WEST VIRGINIA PUBLIC EMPLOYEES

GRIEVANCE BOARD

CHARLOTTE WHITTEN ALDRIDGE

Grievant,

v. **Docket No. 07-22-337**

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Charlotte Whitten Aldridge, filed this grievance against Respondent Lincoln County Board of Education ("LCBOE"), on April 19, 2007, protesting she did not receive proper statutory notice that she was being recommended for reduction-in-force for the 2007-2008 school year. She seeks reemployment as a regular full-time aide (at Midway Elementary School) and any applicable lost benefits.

Grievant's immediate supervisor was unable to resolve this matter at Level I. A Level II decision issued June 12, 2007, by Hearing Examiner Doug Smith denied the grievance at that level following a hearing held on June 4, 2007. Level III was bypassed, and a Level IV hearing was convened in the West Virginia Public Employees Grievance Board's Charleston office on October 5, 2007. Grievant was represented by John Roush, Esq., of the West Virginia School Service Personnel Association, and Respondent was represented by Jeff Huffman, Assistant Superintendent of Lincoln County Schools. This case became mature for decision on October 26, 2007, the deadline for submission of

the parties' proposed findings of fact and conclusions of law.

Synopsis

Grievant seeks reemployment as a regular, full-time aide with Respondent, asserting she was not properly notified by certified letter that she was being recommended forreduction-in-force (RIF) as required by statute. Respondent posted the certified RIF notification in a timely manner, but Grievant did not physically receive the document. Grievant, aware of the mailing error, the nature of the certified letter, and that there were time constraints, elected not to notify Respondent of the error and did not secure a copy of the RIF letter prior to the expiration of pertinent deadline. Grievant contends that given the strict compliance standard of applicable statutes governing RIF notification, she is entitled to retain her position and related benefits.

Grievant had actual notice of her reduction-in-force. Although school personnel laws are to be strictly construed in favor of employees, and Respondent did not technically comply with the statutory notice requirement, the reduction-in-force is upheld, on the facts of this case because Grievant received actual notice in a timely manner and failed to act. Grievant's due process rights were not violated. Grievance denied.

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

Findings of Fact

1 1. Grievant, Charlotte Aldridge, married in April 2007, she was Charlotte Whitten prior to that time.

2 2. Grievant, had been employed during the 2006-2007 school year as an aide by the Lincoln County Board of Education at Midway Elementary School.

3 3. Grievant had continuing contract status in the 2006-2007 school year.

4 4. In February 2007, Assistant Superintendent Jeff Huffman visited Grievant at

her work site informing her, in person, that she would be receiving a reduction-in-force ("RIF") letter and that she would be entitled to a hearing. Huffman Testimony Level II & IV. 5 5. In accordance with West Virginia Code §18A-2-6, a letter notifying Grievant of the intent of the Superintendent of Lincoln County Schools to recommend she would be reduced-in-force due to lack of need was prepared and mailed by certified mail on February 27, 2007.

6 6. The certified letter was mailed to Grievant's old address, even though, Respondent had Grievant's updated address. Grievant had received written correspondence from the school board at her correct mailing address.

7 7. The misaddressed, certified letter was signed for on February 28, 2007, by Grievant's former mother-in-law, whose name is also Charlotte Whitten. Respondent received the return receipt with proper signature and, therefore, remained unaware of the clerical error.

8 8. Sometime during the first week of March, Ms. Whitten telephoned Grievant and informed her that she had received a letter from the Lincoln County Board of Education directed to the Grievant. Grievant orally identified the certified letter as her RIF letter. This phone conversation took place "a couple days after" Ms. Whitten received the certified mail on February 28, 2007. Grievant's Testimony, Level II & Level IV.

9 9. At the time in question, Grievant was aware of the significance of receiving a RIF letter in that she had previously experienced a RIF notification, the first year she was hired. Grievant's Testimony, Level II.

10 10. Grievant knew there were time constraints regarding reduction-in-force notification and hearing procedures which affect a county board of education's ability to alter the employment of an employee with continuing contract status. 11 11. Grievant was aware that LCBOE mailed her a certified letter, but did not contact the Board to confirm the nature of the letter, inform them the letter had been intercepted by

a third party, or request a copy.

12 12. Grievant obtained a copy of the February 2007 RIF letter from the Lincoln County Board of Education on April 15, 2007, that being more than forty days after Ms. Whitten had notified her of original delivery. (See footnote 1) Grievant's Testimony, Level II & Level IV.

13 13. Grievant received actual notice of her reduction of employment.

14 14. Respondent's failure to give Grievant written notice was due to clerical error, complicated by independent intervening events unknown to them, but known to or within the control of Grievant.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her 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); (See footnote 2) 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 acceptas sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health and Human Res., Docket No. 92-HHR-486 (May 17, 1993).

It is well established that county boards of education must utilize the notice and hearing procedures of West Virginia Code § 18A-2-6 to RIF an employee with continuing contract status. West Virginia Code §18A-2-6 allows a county board of education to terminate an employee's contract “with written notice, stating cause or causes, to the employee, by a majority vote of the full membership of the board before the first day of April of the then current year.” Prior to this RIF, the affected employee has the right to a

hearing before the board.

It is a matter of record that Grievant did not timely receive the certified letter LCBOE mailed to her attention on February 27, 2007. However, Grievant acknowledges Asst. Superintendent Huffman informed her on February 25, or 26, that she would be receiving a reduction-in-force letter. Grievant also acknowledges her former mother-in-law notified her of the certified letter, and believed at the time that this was her RIF letter. The question presented in this case is whether Grievant received actual notice of LCBOE's intent to abolish her contract due to a reductions in force.

Black's Law Dictionary defines notice as follows:

> A person has notice of a fact or condition; if that person (1) has actual knowledge of it; (2) has received a notice of it; (3) has reason to know about it; (4) knows about a related fact; or (5) is considered as having been able to ascertain it by checking an official filing or recording.

7th ed. at 1087.

Grievant had direct knowledge of a misdelivered certified letter from Respondent, after being informed that a RIF letter was being mailed to her. Grievant believed this certified letter was her RIF letter. Given she had previously received a RIF notification,Grievant was aware time frames attached to such communication. Notice is knowledge of facts which would naturally lead an honest and prudent person to make inquiry, and does not necessarily mean knowledge of all the facts. Black's Law Dictionary. Aware that a certified letter posted by Respondent had been intercepted by a third party, Grievant failed to secure a copy of the document for more than forty days after notification of delivery, or to alert Respondent that the letter had been misaddressed.

When asked why she did not secure a duplicate of the RIF letter sooner Grievant testified she did not know what to do, did not have time, or did not know she should go to the board office to get a copy. That an individual would know that she has been

mailed a certified letter and not want to know the contents when it affects her livelihood is exceedingly difficult to believe. In the circumstance of this case, notice is evident in that there has been a designed abstinence from inquiry for the very purpose of escaping notice. Accordingly, based on all the facts and circumstances of this case, the undersigned finds Grievant received actual notice of the contents of the February letter when she spoke to her former mother-in-law and identified the certified letter as her RIF letter.

The next issue to consider is whether Grievant's actual notice makes any difference, when school personnel regulations and laws are to be strictly construed in favor of the employee, and it is accepted Grievant did not personally receive the letter. Morgan v. Pizzino, 163 W. Va. 454, 256 S.E.2d 592 (1979).

The facts of this case are analogous to those of Hall v. Mingo County Board of Education, Docket No. 95-29-227 (October 31, 1995), in which a Grievant alleged his prior contract terms should be restored because he did not receive proper notice. Grievant was inadvertently mailed the certified letter of another employee. The administrative law judgedetermined Grievant had actual notice and hid this information until after the deadline had passed. In that case, the Grievance Board decided that although school personnel laws are to be strictly construed in favor of employees, and the school board did not technically comply with the notice requirements of W. Va. Code, 18A-2-2, the reduction should stand because Grievant received actual notice in a timely manner and failed to act.

Similarly, in this case, Respondent made a clerical error unknown to it but known to Grievant, and Grievant failed to notify Respondent of the error or to take the steps of a prudent person to obtain the letter until the relevant deadline had lapsed.

A review of the record leads the undersigned to conclude Grievant attempted to manipulate the notification requirements in order to maintain her employment, even though she had actual notice. An employee who chooses not to pick up a certified letter

in order to claim lack of notice will not be permitted to use such conduct to thwart the law's intent. Respondent acted in good faith, Grievant did not. The reduction-in-force of Grievant's employment in this set of circumstances should stand.

In addition to the foregoing Findings of Fact and Discussion, it is appropriate to make the following formal Conclusions of Law.

Conclusions of Law

1. Pertinent language of W. Va. Code §18A-2-6 provides;

> The continuing contract of any such employee shall remain in full force and effect except as modified by mutual consent of the school board and the employee, unless and until terminated with written notice, stating causes or causes, to the employee, by a majority vote of the full member of the board before the first day of April of the then current year.
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> . . .
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> The affected employee shall have the right of a hearing before the board, if requested, before final action is taken by the board upon the termination of such employment.

2. School personnel laws and regulations are to be strictly construed in favor of the employee. Morgan v. Pizzino, 163 W. Va. 454, 256 S.E.2d 592 (1979); Lavender v. McDowell County Bd. of Educ., 174 W. Va. 513, 327 S.E.2d 691 (1984).

3. Although Respondent did not technically comply with the notice requirements of W. Va. Code §18A-2-6, due to a clerical error, Grievant received actual notice in a timely manner. See Hall v. Mingo County Board of Education, Docket No., 95-29-227 (October 31, 1995)

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. See W. Va. Code § 18-29-7

(repealed) (but see Executive Order No. 2-07, May 8, 2007). Neither the West Virginia Public 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.

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Landon R. Brown

Administrative Law Judge

Date: November 30, 2007

Footnote: 1

Exactly what happened to the letter received by Ms. Whitten is unclear.

Footnote: 2

In 2007, the Legislature abolished the West Virginia Education and State Employees Grievance Board, replacing it with the Public Employees Grievance Board. W. Va. Code §§ 18-29-1 to 18-29-11 and W. Va. Code §§ 29-6A-1 to 29-6A-12 were repealed and replaced by W. Va. Code §§ 6C-2-1 to 6C-2-7 and W. Va. Code §§ 6C-3-1 to 6C-3-6 (2007). Grievances which were pending prior to July 1, 2007, are decided under the former statutes, W. Va. Code §§ 18-29-1 to 18-29-11, for education employees, and W. Va. Code §§ 29-6A-1 to 29-6A-12, for other state and higher education employees. See Executive Order No. 2-07, May 8, 2007. References in this decision are to the former statutes and rules, which continue to control the proceedings in this case.