WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

SANDRA DEE MOYE,
Grievant,

v. **Docket No. 2010-1643-RalED**

RALEIGH COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

Sandra Dee Moye, Grievant, has been employed by the Respondent, Raleigh County Board of Education ("Board") since November 2007. At the time this grievance was filed, she held a position that was multi-classified as Secretary III/Accountant III/Switchboard Operator-Receptionist.[1] Ms. Moye filed a level one grievance form dated May 19, 2010. As her Statement of grievance she wrote:

> My classification is Secretary III/Accountant III/Switchboard Operator-Receptionist. I allege I am performing the duties of an Accounts Payable Supervisor and have work experience to be classified as such. I allege that I am currently misclassified and should be reclassified as Secretary III/Accountant III/Switchboard Operator–Receptionist/Accounts Payable Supervisor. Violation of West Virginia Code 18A-4-8. If reclassification is granted also requesting 261 day employment term. Violation of West Virginia Code 18A-4-5B.

As relief Grievant seeks:

> . . . [T]o be reclassified as Secretary III/Accountant III/Switchboard Operator–Receptionist/Accounts Payable Supervisor, retro pay. Benefits, seniority. Also requesting reward of interest on all monetary sums. Requesting 261 day employment term.

By agreement of the parties, a level one hearing was held on July 12, 2010, and the

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[1] After the grievance was filed, the Switchboard Operator-Receptionist duties, which were performed for one hour each day, were removed. There is no indication that this action was related to the grievance.

grievance was denied in a decision dated August 6, 2010. The level two appeal was dated August 14, 2010. A mediation was held November 8, 2010, which resulted in an Order which was entered the next day.

Grievant filed a level three appeal dated November 19, 2010, and a level three hearing was held in Beckley, West Virginia, on June 29, 2011. Grievant personally appeared at the hearing and was represented by John E. Roush, Esquire, WVSSPA[2]. The Respondent Board was represented by Gregory W. Bailey, Esquire, Bowles Rice McDavid Graff and Love LLP. At the conclusion of the hearing, the parties agreed to submit Proposed Findings of Fact and Conclusions of Law which were received by the West Virginia Public Employees Grievance Board on August 1, 2011. This matter became mature for decision on that date.

Synopsis

Grievant holds a position that had been placed in the Accounts Payable Supervisor classification for many years prior to her taking it in 2008. She argues that the duties of the position have not changed and the duties meet the classification definition set out in W. VA. CODE § 18A-4-8(I) because her duties are primarily related to Accounts Payable functions.

Respondent argues that the use of the words "has primary responsibility" used in the classification definition for Accounts Payable Supervisor implies a singularity that is inconsistent with having more than one employee in the department with that title. The Board notes that Grievant's supervisor will absorb some duties related to Accounts Payable from another position and he alone will have the Accounts Payable Supervisor

[2] West Virginia School Service Personnel Association.

Classification.

Grievant asserts that Respondent's interpretation of the classification definition is too limited and points to the fact that it has traditionally had more than one Accounts Payable Supervisor and it presently has three Payroll Supervisors even though the definition for that classification has nearly identical language related to "primary responsibilities" as is found in the definition for Accounts Payable Supervisor. Grievant has met her burden of proof and the Grievance is GRANTED.

The following facts are found to be proven by a preponderance of the evidence based upon an examination of the entire record developed at all levels in this matter.

Findings of Fact

1. Grievant, Sandra Dee Moye, is employed by the Respondent Board in a position that is presently multi-classified as Secretary III/Accountant III. *See,* footnote 1, *supra*.

2. Grievant's present position was posted on August 18, 2008, as a position in the Central Office with the classification of Secretary III/Accountant III. Respondent's Exhibit 1. Grievant was awarded the position and transferred into it on September 3, 2008.

3. Immediately before the position was posted, it was held by Joey McDaniels. When Mr. McDaniels held the position it was classified as Secretary III/Accountant III/Accounts Payable Supervisor.

4. Grievant's immediate Supervisor when she assumed her present position was Larry Jessup, Director of Accounting. He directed the Board's Business Office and was in charge of Accounts Payable, Payroll and Employee Benefits. When Grievant accepted her position, Mr. Jessup gave her a list of her duties which included the following:

1. Travel Expense Sheets/Reimbursement to Employees;
2. Set-up Direct Deposits – change information as needed;
3. Voluntary Deductions – send out semi-monthly and monthly from September to June. Set-up all new voluntary deductions and change amounts on existing deductions as needed;
4. Give Larry Tax checks and Direct Deposit Checks that will be printed for each pay period;
5. Suggestee Executions – Garnishments – Semi-monthly and monthly checks;
6. Substitute Service Personnel Payroll – each pay period;
7. Switchboard from 11 – 12 only. If Jo Ann goes to lunch at a different time, someone else will cover the switchboard;
8. Plan Administrator for 403b and 457 TSAs (Tax Sheltered Annuities);
9. Any typing for Larry or David (mostly for Larry – Mitzi type for David most of the time);
10. Quarterly Reports – Mail quarterly. Mr. Brooks will give info. March – June – September – December;
11. Send out Bond Fund checks out of Debt Service Fund. (you generate a hand-written check for this);
12. Keep up shorthand pad for AP Check Register and Payroll Registers;
13. Hold Brickstreet [Workers' Compensation] Checks until Mr. Brooks gives you the invoice. (Quarterly);
14. Payroll sheet each pay period – Take to the employees for their initials. Then let Larry approve it and give top copy to Mitzi and the yellow copy stays in your file;
15. Retirement paperwork. Fill out and send back to CPRB as soon as possible;
16. Lock Vault at the end of the day before you leave;
17. Pony Mail.[3]

5. When the position was held by Joey McDaniels, his list of job duties was exactly the same as Grievant's except that he did not have the "Pony Mail" duty.[4] Mr. McDaniels also helped with the Payroll duties when he had time but Grievant is not expected to do so.

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[3] Grievant's Exhibit 1. The names listed in the job duties have changed as some employees have retired or transferred. Pony Mail is the internal mail system used by the Respondent to deliver internal documents to the various schools and offices throughout the county.

[4] Grievant's Exhibit 2, list of Duties for the position held by Joey McDaniels.

6. Mr. McDaniels was hired to fill the position when it was vacated by the retirement of Gloria Freeman which took effect on June 30, 2007. Ms. Freeman held a 261-day employment term and the duties for the position did not change when Mr. McDaniels took the position.[5]

7. While Grievant does have some payroll responsibilities such as the substitute service personnel payroll, the majority of her duties and responsibilities are accounts payable functions.

8. Brenda Toney was also employed in the Board's Business Office Accounts Payable Department. She transferred from that position after this grievance was filed. Her position was classified as Secretary III/Accountant III/Accounts Payable Supervisor. She had held the Accounts Payable Supervisor classification since April 2001.

9. Brenda Toney and Gloria Freeman were both classified as Accounts Payable Supervisors and shared the duties of that classification for the Respondent, though they worked on different accounts. They used the same equipment, the same software and performed the same tasks. [6]

10. Until Joey McDaniels left the Accounts Payable Department, it was the norm to have more than one employee with the Accounts Payable Supervisor classification. The

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[5]Consequently, Grievant is performing essentially the same duties as were performed by Gloria Freeman whose position was classified as Accounts Payable Supervisor and held a 261-day employment term.

[6] These were specific findings of the Administrative Law Judge in *Lynch et al., v. Raleigh County Bd. of Educ.*, Docket No. 07-41-365, and were affirmed and adopted by the *Circuit Court of Raleigh County in Toney v. Raleigh County Bd. of Educ.*, Raleigh Co. Cir. Ct. Civil Action No. 09-AA-1-B, (Apr. 16, 2010). In fact, the Circuit Judge specifically stated in his remand order, "On remand, the ALJ may not revisit the conclusion that the comparison of duties of Toney and Freeman was apt." *Id.*

practice was to hire an individual as a Secretary III/Accountant III and to upgrade the employee's classification to Accounts Payable Supervisor after one year when the employee was fully functioning in the position.

11. By memorandum to the Board's Treasurer, David Brooks, dated April 15, 2009, Director Jessup recommended that Grievant's classification be amended to include the Accounts Payable Supervisor classification effective July 1, 2009. He noted that, "Sandy Moye has been performing all duties associated with the accounts payable function for almost a year." Director Jessup also wrote that "[Grievant's] job responsibilities are the same or similar to the assignments of the other Accounts Payable Supervisor in the Business Office, also the individual she replaced was classified as Accounts Payable Supervisor." Level 1, Joint Exhibit 3.

12. When no action was taken regarding Director Jessup's recommendation, Grievant inquired of Director Jessup and Treasurer Brooks as to whether her position would be reclassified. She was told to wait and that Superintendent Hutchens was working on it. Eventually, Grievant was told to ask Superintendent Hutchins about the reclassification recommendation. Superintendent Hutchins told Grievant that the reclassification was not going to happen because the Board was concerned about a 261-day employment term grievance.

13. Michael Click assumed the position of Director of Accounting as soon as Mr. Jessup retired on June 30, 2009.[7] He performs the same duties of directing the Board's Business Office that were performed by Director Jessup and Mr. Click has a 240-day

[7] Mr. Click actually started working in the position prior to the actual retirement of Mr. Jessup so that he could learn the job while Mr. Jessup was still there.

contract term.

14. Since Brenda Toney has transferred from her Accounts Payable Supervisor position, Director Click intends to assume some of the duties she performed and post the position she left without the Accounts Payable Supervisor class title, but he has not changed Grievant's position.

15. There are three employees in the payroll department of the Board's Business Office. They all hold the multi-classified position title of Secretary III/ Accountant III/Payroll Supervisor. All three of these employees have 261-day employment terms while all of the employees in the Accounts Payable Department of the Business Office have 240-day employment terms.

16. Class titles for service personnel positions are defined in W. VA. CODE § 18A-4-8. The definitions for Accountant III, Accounts Payable Supervisor and Payroll Supervisor state the following:

> 18A-4-8(i)(6) Accountant III means a person employed in the county board office to manage and supervise accounts payable, payroll procedures, or both.
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> 18A-4-8(i)(7) Accounts payable supervisor means a person employed in the county board office who has primary responsibility for the accounts payable function and who either has completed twelve college hours of accounting courses 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.
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> 18A-4-8(i)(67) Payroll supervisor means a person employed in the county board office who has primary 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.

17. Prior to coming to work for the Respondent Board in November 2007, Grievant

had been employed by Value City Department Stores continuously since March 1989. She held the position of Office Manager/Human Relations from March 1989 through December 2005. "In this position her duties included accounts payable, accounts receivable and payroll, supervision of cash office including auditing for cashier over/shorts and making corrections. . .She completed complex as well as detailed financial and accounting transactions . . ."[8]

18. Based upon Grievant's experience at Value City Department Stores, Respondent conceded that Grievant has more than "eight years of experience performing progressively more difficult accounting tasks" and therefore meets the minimum statutory qualifications for the "Accounts Payable Supervisor" classification. Level 1 Transcript, page 4.

Discussion

As this grievance does not involve a disciplinary matter, Grievant bears the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). 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).

Grievant argues that her position meets the statutory definition of Accounts Payable Supervisor and she should hold that classification. She points out that her duties have not

[8] Level 1, Joint Exhibit 1, Letter from Judy Fisher. Operations Assistant Manager, Value City Department Stores.

changed from those performed by others who previously held the job and the higher classification. Respondent argues that Ms. Toney held the "primary" responsibility for accounts payable and therefore was the only employee entitled to the Accounts Payable Supervisor classification. They note that with the departure of Ms. Toney, Director Click will assume the primary responsibilities and therefore Grievant does not qualify to receive the Supervisor class title.[9]

Respondent relies heavily upon the decision in *Toney v. Raleigh County Bd. of Educ.,* Docket No. 01-41-501 (Jan. 16, 2002). In that decision, the Administrative Law Judge interpreted the statutory definition of Accounts Payable Supervisor classification as follows:

> . . . [T]he new classification explicitly states the new position has "primary" responsibility for the accounts payable function, and this term implies a singularity of position that would be impossible with two "primary" employees. It is possible that Respondent has more than one accounts payable function over which it needs a primary supervisor, or there may be other circumstances which would allow more than one person with this title. . . .

Id. Based upon this interpretation Respondent argues that it has chosen to give the primary responsibility for accounts payable functions to Ms. Toney and now, Director Click. Therefore, Grievant is not entitled to the classification. This reliance is misplaced.

First and foremost, Respondent did not limit the Accounts Payable Supervisor classification to one employee for several years following the ruling in *Toney, supra.* Rather, Ms. Toney and Ms. Freeman were both Accounts Payable Supervisors as was Mr.

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[9] While the record is not clear on this issue, the Accounts Payable Supervisor is paid at Pay Grade "G" while the Accountant III classification is paid at Pay Grade "F". Pay Grade "G" is paid $31.00 per month more than Pay Grade "F". *See:* W. VA. CODE § 18A-4-8a.

McDaniels who followed Ms. Freeman. If Respondent was relying upon the *Toney* decision, it evidently had more than one accounts payable function over which it needed a primary supervisor. That situation has not changed. Grievant is performing virtually the same functions which were performed by Ms. Freeman and Mr. McDaniels. Respondent cannot now simply change the classification when there is no change in the job. Additionally, the definition of the Payroll Supervisor contains virtually the same language found in the Accounts Payable Supervisor definition. Specifically: "a person employed in the county board office who has primary responsibility for the payroll function." W. VA. CODE § 18A-4-8(l)(67). Yet the Board has more than one employee employed as Payroll Supervisors.

Additionally, Grievant points out that there is more than one way to interpret the term "primary responsibility" in the Accounts Payable Supervisor definition. Rather, than assuming that it implies that one person is in charge of these functions, it could as easily mean that the employee's most important job responsibilities relate to the accounts payable functions. This interpretation is consistent with how classification is controlled in state employment where it has been consistently held that the Division of Personnel is required to classify a position based on predominant duties, not duties that are performed on an occasional and intermittent basis. *Adkins v. Workforce W. Va. and Div. of Pers.*, Docket No. 2009-1457-DOC (Oct. 13, 2009). Also the definition states that an Accounts Payable Supervisor means "a" person . . . who has primary responsibility. If the definition was intended to apply to a single individual the legislature could easily stated "the" person denoting "one." It is axiomatic that school personnel regulations and laws are to be strictly construed in favor of the employee. *Morgan v. Pizzino*, 163 W. Va. 454, 256 S.E.2d 592 (1979); *Brum v. Bd. of Educ.*, 215 W. Va. 372, 599 SE 2d 795 (W. Va. 2004). This

interpretation is consistent with how Respondent has configured its employees with more than one employee consistently holding the positions of Payroll Supervisor and Accounts Payable Supervisor. The vast majority of Grievant's responsibilities relate to Accounts Payable functions.

Respondent certainly has the right to reconfigure its personnel to meet its changing needs. If Director Click wishes to absorb the primary Accounts Payable functions of the job that was held by Ms. Toney and post that position differently, he may certainly do so. However, merely changing the name of Grievant's position does not change its classification. As Gertrude Stein noted : "A rose is a rose is a rose."[10] Grievant has proved by a preponderance of the evidence that her position meets the statutory definition of an Accounts Payable Supervisor and that she meets the qualifications for that classification.

The next question to be addressed is whether Grievant is entitled to a 261-day employment term since she is performing the duties of an Accounts Payable Supervisor. This issue has been addressed by the Grievance Board. In the case of *Tammy Lynch, et al v. Raleigh County Bd. of Educ.,* Docket No. 07-41-365 (Dec. 10, 2008), Brenda Toney and four others brought a grievance against the Respondent seeking 261-day employment terms. These employees argued that the Board was violating W. VA. CODE § 18A-4-5b by giving them 240-day contracts when employees with the same classification and similar duties were given 261-day contracts which included paid vacations. W. VA. CODE § 18A-4-5b states in pertinent part:

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[10] Gertrude Stein, *Sacred Emily* (1913) a poem collected in: *Geography and Play* (Boston: Four Seas Co., 1922), pp. 178-188).

> [C]ounty [salary] schedules shall be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation of equipment or other requirements. Further, uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county . . .

Brenda Toney argued that she was performing "like assignments and duties" as Ms. Freeman since they were both Accounts Payable Supervisors and therefore she should also have a 261-day employment term with paid vacation days.[11] The ALJ found that Ms. Toney and Ms. Freeman did perform "like assignments and duties." However, he ruled that Ms. Toney could not compare herself to Ms. Freeman because Ms. Freeman had retired the day after the Grievance was filed and her position was re-posted with a 240-day employment term. Ms. Toney appealed this decision to the Circuit Court of Raleigh County. The Circuit Court reversed the decision and remanded the grievance to the Grievance Board with the following specific instructions:

> On remand, the ALJ may not revisit the conclusion that the comparison of duties of Toney and Freeman was apt. It is necessary, however, to determine whether the comparison employee, Freeman, was employed at the same time the appellant was so employed and whether Freeman was employed at a time prior to the enactment of the applicable statute.

Toney v. Raleigh County Bd. of Educ., Raleigh Co. Cir. Ct. Civil Action No. 09-AA-1-B, (Apr. 16, 2010).

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[11] Employees working for Respondent who work 261-day employment terms do not actually work more days than employees with a 240-day employment term because they receive paid vacation days on which the 240-day employees are off work without pay.

On remand, the ALJ found that Ms. Toney had been employed at the same time as Ms. Freeman and reiterated that they were performing like assignments and duties. Based upon these findings the ALJ ruled that:

> Ms. Freeman should have been viewed as a valid comparison employee. In view of the stipulated facts, and the record of this case, Grievant has met her burden of proving that other similarly situated employees were favored over her by having a 261-day contract while the Grievant had only a 240-day contract. The failure to provide Grievant with a 261-day contract was discrimination and a violation of the uniformity statute.

Toney v. Raleigh County Bd. of Educ., Docket No. 07-41-365R1 (Sept. 9, 2011).

Grievant Moye is performing the same duties as were being performed by Ms. Freeman. She was working at the same time as Ms. Toney who should have received a 261-day employment term. Pursuant to the ruling in the most recent *Toney*[12] decision. Brenda Toney should be considered to be a valid comparison employee and Grievant is entitled pursuant to W. VA. CODE § 18A-4-5b to receive a 261-day employment term as well. As noted by ALJ Reece noted in the *Toney* remand decision, Respondent had no viable justification for denying Grievant a 261-day contract, except for the Respondent's desire to eliminate 261-day contracts. Accordingly, the grievance is GRANTED.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant bears the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). The preponderance standard generally requires proof that a reasonable person would accept

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[12] *Toney v. Raleigh County Bd. of Educ.*, Docket No. 07-41-365R1 (Sept. 9, 2011).

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. School personnel regulations and laws are to be strictly construed in favor of the employee. *Morgan v. Pizzino*, 163 W. Va. 454, 256 S.E.2d 592 (1979); *Brum v. Bd. of Educ.*, 215 W. Va. 372, 599 SE 2d 795 (W. Va. 2004).

3. Grievant Moye proved by a preponderance of the evidence that her position meets the statutory definition of the classification title Accounts Payable Supervisor found in W. VA. CODE § 18A-4-8(i)(7) and that she meets the minimum qualifications for that classification. Accordingly, Grievant must be classified as an Accounts Payable Supervisor.

4. W. VA. CODE § 18A-4-5b requires county boards of education provide uniform salaries, rates of pay, benefits, increments or compensation for all regular employees who perform like assignments and duties.

5. Grievant proved by a preponderance of the evidence that she was performing like assignments and duties compared to Brenda Toney while Ms. Toney was working as an Accounts Payable Supervisor in Respondent's Business Office. During that time Ms. Toney was entitled to a 261-day contract term and uniformity requires that Grievant is entitled to a 261-day contract term as well. W. VA. CODE § 18A-4-8b; *See Toney v. Raleigh County Bd. of Educ.*, Docket No. 07-41-365R1 (Sept. 9, 2011).

Accordingly, the Grievance is GRANTED. Respondent is Ordered to place Grievant on a 261-day contract term and include the Accounts Payable Supervisor classification in her classification title. Additionally, Respondent is Ordered to provide Grievant back pay and benefits to which she would have been entitled under a 261-day contract with the

Accounts Payable Supervisor classification beginning fifteen days prior to the date of her level one grievance form.

Any party may appeal this Decision 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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (2008).

DATE: DECEMBER 16, 2011.

WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE