THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

BARBARA S. MILLER,
Grievant,

v. **Docket No. 2011-0107-PreED**

PRESTON COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

Barbara S. Miller, Grievant, filed this grievance against her employer, Preston County Board of Education, on July 27, 2010. Grievant states that "a position was posted as Coordinator of Services/Accounts Payable Supervisor/Payroll Supervisor/Auditor on June 4, 2010. Testing was given and the position was awarded to a person in the County who held one of the classification in the title effective 7/1/2010. I feel that person should not have been given consideration over me because I have more seniority as an Accountant in the County. There are competency tests for all classifications (18A-4-8e). Each classification title is defined and listed as a separate classification category except for class titles having Roman numeral designations and those are considered as a single classification. There is not a test given for Accounts Payable Supervisor or Payroll Supervisor. Are these the only positions with the classification table not tested? Are these classifications just extensions of the Accountant classification just as the classifications with Roman numerals, cafeteria manager, executive secretary, chief mechanic, mechanic and assistant mechanic? The person awarded the position has 9 years as an Accounts Payable Supervisor and 15 years as an Accountant. I have 7 years as a Payroll Supervisor and 18 years as an Accountant." Grievant seeks to "be awarded the position of

Coordinator of Services/Accounts Payable Supervisor/Payroll Supervisor/Auditor effective 7/1/2010."

This grievance was denied at level one by Decision dated September 15, 2010. A level two mediation session was conducted on October 8, 2010. Appeal to level three was perfected on October 22, 2010. A level three hearing was conducted before the undersigned Administrative Law Judge on January 3, 2011, and June 6, 2011. Grievant appeared in person and by her attorney, Steven L. Shaffer, Estep & Shaffer L.C. Respondent appeared by its attorney, Gregory W. Bailey, Bowles Rice McDavid Graff & Love LLP. This matter became mature for consideration upon receipt of the last of the parties' proposed findings of fact and conclusions of law on July 8, 2011.[1]

Synopsis

Grievant and successful applicant applied for the same Coordinator of Services, Accounts Payable Supervisor, Payroll Supervisor and Auditor position, and both were qualified for the position. The successful applicant had greater seniority in one of the class titles than Grievant, but had less overall seniority. Respondent awarded the multiclassified position by considering the applicant with the greatest seniority in any one of the classification titles. Grievant did not demonstrate that this action was arbitrary and capricious or a violation of policy. This grievance is denied.

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[1]Respondent's proposals were postmarked July 7, 2011. The agreed upon postmark date was July 1, 2011. Grievant objected to the late filing in that it was tantamount to a response to Grievant's proposals. Grievant moved that Respondent's proposals be stricken from the record of this case. Respondent's counsel answered Grievant's objection by indicating that the late filing was a mere inadvertence, and its proposal were finalized in advance of receiving Grievant's proposals. Grievant's motion that Respondent's proposals be stricken from the record of this grievance is denied. Grievant's exception to this ruling is preserved for the record.

The following findings of fact are based upon the record developed at level three.

Findings of Fact

1. The position in question was posted on June 4, 2010. The position is multiclassified and contains the classification titles of Coordinator of Services, Accounts Payable Supervisor, Payroll Supervisor and Auditor.

2. The successful applicant held the classification title Accounts Payable Supervisor. The successful applicant passed the Coordinator of Services competency test during June 2010, and the Auditor test during June 2010. The seniority date of the successful applicant in the Accounts Payable Supervisor classification is July 1, 2001.

3. Grievant was classified as a Payroll Supervisor. Grievant passed the Coordinator of Services competency test on July 24, 2010, and the Auditor test on July 23, 2010. The seniority date of Grievant in the Payroll Supervisor classification is July 1, 2003.

4. The successful applicant held the greatest seniority in Accounts Payable Supervisor classification title of the position and was awarded the job. Grievant did not have seniority in any of the classification titles greater than July 1, 2001. However, Grievant has more seniority as a regular service personnel than the successful applicant.

5. Preston County Board of Education Policy R 8-2-4, Promotion and Filling Service Personnel Vacancies, does speak to the consideration of seniority when awarding multiclassified positions. The policy does not specify that overall county seniority is to be considered when awarding multiclassified positions. Level Three, Grievant's Exhibit 2.

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).

Grievant and Respondent do not dispute that both the Grievant and the successful applicant were qualified for the position. Grievant argues that Respondent was required to rely upon the total regular seniority of all the qualified applicants in order to award the job. Respondent counters that seniority may only be acquired within the separate classification titles within a multiclassification position. In addition, Respondent's method of awarding multiclassified positions by considering the candidate with the greatest seniority in any one of the classification titles of a multiclassified position is not arbitrary and capricious.[2]

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[2]It is well settled that county boards of education have substantial discretion in matters relating to the hiring of school personnel as long as their decisions are in the best

"'Multiclassification' means a person employed to perform tasks that involve the combination of two or more class titles in this section [W. VA. CODE § 18A-4-8(i)]." W. VA. CODE § 18A-4-8(i)(62). A school service person who holds a multiclassification title accrues seniority in each classification category of employment that the employee holds and is considered an employee of each classification category contained within his or her multiclassification title. W. VA. CODE § 18A-4-8g(l).

Although seniority rights for school personnel are well defined in W. VA. CODE § 18A-4-8b, which requires an employer to make decisions affecting the filling of service personnel positions "on the basis of seniority, qualifications and evaluation of past service," there is a lack of definition with regard to seniority rights of multiclassified personnel. The West Virginia Supreme Court of Appeals has attempted to clarify these rights by holding, "[m]ulticlassified school service personnel: (1) do not belong to a separate classification category, but are employees of each category contained within their multiclassification titles; (2) are subject to a reduction of force in any individual job category, based on seniority accumulation within that category; and (3) in the event of a reduction in force, remain in the employ of the county board of education with any categories that are subject to the reduction in force deleted from their multiclassification titles." *Taylor v. Pocahontas County Bd. of Educ.*, Docket No. 05-38-213 (Oct. 14, 2005), citing *Cornell v. Putnam County Bd. of Educ.*, Docket No. 03-40-111 (June 26, 2003) and *Taylor-Hurley v. Mingo County Bd. of Educ.*, 209 W. Va. 780, 551 S.E.2d 702 (2001).

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interest of the school and are not arbitrary and capricious. *See Hyre v. Upshur County Bd. of Educ.*, 186 W. Va. 267, 412 S.E.2d 265 (1991); Syl. Pt. 3, *Dillon v. Bd. of Educ. of County of Wyoming*, 177 W. Va. 145, 351 S.E.2d 58 (1986).

As applied to the situation presented in the instant case, the inescapable conclusion is that multiclassification seniority can be measured by looking to the greatest seniority in one of the relevant classification categories of the position in question. That would appear to be the method to compare the seniority of two employees holding the same multiclassification titles. Seniority may only be acquired within the separate classification titles within a multiclassified position. Multiclassification is not a separate title within W. VA. CODE § 18A-4-8, and each category within the multiclassification should be viewed separately. *Taylor-Hurley*, *supra; Cornell*, *supra*.

Respondent's decision to award multiclassified positions by considering the candidate with the greatest seniority in any one of the classification titles of a multiclassified position cannot be viewed as arbitrary and capricious. In this grievance, the successful applicant held the greatest seniority in one of the classification titles for the position in question, a seniority date of July 1, 2001, for Accounts Payable Supervisor, and was awarded the position. This date provides more seniority than Grievant's seniority date of July 1, 2003, for the classification title of Payroll Supervisor. This approach by Respondent was not an abuse of discretion and did not violate its policy related to promotion and filling service personnel vacancies.

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).

2. "Multiclassified school service personnel: (1) do not belong to a separate classification category, but are employees of each category contained within their multiclassification titles; (2) are subject to a reduction of force in any individual job category, based on seniority accumulation within that category; and (3) in the event of a reduction in force, remain in the employ of the county board of education with any categories that are subject to the reduction in force deleted from their multiclassification titles." *Taylor v. Pocahontas County Bd. of Educ.*, Docket No. 05-38-213 (Oct. 14, 2005), citing *Cornell v. Putnam County Bd. of Educ.*, Docket No. 03-40-111 (June 26, 2003) and *Taylor-Hurley v. Mingo County Bd. of Educ.*, 209 W. Va. 780, 551 S.E.2d 702 (2001).

3. Seniority may only be acquired within the separate classification titles within a multiclassified position. Multiclassification is not a separate title within W. VA. CODE § 18A-4-8, and each category within the multiclassification should be viewed separately. *Taylor-Hurley*, *supra; Cornell*, *supra*.

4. It was not arbitrary and capricious for Respondent to award multiclassified positions by considering the candidate with the greatest seniority in any one of the classification titles of a multiclassified position.

Accordingly, this grievance is **DENIED**.

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: August 9, 2011

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Ronald L. Reece
Administrative Law Judge