DEBRA BRYANT and BRENDA SHIELDS,

Grievants,

v v.

Docket No. 05-41-236

RALEIGH COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, Debra Bryant and Brenda Shields, filed this grievance on April 25, 2005, 2003, against their employer, the Raleigh County Board of Education ("RCBOE"). Their Statement of Grievance reads "18A-2-2 & 18A-4-7a." The relief sought is "Salary returned to 2004 - 2005 level and backpay (sic)."

This grievance was denied at Levels I and II, and RCBOE waived participation in the grievance at Level III. Grievants appealed to Level IV on July 5, 2005, and a Level IV hearing was held in Beckley, West Virginia, on January 30, 2006. This case became mature for decision on March 7, 2006, after receipt of the parties' proposed findings of fact and conclusions of law. (See footnote 1)

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

Findings of Fact

1. Grievants have been employed by RCBOE as full-time, LPN instructors since 2002 at the Academy of Careers and Technology. They teach only post-secondary students. 2. Grievants are not school nurses, do not perform the duties of school nurses, and are not certified as school nurses.

3. When they were hired, Grievants were asked to fill out Teacher's Certificate of Training and Experience forms. These forms are typically completed by teachers to detail their teaching experience. Grievants completed these forms indicating they had many years of teaching experience,

and Grievant Bryant indicated she had been issued a Teacher's Certificate in 1983. This data was incorrect. What Grievants meant to indicate was their past nursing experience and licensure, but there was no other place to put this information on the form.

4. When reviewing these forms prior to hiring, Grievants were incorrectly given the years of experience credit given to school nurses. See W. Va. Code § 18A-4-1. Grievants, as LPN instructors, do not receive years of experience credit. See W. Va. Code § 18A-4-4.

5. During the first three years of employment, 2002 - 2005, Grievants held probationary contracts. Each of these contracts ended by its own terms at the end of each school year in June.

6. In early 2005, RCBOE discovered it had incorrectly given Grievants years of experience credit, and they were being overpaid.

7. By letters dated March 31, 2005, Superintendent Charlotte Hutchens informed Grievants they had been incorrectly considered as school nurses, and "[a]fter reviewing the West Virginia State Code and seeking legal advice, we have determined that 'school nurse' should be interpreted to mean only those nurses providing direct services to students. Therefore, since you are assigned to the LPN program at the Academy ofCareers and Technology, it is necessary to adjust your experience for pay purposes to include only those years you have earned while employed by a school system." Jt. Exh. 3 & 4 at Level III.

8. Grievants signed continuing contracts of employment for the 2005 - 2006 school year.

9. RCBOE has not sought reimbursement from Grievants for the greater salary paid to them as a result of the error.

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); 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). Where the evidence equally supports both sides, the employees have not met their burden. Id.

In their proposed Findings of Fact, Grievants assert RCBOE failed to terminate their contracts in accordance with "the statute, and transfer them to positions that no longer included experience pay." Grievants do not cite what statute demands this action, but it may be they are referring to W. Va. Code § 18A-2-2. This Code Section is inapplicable in this case, as that statute deals with continuing contracts, and Grievants had probationary contracts at the time they were notified of the error and correction. Accordingly, RCBOEdid not have to terminate Grievants' contracts, as they terminated of their own accord on the last day of June 2005.

Grievants also assert no error was made, and the initial calculation of their compensation was correct. This assertion is incorrect as it is clear an error was made that resulted in Grievants being over paid in violation of W. Va. Code § 18A-4-4. While it is certainly understandable Grievants are displeased with the decrease in compensation, this does not make RCBOE's action wrong. Prior "mistakes [do] not create an entitlement to future incorrect reimbursement. See Stover v. Div. of Corr., Docket No. 04-CORR-259 (Sept. 24, 2004); Ritchie v. Dep't of Health and Human Res., Docket No. 96-HHR-181 (May 30, 1997); Pugh v. Hancock County Bd. of Educ., 95-15-128 (June 5, 1995)." Dillon v. Mingo County Bd. of Educ., Docket No. 05-29-413 (Apr. 28, 2006).

The mistake occurred because of an employee's failure to assess Grievants' experience properly and to apply the correct Code Section. This Grievance Board has previously held that a county board of education is not bound by an employee's mistake. Samples v. Raleigh County Bd. of Educ., Docket No. 98-41-391 (Jan. 13, 1999); Carr v. Monroe County Bd. of Educ., Docket No. 98-31-342 (Dec. 15, 1998); Berry v. Boone County Bd. of Educ., Docket No. 97-03-305 (Apr. 13, 1998); Chilton v. Kanawha County Bd. of Educ., Docket No. 89-20-114 (Aug. 7, 1989), aff'd, Kanawha County Cir. Ct., No. 89- AA-172 (Oct. 4, 1991). Accordingly, Grievants have not met their burden of proof and established a violation of any statute, policy, rule, or regulation that would entitle them to continue to receive compensation granted in error.

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); 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). Where the evidence equally supports both sides, the employees have not met their burden. Id.

2. Mistakes in compensation do not create an entitlement to future incorrect reimbursement. Dillon v. Mingo County Bd. of Educ., Docket No. 05-29-413 (Apr. 28, 2006). See Stover v. Div. of Corr., Docket No. 04-CORR-259 (Sept. 24, 2004); Ritchie v. Dep't of Health and Human Res., Docket No. 96-HHR-181 (May 30, 1997); Pugh v. Hancock County Bd. of Educ., 95-15-128 (June 5, 1995).

3. A county board of education is not bound by an employee's mistake. Samples v. Raleigh County Bd. of Educ., Docket No. 98-41-391 (Jan. 13, 1999); Carr v. Monroe County Bd. of Educ., Docket No. 98-31-342 (Dec. 15, 1998); Berry v. Boone County Bd. of Educ., Docket No. 97-03-305 (Apr. 13, 1998); Chilton v. Kanawha County Bd. of Educ., Docket No. 89-20-114 (Aug. 7, 1989), aff'd, Kanawha County Cir. Ct., No. 89- AA-172 (Oct. 4, 1991).

4. Grievants have not met their burden of proof and have not established a violation of any statute, policy, rule, or regulation. Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Raleigh 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.

JANIS I. REYNOLDS

SENIOR ADMINISTRATIVE LAW JUDGE

Dated: May 16, 2006

Footnote: 1

Grievant was represented by Ben Barkey from the West Virginia Education Association, and RCBOE was represented by Greg Bailey, Esq. of Bowles Rice McDavid Graff and Love.