THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

WANDA RUTH WILLIAMS,
Grievant,

v. **Docket No. 2009-1482-RalED**

RALEIGH COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

This grievance was filed by Grievant, Wanda Ruth Williams, on April 23, 2009, against her employer, the Raleigh County Board of Education. The statement of grievance reads:

> Grievant alleges that she is entitled to reclassification by adding the Payroll Supervisor classification title to her contract of employment. Grievant alleges violation of W.VA. CODE § 18A-4-8 and W.VA. CODE § 18A-4-8a.

As relief, Grievant seeks:

> Reclassification by addition of the classification title of Payroll Supervisor to her contract effective July 1, 2008 with compensation for all lost wages with interest.

A hearing was held at level one on June 2, 2009, and the grievance was denied at that level on July 13, 2009. A level two mediation session was conducted on September 18, 2009. Appeal to level three was made on October 29, 2009, and a level three hearing was conducted on May 3, 2010, before Administrative Law Judge Landon R. Brown[1] at the Public Employees Grievance Board in Charleston, WV. Grievant was represented by counsel, John Roush, Esq., of WVSSPA, and Respondent was represented by counsel, Gregory W. Bailey, Esq., of Bowles Rice McDavid Graff & Love LLP. This matter became

[1]This matter was transferred to the undersigned ALJ for administrative reasons.

mature for decision on May 31, 2010, upon receipt of the parties' written Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant is employed as a Secretary III/Accountant III by the Raleigh County Board of Education. Grievant sought reclassification as Secretary III/Accountant III/Payroll Supervisor. The Raleigh County Schools Personnel Department did not reclassify Grievant to include Payroll Supervisor. Grievant did not prove by a preponderance of evidence that she met the requirements for classification as Payroll Supervisor.

The Grievance is denied.

The following Findings of Fact and Conclusions of Law are properly made from the record developed at the level three hearing.

Findings of Fact

1. Grievant, Wanda Williams, is employed as a Secretary III/Accountant III for Raleigh County Schools.

2. On June 3, 2008, Larry Jessup, Assistant Business Manager for Raleigh County Schools, requested that Grievant be reclassified, adding Payroll Supervisor to her job title.[2]

3. Grievant has completed six hours of accounting from Mountain State University.[3]

4. Grievant does not assert an entitlement to the Payroll Supervisor

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[2] *See* Joint Exhibit No. 4.

[3] *See* Joint Exhibit No. 5.

classification on the basis of attainment of the requisite number of college hours of accounting.

5. Grievant submitted documentation from previous employers regarding her accounting-related work experience and requested it be considered in calculating her credit for accounting experience.

6. Respondent did not reclassify Grievant to include Payroll Supervisor for lack of meeting the required qualifications of either completing 12 college hours of accounting from an accredited institution of higher education or possessing eight years of experience performing progressively difficult accounting tasks.

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. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); *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). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he 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). Also, it is well-settled that "[c]ounty boards of education have substantial

discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious." Syl. pt. 3, *Dillon v. Wyoming County Bd. of Educ.*, 177 W. Va. 145, 351 S.E. 2d 58 (1986).

Grievant is employed by Respondent as a Secretary III/Accountant III. Grievant was interviewed for this position by Larry Jessup, Assistant Business Manager for Raleigh County Schools. Mr. Jessup indicated to Grievant that after she had been in the position for a year, he would recommend that she be reclassified as Secretary III/Accountant III/Payroll Supervisor. After performing the position for over a year, Mr. Jessup requested Grievant be reclassified, adding Payroll Supervisor to her job title. Personnel Director, Dr. Emily Meadows, questioned this reclassification out of concern that Grievant did not meet either of the qualifications required for classification of Payroll Supervisor. W.VA. CODE § 18A-4-8(l)(67) provides:

> "Payroll supervisor" means a person employed in the county board office who hasprimary responsibility for the payroll function and who either has completed twelve college hours of accounting from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel[.]"

In reviewing Grievant's personnel file, she was credited as possessing six college hours of accounting and three years of experience performing progressively difficult accounting tasks[4]. Grievant sought reclassification based upon accounting experience. Upon review for reclassification, Grievant was credited with three years of accounting experience as follows: one year for the 2007-2008 school year as Secretary II/Accountant

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[4]*See* Joint Exhibit No. 11.

II at Independence High School and Secretary III/Accountant III in the Insurance Department of Raleigh County Board of Education ("RCBOE"); one year for the 2005-2006 school year for long-term substitute work in the purchasing department of RCBOE; and, one year for the 2004-2005 school year for long-term substitute work in the Special Education Department of RCBOE. Grievant was not reclassified.

Grievant argued that following *Toney v. Raleigh County Board of Education*, Docket No. 01-41-501 (January 16, 2002), accounting work experience is not limited to experience acquired with a county board of education. Grievant is correct in point, however, Respondent was not denying credit for experience acquired outside of a county board of education. Respondent calculated accounting experience based upon verified documentation in their possession. Respondent notified Grievant to provide appropriate documentation for work experience to be considered[5]. Grievant attempted to submit experience verification with the U.S. Census Bureau[6], Coleman's All Pro Services[7] and AAA Travel Agency[8]. Based upon the submissions, Grievant was credited with two additional years of accounting experience: one year for the 2003-2004 school year performing full time accounting and payroll duties for Coleman's All Pro Services together with substitute work for RCBOE; and one year[9] for the 2008-2009 school year as Secretary

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[5]*Id*.

[6]*See* Joint Exhibit No. 12.

[7]*See* Joint Exhibit No. 13.

[8]*See* Joint Exhibit No. 9.

[9]Grievant's credit for another year of experience in her current position was calculated looking at the conclusion of the 2008-2009 fiscal year. *See* Respondent's

II/Accountant II at Independence High School and Secretary III/Accountant III in the Insurance Department of RCBOE. By memo dated April 13, 2009 from the Personnel Director, Grievant was notified that, assuming full time work performed at Coleman's All Pro Services qualified as accounting experience, she would be credited with five years of experience performing progressively difficult accounting tasks[10]. Grievant did not possess the required minimum of eight years of experience for reclassification.

At level three, Grievant argued an entitlement to credit for accounting experience for six months of work as a Clerk for the U.S. Census Bureau. No evidence was presented that the position of Clerk included performing progressively difficult accounting tasks. Likewise, no evidence was presented verifying Grievant's position as Secretary/Receptionist for AAA Travel Agency qualified as accounting experience.

Grievant sought to receive accounting experience credit for work performed for Coleman's All Pro Services and RCBOE, during the same year. Grievant worked for Coleman's All Pro Services in the evenings and on weekends while working for the RCBOE. Grievant believes she should be credited with 2 years of account experience credit for performing two jobs during the course of one year. However, Grievant offered no authority in law or policy or any precedent to support this claim.

Mr. Jessup's indication, during Grievant's interview for the Secretary III/Accountant III position, that she would be reclassified to include Payroll Supervisor after performing the position for a year, is unenforceable. It is well-settled that a supervisor's promises cannot

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Exhibit No. 1.

[10] *Id.*

be binding against an agency where the supervisor does not possess the authority to actually make that determination. *Dickson v. Dep't of Env. Protection Div. of Personnel*, Docket No. 03-DEP-381 (Apr. 14, 2004); *Rush v. Kanawha County Bd. of Educ.*, Docket No. 02-20-362 (Feb. 28, 2003); *Ollar v. W. Va. Dep't of Health and Human Serv.*, Docket No. 92-HHR-186 (Jan. 22, 1993). "Any other rule would deprive the people of their control over the civil service, and leave the status and tenure of all employees to be governed by whatever arrangements incumbent administrators may agree to or prescribe." *Freeman v. Poling,* 175 W. Va. 814, 819, 338 S.E.2d 415, 421 (1985), *citing Carducci v. Regan,* 714 F.2d 171, 177 (D.C. Cir. 1983). Mr. Jessup does not have the authority to reclassify Grievant when she does not meet the required qualifications for the job classification.

In summary, Grievant did not prove by a preponderance of the evidence that she met the required qualifications of Payroll Supervisor. RCBOE's determination of qualifying work experience was not arbitrary and capricious. RCBOE is not bound by the unauthorized assertion of Mr. Jessup to reclassify Grievant after performing her position for a year.

The following conclusions of law support the decision reached.

Conclusions of Law

1. 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. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); *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). "A preponderance of the evidence

is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he 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).

2. It is well-settled that "[c]ounty boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious." Syl. pt. 3, *Dillon v. Wyoming County Bd. of Educ.*, 177 W. Va. 145, 351 S.E. 2d 58 (1986).

3. W.VA. CODE § 18A-4-8(I)(67) defines "Payroll Supervisor" as, "... a person employed in the county board office who has primary responsibility for the payroll function and who either has completed twelve hours of accounting from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel."

4. The requirement of "at least eight years of experience performing progressively difficult accounting tasks" is not limited to experience with a county board of education. *Toney v. Raleigh County Board of Education*, Docket No. 01-41-501 (Jan. 16, 2002).

5. A supervisor's promises cannot be binding against an agency where the supervisor does not possess the authority to actually make that determination. *Dickson v. Dep't of Env. Protection Div. of Personnel*, Docket No. 03-DEP-381 (Apr. 14, 2004); *Rush v. Kanawha County Bd. of Educ.*, Docket No. 02-20-362 (Feb. 28, 2003); *Ollar v. W. Va. Dep't of Health and Human Serv.*, Docket No. 92-HHR-186 (Jan. 22, 1993). "Any other rule would deprive the people of their control over the civil service, and leave the status and tenure of all employees to be governed by whatever arrangements incumbent administrators may agree to or prescribe." *Freeman v. Poling,* 175 W. Va. 814, 819, 338 S.E.2d 415, 421 (1985), *citing Carducci v. Regan,* 714 F.2d 171, 177 (D.C. Cir. 1983).

6. Grievant has not proven by a preponderance of the evidence that she meets the required qualifications contained in W.VA. CODE § 18A-4-8(l)(67) to be classified as a Payroll Supervisor.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Dismissal Order to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. 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 certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. *See also* 156 C.S.R. 1 § 6.20 (2008).

DATE: DECEMBER 1, 2010 _____

Jennifer Lea Stollings-Parr
Administrative Law Judge