filed this grievance requesting to be reallocated to the Health and Human Resources Specialist series. They did not request the prior settlement agreement be rescinded, but did allege they were told the Health and Human Resources Specialist series was to be phased out.

7. The Division of Personnel plans to phase out the Health and Human Resources Specialist series eventually, but HHR is not yet ready to take this action. Test. Lowell Basford, the Assistant Director of the Classification and Compensation Section of the Division of Personnel at Level III pre-hearing conference.

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 (2004); Howell v. W. Va. Dep't of Health & Human Res., Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6. See also 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). "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).

Respondents contend this grievance should be dismissed, based upon Grievants' settlement of the prior grievance regarding this same classification series. Respondents argue the current grievance arises from the same "facts and circumstances" as the prior grievance, in contravention of the Settlement Agreement. It is noted Grievants sought to be reallocated to Health and Human Resources Specialist, Senior in Hedrick I.

While Grievants assert their job duties have changed and now warrant reallocation because they now perform more work, Lowell Basford, the Assistant Director of the Classification and Compensation Section of the Division of Personnel, testified Grievants' duties remained the same during the three months between the signing of the settlement agreement in March 2005 and the filing of this second grievance in May 2005. Both Hedrick I and the Dismissal Order also found no significant change in Grievants'.

The law favors and encourages resolution of controversies by contracts of compromise and settlement rather than by litigation, and the law will uphold and enforce such contracts if they are fairly made and not in contravention of some law or public policy. McDowell County Bd. of Educ. v. Stephens, 191 W. Va. 711, 447 S.E.2d 912 (1994). This Grievance Board has recognized the principle that grievance settlements should be upheld unless it is proven by a preponderance of the evidence that the settlement was not fairly made or was in contravention of some law or public policy. Adkins v. Logan County Bd. of Educ., Docket No. 97-23-216 (Sept. 29, 1997); Vance v. Logan County Bd. of Educ., Docket No. 95-23-190 (Mar. 15, 1996). Interestingly, Grievants do not seek the rescission of the prior settlement agreement, but now assert they would not have signed the agreement if they had known others would be reallocated to the Health and Human Resources Specialist series, and it is unfair that others were reallocated to this classification, and they were not.

At the time this settlement agreement was reached, the Health and Human Resources Specialist

series was still in effect. Grievants chose to sign the settlement agreement and were given the consideration of reallocation/promotion to Child Support Specialists 3 with back pay and a five percent salary increase. The fact they later found out other employees got what Grievants perceive as a "better deal" does not make the settlement agreement invalid. (See footnote 2)

The discovery of alternative relief does not change the fact Grievants are once again alleging they are misclassified. Strawser v. Dep't of Health and Human Res., Docket No. 99-HHR-414 (Mar. 6, 2000). Grievants executed a settlement agreement regarding their classification grievance, and the mere filing of the instant grievance breaches the terms of that agreement. Kyle v. W. Va. Div. of Corrections, Docket No. 99-CORR-077D (Aug. 3, 1999). The language of the settlement agreement encompasses Grievants' current claims. Accordingly, they are not entitled to any relief in this grievance. See Lowe v. W. Va. Div. of Corrections, Docket No. 99-CORR-095 (June 10, 1999).

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. 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 (2004); Howell v. W. Va. Dep't of Health & Human Res., Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6. See also 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). "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).

2. The law favors and encourages resolution of controversies by contracts of compromise and settlement rather than by litigation, and the law will uphold and enforce such contracts if they are fairly made and not in contravention of some law or public policy. McDowell County Bd. of Educ. v. Stephens, 191 W. Va. 711, 447 S.E.2d 912 (1994). See Strawser v. Dep't of Health and Human Res., Docket No. 99-HHR-414 (Mar. 6, 2000).

3. Because Grievants entered into a settlement agreement encompassing the claims asserted in this grievance, they are entitled to no relief. Strawser, supra.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the "circuit court of the county in which the grievance occurred." Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 29-6A-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.

JANIS I. REYNOLDS

ADMINISTRATIVE LAW JUDGE

Dated: November 8, 2005

Footnote: 1

Grievants represented themselves, HHR was represented by B. Allen Campbell, Senior Assistant Attorney General, and the Division of Personnel was represented by Karen O'Sullivan Thornton, Assistant Attorney General.

Footnote: 2

It appears from the record that Respondents settled several classification grievances during this time.