THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES

GRIEVANCE BOARD

CRAIG ADKINS,

Grievant,

v. **Docket No. 05-22-331D**

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent

D E C I S I O N

On May 31, 2005, Grievant, Craig Adkins, filed a grievance against his employer, the Lincoln County Board of Education ("LCBOE" or "Board"). His Statement of Grievance reads:

> My monthly employment changed from "Twenty" (20) days to equal to one month to "forty" (40) days equal to one (1) month when I went from "Normal School Employment Days" to "Additional or Extended Calendar Days." This causes my daily rate to change from $206.89 to $189.00.
>
> The Relief Sought: Either pay me my correct daily rate of $206.89 for 240 days or correct my employment to 220 days equal to eleven months (11).

On September 28, 2005, Grievant filed a motion for default with this Grievance Board, stating his employer had defaulted when it failed to issue the Level II decision within the required time frame. A Level IV default hearing was held November 3, 2005, and default was granted by order dated November 17, 2005. A hearing on whether the relief requested was contrary to law or clearly wrong

was held on March 7, 2006, and this case became mature for decision on April 24, 2006, after receipt of the parties' proposed findings of fact and conclusions of law. Grievant was represented by Gary Archer from theWest Virginia Education Association, and Respondent was represented by James Gabehart, Esq.

Issues and Arguments

Grievant argues his 240-day contract is a 12 month contract, and LCBOE is required to pay him an additional month's salary. Grievant arrives at this argument because the 200-day contract is routinely called a ten-month contract. Thus, Grievant believes his 240- day contract is a 12 month contract, and he concludes he is incorrectly paid for only eleven months. (See footnote 1) This theory ignores basic time calculations. At the Level IV hearing, Grievant asserted he had filed this grievance not for the 2004 - 2005 school year, but to correct his contract for the next school year, 2005 - 2006. However, his post-hearing proposals indicate he wants back pay for the 2004 - 2005 school year, and no information was given about Grievant's 2005 - 2006 contract.

Respondent asserts Grievant has a 240-day/11 month contract, and he is paid correctly for that contract. Respondent also notes only one LCBOE employee has a 261- day/12 month contract, and that person is Superintendent William Grizzell. All other employees have 200 to 240 day contracts without any paid vacation days. Respondent also asserts the contract for the 2004 - 2005 school year was agreed to after negotiation, and the parties agreed to an increase in the number of days from 230 to 240.

The undersigned Administrative Law Judge notes there is a failure to communicate between the parties because of differing terminology and because of Grievant's insistence on applying LCBOE's instructional calendar to compensation issues. Additionally, thewords used to describe the length of a contract within the school system and the military are very different and also contribute to a lack of understanding on the part of Grievant.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant is a retired Sergent Major and is employed by LCBOE as a Junior Reserve Officers'

Training Corps ("JROTC") teacher. At the time he filed this grievance, he was at the end of his third probationary contract.

2. Prior to hiring Grievant, LCBOE had not had a JROTC program, and there was difficulty getting information from the military about salary rates and contract length. LCBOE and Grievant negotiated the length of Grievant's contract using the information available. The military recommends that a least one instructor have an eleven-month contract.

3. LCBOE and Grievant agreed to an initial contract for the 2002 - 2003 school year for 230 days.

4. Grievant became dissatisfied with this contract, voiced numerous complaints, and had frequent discussions with LCBOE's treasurer, Birdie Gandee, as well as, Superintendent William Grizzell.

5. The parties finally negotiated an agreement for the 2004 - 2005 school year which gave Grievant a 240-day contract. Grievant is not expected to and does not work the month of July, and he is not paid for that month. Grievant signed this contract. Test. Grievant, Gandee, & Grizzell, Level III & IV Hearings. 6. Military regulations require that JROTC instructors be treated the same as other teachers by the board of education. Grt. No. 7 at Level III.

7. There are 365 days in a year, 104 Saturdays and Sundays, and 261 working days. Additionally, most months have 21 to 23 working days, i.e., Mondays through Fridays.

8. Within school systems, the routine teacher's contract is for 200 days, and this contract is known as a ten-month contract as it runs from late August to early June. Teachers do not teach for ten months, have many days off during the school year, such as Christmas and Spring Break, and the time from period from late August to early June is not ten months. Since there are only 180 instructional days, teachers have 20 days of compensation for other non-teaching days. Grt. No. 2 at Level III.

9. LCBOE has employees with contracts that are of a longer period, such as 210, 220, and 240. Many Central Office staff, like Ms. Gandee, have 240-day contracts and receive 21 days of NON-paid vacation each year. There is only ONE employee, Superintendent Grizzell, who has a 261-day contract, and he receives 21 paid vacation days a year.

Discussion

When determining whether the remedy requested is contrary to law or clearly wrong, it is presumed the grievant prevailed on the merits of the grievance. W. Va. Code § 29- 6A-3. The burden of proof is on a respondent to prove by clear and convincing evidence that the remedy requested would be contrary to law or clearly wrong. This standard requires a respondent to produce evidence substantially more than a preponderance of theevidence, but less than that required to prove the matter beyond a reasonable doubt. Lohr v. Div. of Corr., Docket No. 99-CORR-157D (Nov. 15, 1999).

Consistent with this statutory presumption that Grievant prevailed on the merits, the undersigned must decide whether the relief requested by Grievant, to be paid a salary for 12 months when he only works 11, is contrary to wrong or clearly wrong.

Through a combination of fuzzy math, erroneous logic, and a comparison of apples to oranges, Grievant has come to believe his 240-day contract is a 12 month contract, and he is under paid. It would be clearly wrong and contrary to law to pay Grievant, who through own testimony agreed he works only 11 months, for 12 months of work.

Further, Grievant negotiated this contract, signed it, and did not file a grievance about it until May 31, 2005, approximately ten months later. It would be clearly wrong and contrary to law to require LCBOE to pay Grievant additional money given the agreed upon terms of a signed contract. (See footnote 2)

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

Conclusions of Law

1. When determining whether the remedy requested is contrary to law or clearly wrong, it is presumed the grievant prevailed on the merits of the grievance. W. Va. Code § 29-6A-3. The burden of proof is on Respondent to prove by clear and convincing evidence that the remedy requested would be contrary to law or clearly wrong. 2. The Grievance Board has determined a respondent's standard of proof that the relief sought is clearly wrong or contrary to law, once a default claim is proven, is by clear and convincing evidence. Lohr v. Div. of Corr./Div. of Personnel, Docket No. 99- CORR-157D (Nov. 15, 1999). See W. Va. Code § 29-6A-3.

3. Respondent established by clear and convincing evidence that it would be clearly wrong and contrary to law to compensate Grievant for 12 months for 11 months of work.

Accordingly, this grievance is **DENIED**.

Any party, or the West Virginia Division of Personnel, 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 (1998). 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: May 31, 2006

Footnote: 1

It is noted this theory would lead to Superintendent Grizzell's 261 day contract being a thirteen month, one year contract.

Footnote: 2

Grievant appears to assert he has been discriminated against and was not treated like all other teachers. Grievant's contract is for 240 days, and the vast majority of teachers only have a 200-day contract. He has been treated the same or better than his similarly situated peers. It would be clearly wrong and/or contrary to law to either pay him for work not done, or to give him a 261-day contract that no other teacher or Central Office administrator has.