THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

BESSIE CASTO and

JAMES HENSON,

Grievant,

v. **DOCKET NO. 06-40-312**

PUTNAM COUNTY

BOARD OF EDUCATION,

Respondent.

DISMISSAL ORDER

Grievants, Bessie Casto and James Henson, filed this grievance sometime in July 2006, asserting Respondent's decision to change the terms of compensation for extracurricular assignments, specifically the elimination of payment for wait time, violated *W. Va. Code* §§ 18A-4-8(m); 18A-4-16; 18A-2-7 and 18A-2-6. Their stated relief sought is "calculation of wait time in their compensable time for their extracurricular assignments for the 2006-2007 school year and beyond. Grievants also seek back pay with interest."

A level four hearing was held in the Grievance Board's Charleston office on November 9, 2006. Grievants were represented by John Roush, Esq., West Virginia School Service Personnel Association, and Respondent was represented by Gregory Bailey, Esq., Bowles Rice McDavid Graff & Love LLP. The matter became mature for decision on December 1, 2006, the deadline for filing of the parties' proposed findings of fact and conclusions of law.

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

Findings of Fact

1. Grievants filed this grievance concerning compensation for wait time on July 7, 2006.
2. On August 17, 2006, seventeen bus operators, including Grievants, filed a grievance on the

exact same issue. A decision denying the grievance went out in that case on January 18, 2007. *See Sargent et. al v. Putnam County Bd. Of Educ.*, Docket No. 06- 40-426 (Jan. 18, 2007).

3. It was not discovered that Grievants were party to the *Sargent* grievance until after the December 1, 2006, mature date.

Discussion

The maxim of *res judicata* is a well-established legal doctrine stating that a final judgment rendered on the merits by a court of competent jurisdiction is conclusive as to the rights of the parties to that proceeding and, as to those same parties, constitutes "an absolute bar to a subsequent action involving the same claim, demand or cause of action." Black's Law Dictionary 678 (Abridged 5th Ed. 1983). *See Meeks v. Kanawha County Bd. of Educ.*, Docket No. 96-20-095, (Feb. 28, 1997); *Woodall v. W. Va. Dep't of Transp.*, Docket No. 93-DOH-393 (Feb. 2, 1994); *Ramsey v. W. Va. Dep't of Health & Human Serv.*, Docket No. 90-H-478 (July 31, 1991).

The preclusion doctrine of *res judicata* may be applied by an administrative law judge to prevent the "relitigation of matters about which the parties have already had a full and fair opportunity to litigate and which were in fact litigated." *Vance v. Jefferson County Bd. of Educ.*, Docket No. 03-19-018 (May 27, 2003); *Liller v. W. Va. Human Rights Comm'n*,376 S.E.2d 639, 646 (W. Va. 1988). Before the prosecution of a lawsuit may be barred on the basis of *res judicata* , three elements must be satisfied. First, there must have been a final adjudication on the merits in the prior action by a court having jurisdiction of the proceedings.

Second, the two actions must involve either the same parties or persons in privity with those same parties.

Third, the cause of action identified for resolution in the subsequent proceeding either must be identical to the cause of action determined in the prior action or must be such that it could have been resolved, had it been presented, in the prior action.

Syl. pt. 4, *Blake v. Charleston Area Medical Center, Inc*. 201 W. Va. 469; 498 S.E.2d 41 (1997); Harmon v. Fayette County Bd. of Educ., Docket No. 03-10-035 (May 6, 2003).

All of the above criteria have been met in this case. Grievants were parties in the *Sargent* grievance which contested the change in wait time compensation. The issue was completely and fully

adjudicated in *Sargent et. al v. Putnam County Bd. of Educ.*, Docket No. 06-40-426 (Jan. 18, 2007).

The following conclusions of law support this discussion:

Conclusions of Law

1. The maxim of *res judicata* is a well-established legal doctrine stating that a final judgment rendered on the merits by a court of competent jurisdiction is conclusive as to the rights of the parties to that proceeding and, as to those same parties, constitutes "an absolute bar to a subsequent action involving the same claim, demand or cause of action." Black's Law Dictionary 678 (Abridged 5th Ed. 1983). *See Meeks v. Kanawha County Bd. of Educ.*, Docket No. 96-20-095, (Feb. 28, 1997); *Woodall v. W. Va. Dep't of Transp.*,Docket No. 93-DOH-393 (Feb. 2, 1994); *Ramsey v. W. Va. Dep't of Health & Human Serv.*, Docket No. 90-H-478 (July 31, 1991).

2. The preclusion doctrine of *res judicata* may be applied by an administrative law judge to prevent the "relitigation of matters about which the parties have already had a full and fair opportunity to litigate and which were in fact litigated." *Vance v. Jefferson County Bd. of Educ.*, Docket No. 03-19-018 (May 27, 2003); *Liller v. W. Va. Human Rights Comm'n*, 376 S.E.2d 639, 646 (W. Va. 1988).

3. Before the prosecution of a lawsuit may be barred on the basis of res judicata, three elements must be satisfied.

First, there must have been a final adjudication on the merits in the prior action by a court having jurisdiction of the proceedings.

Second, the two actions must involve either the same parties or persons in privity with those same parties.

Third, the cause of action identified for resolution in the subsequent proceeding either must be identical to the cause of action determined in the prior action or must be such that it could have been resolved, had it been presented, in the prior action.

Syl. pt. 4, *Blake v. Charleston Area Medical Center, Inc*. 201 W. Va. 469; 498 S.E.2d 41 (1997); Harmon v. Fayette County Bd. of Educ., Docket No. 03-10-035 (May 6, 2003).

4. This grievance is barred by *res judicata*.

For the foregoing reasons, this grievance is **DISMISSED** and **STRICKEN** from the Grievance

Board's docket.

This decision is final upon the parties and is enforceable in the Circuit Court of Kanawha County. Any party may appeal this decision to the Circuit Court of Kanawha County within thirty days of receipt of the decision. This decision is not automaticallystayed pending the outcome of the appeal. W. Va. Code § 6C-2-5(c). 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.

DATE: April 16, 2007

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Wendy A. Campbell

Administrative Law Judge