WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

Elizabeth Ryder,

Grievant,

vs.

Docket No. 06-50-005

M. Paul Marteney, ALJ

Wayne County Board

of Education,

Employer.

DECISION

Grievant filed this grievance on March 2, 2005. Her **Statement of Grievance** reads, "Violations of WV Code 18A-4-3 and 18-29-2, sections "a" "m" and "o" with regard to incorrect salary payment as an assistant principal and experience credit. Violations regarding compensation and terms of employment." (See footnote 1) The **Relief Sought** is "Relief sought is to be compensated for loss of salary and benefits with interest due for incorrect salary as an administrator."

A level four hearing was held in the Grievance Board's Charleston office on March 20, 2006. Grievant appeared in person and was represented by Susan Hubbard, of the West Virginia Education Association and Respondent was represented by counsel, David Lycan, Esq. The matter became mature for decision on April 21, 2006, the deadline for filing of the parties' proposed findings of fact and conclusions of law.

Decision Summary

Grievant asserted that she was entitled to teaching experience credit, which could be used to enhance her salary, for time she spent working for a private corporation running a charter school in Ohio. Because she was never certified by the Ohio Department of Education as an administrator or teacher, and because she did not teach while so employed, she is not entitled to the credit.

Based on a preponderance of the evidence, I find the following material facts have been proven:

Findings of Fact

I 1.

Grievant is regularly employed by Respondent as an Assistant Principal at Buffalo Middle School. She has worked as an administrator for Respondent in various capacities and periods since December 1, 2003.

II 2.

Grievant had previously been employed by Respondent as a classroom teacher.

III 3.

From February 1994 to October, 1998, Grievant was employed by the Youth Development Corporation of America (YDCA), principally at the Ohio Center for Youth (the Center), a residential program that included a chartered, non public school. As Director of Education, she worked 248 days, as Director of the Center, she worked 629 days. IV 4.

While employed by YDCA, Grievant served in the capacities of Director of Education, Director of Foster Care, Director of the Ohio Center for Youth, and Assistant Chief Executive Officer for YDCA.

V 5.

Grievant's duties at the Center's charter school were administrative and analogous to a principal in a public school. She was Director of Education from February 28, 1994 to February 15, 1995, and Director of the Center from June 5, 1996 to October 2, 1998.

VI 6.

Because the Center's school was a chartered, nonpublic, special-purpose school, it was not required, apparently through a special exemption, by the State of Ohio to be staffed by certified teachers or administrators.

VII 7.

Grievant did not hold an Ohio teaching certificate or Administrative certificate. She was certified as a teacher in West Virginia the entire time she worked in Ohio, but the Ohio Department of Education does not recognize a license issued by another state as valid for teaching in Ohio schools.

VIII 8.

When Grievant returned to Wayne County, she requested experience credit for her time spent in Ohio employed by the YDCA, but her request was denied. (See footnote 2)

IX 9.

While directing the Center, Grievant on a few occasions taught as a substitute.

Discussion

Grievant believes she should be credited with six years of teaching experience credit for the time she worked in an administrative capacity for a private institution in Ohio that included a private school. Respondent's position is that she is not entitled to such experience credit.

Teachers' salaries are based, in part, upon their “years of experience” which is defined to mean the number of years the teacher has been employed in the teaching profession, including active work in educational positions other than the public schools. (See footnote 3) It is Grievant's burden to prove entitlement to that credit, by a preponderance of the evidence, through proof of her experience outside the state. (See footnote 4) In this case, Grievant has not met that burden because she has not shown she was employed in the “teaching profession” while she was working in Ohio.

In that context, the term “profession” has special and material meaning. West Virginia Code § 18A-1-1 defines terms related to school personnel, and in subsection (b) thereof, “'Professional personnel' means persons who meet the certification requirements of the state, licensing requirements of the state or both and includes the professional educator and other professional employees.” Although “teaching profession” is notexplicitly defined, all the definitions contained in Code § 18A-1-1 that mention “professional” all imply a need for proper licensure or certification to be eligible for the appellation.

In addition, W. Va. Code § 18A-3-2 states, “Any professional educator, as defined in article one of this chapter, who is employed within the public school system of the state shall hold a valid teaching certificate licensing him or her to teach in the specializations and grade levels as shown on the certificate for the period of his or her employment. . . .” Although work may be performed “in educational positions other than in public schools,” such as Grievant's position at the Center, the “profession” requirement is made specific to the person, not the job. Not withstanding that Grievant was not teaching while she was employed in Ohio, she was not licensed or certified by the Ohio Department of Education, therefore she was not “in the profession.” Using the standard Grievant urges, any parent would be able to claim teaching experience credit for time spent homeschooling a

child or volunteering as a literacy mentor. There is no indication in the statute that non-certified teaching experience should be counted.

Grievant has not met her burden of proving she is entitled to teaching experience credit for the time she worked as a “principal” of a chartered, non-public school in Ohio. She neither taught nor was certified to teach during that time.

The following conclusions of law support this discussion:

Conclusions of Law

10 1.

> This is a non-disciplinary grievance in which Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. *See*, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. "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 and Human Resources*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. *Id.*

11 2.

> Teachers' salaries are based, in part, upon their “years of experience” which is defined by W. Va. Code §18A-4-1(1) to mean the number of years the teacher has been employed in the teaching profession, including active work in educational positions other than the public schools. *See Buffey v. Harrison County Bd. of Educ.*, Docket No. 00-17-398 (May 3, 2001).

12 3.

> Grievant has not met her burden of proving she was employed in the teaching profession while she worked for the YDCA in Ohio from 1994 to 1998.

The Grievance therefore is hereby DENIED for the above stated reasons.

The parties are advised that either party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Wayne 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.

Entered: May 10, 2006

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M. Paul Marteney, Chief Administrative Law Judge,

West Virginia Education and State Employees Grievance Board

Footnote: 1

This grievance was partially granted at level two with respect incorrect rate of compensation while Grievant was employed as Acting Principal at Buffalo Middle School. That issue will therefore not be addressed further.

Footnote: 2

The issue of timeliness was not raised at the lower levels, and is deemed waived.

Footnote: 3

W. Va. Code §18A-4-1(1); Buffey v. Harrison County Bd. of Educ., Docket No. 00-17-398 (May 3, 2001).

Footnote: 4

See, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21.