REBECCA SPROUT,

Grievant,

v. **Docket No. 03-17-010**

HARRISON COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Rebecca Sprout ("Grievant") initiated this proceeding on August 14, 2000, requesting a salary increment for work experience as an accountant. The grievance was denied at the lower levels, and Grievant appealed to level four on January 20, 2003. After this matter was placed in abeyance for an extended time at the request of the parties, a level four hearing was conducted in Westover, West Virginia, on October 29, 2004. Grievant was represented by John Roush, Esquire, of the West Virginia School Service Personnel Association, and Respondent was represented by counsel, Sonya Sibold and Nancy Brown. This matter became mature for consideration upon receipt of the parties' fact/law proposals on December 1, 2004.

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

Findings of Fact

1. Grievant is currently employed by Respondent as a Secretary III/Accountant II at Gore Middle School.

2. Grievant has been employed by Respondent in the secretary classification since 1970. As the result of a grievance settlement, Grievant and other school secretaries were reclassified in 2000, giving Grievant her current multi-classification title. 3. Grievant is responsible for bookkeeping activities for her school. She does purchase orders, writes checks, records all expenditures from the various accounts, and reconciles the bank accounts. She verifies the payroll for her school, but payroll deductions and actual checks are distributed by the central office. Grievant does not have an

accounting degree, and one is not required to perform her job duties.

4. Accountants employed in Respondent's central office are classified as Accountant IIIs. They prepare budgets for the entire county, and deal with distribution and reporting of federal and grant funds. They must divide up excess levy funds among the schools and other departments and keep track of the expenditure of those funds. After each school's requisitions are recorded by the school secretary (such as Grievant), a monthly report is prepared by the Accountant IIIs, showing each school's transactions. These employees handle major purchases for the various departments of the county school board, such as maintenance, transportation and custodial. Accountant IIIs are required to have an accounting degree.

5. At least by the early 1990s, Respondent had adopted a policy regarding prior work experience credit for service personnel “for performing identical or similar work which is comparable to the specific service personnel classifications listed below . . .”, upon written application and verification by the Board. As to the specific classifications to which the policy applies, it states:

> The Board of Education may grant prior experience credit for any classification to one who was previously employed by a board of education.
>
> The Board of Education may grant prior experience credit for state and county government service to the secretarial classifications.
>
> The Board of Education may grant prior experience credit for privateemployment experience for the coordinator and or [sic] director classification **and the accountant classification**.

(Level II, Gr. Ex. 6) (Emphasis added.)

6. Respondent has never granted prior work experience credit for private sector work by employees in the Accountant II classification. The policy has only been applied to Accountant IIIs, in order to attract more qualified personnel. At the time the policy was initiated, there were no Accountant IIs employed in Harrison County.

7. Prior to her employment with Respondent, Grievant worked as a secretary for Mutual Insurance Company from 1957-1959. She then worked as a secretary/underwriter for the same

company from 1965-1970, where she did general secretarial work, kept a log of insurance losses, and calculated payments from policy holders. Grievant worked as a secretary for Union National Bank from 1963-1964 in the commercial loan department.

8. In 1991, Grievant filed a grievance alleging entitlement to prior work experience credit in the secretary classification, as a result of her employment with Mutual Insurance Company and Union National Bank. That grievance was denied at level four, based upon the provisions of Respondent's policy, which only allows prior experience credit for secretaries who have been employed by state or county governments. See Sprout v. Harrison County Bd. of Educ., Docket No. 91-17-425 (Aug. 31, 1992).

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, because Respondent's policy regarding prior work experience states that it may be granted to “accountants,” it is discriminatory for Respondent to deny the credit to Accountant IIs, while granting it for Accountant IIIs. She also alleges that this practice constitutes 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, exceptional or advantageous treatment of another or other employees." As recently held by the West Virginia Supreme Court of Appeals, an employee attempting to prove discrimination under the education statute need only establish that he/she was treated differently from a similarly situated employee, and the action was neither job related nor agreed to by the grievant. Bd. of Educ. of County of Tyler v. White, No. 31717 (Oct. 28, 2004). Pursuant to this ruling, an employer may no longer attempt to justify its discriminatory action as legitimate, as this Grievance Board has allowed them to do in the past. 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, 179 W. Va. 53, 365 S.E.2d 251 (1986); Hendricks v. W. Va. Dep't of Tax & Revenue, Docket No. 96-T&R-215 (Sept. 24, 1996); Runyon v. W. Va. Dep't of Transp., Docket Nos. 94-DOH-376 & 377 (Feb. 23, 1995).

Grievant further notes that "[a]n administrative body must abide by the remedies andprocedures it properly establishes to conduct its affairs." Syl. Pt. 1, Powell v. Brown, 160 W. Va. 723, 238 S.E.2d 220 (1977). Indeed, the plain language of the policy states that employees "in the accountant classification" are to be given experience credit for similar private sector work. Although Respondent contends that it was its intention to only apply this provision to central office employees, the document itself does not make this distinction. As Grievant has correctly noted, school personnel laws and regulations must be strictly construed in favor of the employee. Morgan v. Pizzino, 163 W. Va. 454, 256 S.E.2d 592 (1979). Accordingly, Grievant has successfully established that there is no job- related justification for the disparity in treatment of Accountant IIs versus Accountant IIIs with regard to prior work experience, and Respondent's application of the policy is discriminatory.

Nonetheless, Grievant is not entitled to the relief requested, because she has failed to meet her burden of proving that she performed similar work for her previous employers. Grievant's level two testimony regarding her duties for those employers was vague, at best, and she even stated several times that it had been so long ago, she had trouble remembering what her specific "accounting" duties were. Grievant made statements to the effect that she "worked with figures" and "did some ledger work," while also stating that she did a multitude of "secretarial" duties and "whatever they needed me to do." This falls far short of establishing that Grievant did the type of bookkeeping, accounts payable management, and purchasing that she is responsible for in her current position. Accordingly, Grievant has failed to meet her burden of proof in this matter.

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. Discrimination is "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(m).

3. Favoritism is "unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees." W. Va. Code §18-29-2(o).

4. An employee attempting to prove discrimination and/or favoritism need only establish that he/she was treated differently from a similarly situated employee, and the action was neither job related nor agreed to by the grievant. Bd. of Educ. of County of Tyler v. White, No. 31717 (Oct. 28, 2004).

5. Grievant has proven by a preponderance of the evidence that Respondent's application of its prior work experience credit is discriminatory.

6. Grievant has failed to prove entitlement to work experience credit for her previous employment.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to theCircuit 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 5, 2005 _____

DENISE M. SPATAFORE

Administrative Law Judge