THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

GINA MILLS GRIFFITH,
Grievant,

v. **Docket No. 2011-0247-RalED**

RALEIGH COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

Grievant, Gina Griffith, is employed by the Raleigh County Board of Education as a Secretary III. Ms. Griffith filed a level one grievance form dated August 31, 2010. As her Statement of Grievance, Ms. Griffith alleges the following:

> Grievant is a 240-day employment term employee of Respondent. She contends that two similarly situated and classified employees, Alma Willis and Garnet Mooney, hold 261-day employment term contracts of employment. Grievant asserts that this situation constitutes nonuniformity & discrimination/favoritism in violation of W. Va. Code 18A-4-5B & 6C-2-2.

As relief, her statement requests the following:

> Grievant seeks instatement into a 261 day contract retroactive to the earliest point in time permitted by law with compensation for all lost wages and benefits, pecuniary and nonpecuniary, to the maximum extent permitted by law.

A level one hearing was held on October 4, 2010, and a level one Decision denying the grievance was issued on November 17, 2010. A level two mediation session was conducted on March 2, 2011. Grievant perfected her appeal to level three on March 11, 2011. A level three hearing was conducted on October 21, 2011, before the Honorable William B. McGinley, Administrative Law Judge, at the Grievance Board's Beckley office.

Grievant appeared in person and by her counsel, John Everett Roush, West Virginia School Service Personnel Association. Respondent appeared by its attorney, Gregory W. Bailey, Bowles Rice McDavid Graff and Love. For administrative reasons, this case was reassigned to the undersigned Administrative Law Judge on March 12, 2012. This matter initially became mature for consideration upon receipt of the last of the parties' proposed findings of fact and conclusions of law on November 22, 2011.

Synopsis

Grievant asserts that she performs like assignments and duties as two of her co-workers. Grievant argues that the failure of Respondent to provide her with the same 261-day contract constitutes unlawful discrimination and violates uniformity provisions. Respondent demonstrated that the co-workers and Grievant do not perform like assignments and duties. Consequently, the grievance is denied.

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

Findings of Fact

1. Grievant is employed as a Secretary III at the Maintenance Department of the Raleigh County Schools. She holds a 240-day employment term contract. She began this job on July 1, 2010.

2. Grievant's supervisor, Gilbert Pennington, is the Maintenance Director. Grievant is also given assignments by Dennis Persinger, Coordinator of Maintenance, and Racine Thompson, Assistant Superintendent, having responsibilities over maintenance of the schools' property.

3. Grievant is responsible for answering telephone calls; directing callers to appropriate employees within the Maintenance Department; preparing payrolls and maintaining a daily labor report; organizing work orders; directing work orders to crew leaders; maintaining personnel records of Maintenance Department employees; ordering supplies for the Maintenance Department and specific needed for specific work orders.

4. Alma Willis and Garnet Mooney are employed by the Respondent with the classification title of Secretary III. Each holds a 261-day employment contract.

5. Alma Willis is employed in the central office, assigned to Assistant Superintendents Racine Thompson and Janet Lilly. Ninety percent of her duties and responsibilities relate to work performed for Ms. Lilly, and only ten percent of her work is related to work performed for Mr. Thompson. Ms. Willis has a seniority date of December 24, 1975. Her current tenure as a 261-day contract employee began with the 1994-1995 school year.

6. Garnet Mooney is employed in the Transportation Department. Ms. Mooney has a seniority date of August 22, 1962. She has held a 261-day contract since she was first employed and has continuously worked in the same position. Her current classification title began with the 1981-1982 school year.

7. Ms. Willis performs an array of duties not performed by the Grievant. Among them are support for elementary athletic programs, including the maintenance of the bylaws and scheduling; assisting in the preparation of the monthly reports to the West Virginia Department of Education; maintenance of the “bell to bell” forms; support for early admission testing; support for out-of-district student transfers; support for the Universal Pre-K program, including preparation of an annual Pre-K plan; support for textbook

adoption; support for staff development; and communication with parents on matters relating to the areas of responsibility of Ms. Lilly.

8. Ms. Mooney also performs duties not performed by the Grievant. The primary focus of Ms. Mooney's position concerns the assignment of substitute bus operators for regular runs and midday runs, the assignment of bus operators to field trips, and the assignment of bus operators for extra-duty trips. Ms. Mooney does not perform duties performed by Grievant such as maintaining the fuel log, ordering office supplies, typing correspondence, arranging in-service for bus operators, maintenance of warranty documentation, credit card purchase reconciliation, and opening and processing mail.

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 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). *See also 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). "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's argument centers around W. VA. CODE § 18A-4-5b, which states in part that:

> The county board of education may establish salary schedules which shall be in excess of the state minimums fixed by this article.

> These county 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 . . .

This portion of the statute is referred to as the uniformity provision and it requires that all employees who are performing like assignments and duties be treated the same with regard to pay and benefits. The provision has been addressed by the West Virginia Supreme Court of Appeals in cases specifically involving employees who were working under 240-day contract terms and allegedly performing like assignments and duties as other employees with 261-day contract terms. *See Flint v. Bd. of Educ. of the County of Harrison*, 207 W. Va. 251, 531 S.E.2d 76 (1999); and *Durig v. Bd. of Educ. of the County of Wetzel*, 215 W. Va. 244, 599 S.E.2d 667 (2004). The Court noting in syllabus point three that:

> "Where county board of education employees perform substantially similar work under 261-day and 240-day contracts, and vacation days provided to 261-day employees reduce their annual number of work days to a level at or near the 240-day employees, principles of uniformity demand that the similarly situated employees receive similar benefits."

In the present case, Grievant, Ms. Willis, and Ms. Mooney are all classified as Secretary III; however, none of them perform like assignments and duties. Ms. Willis performs an array of duties not performed by the Grievant. Among them are support for elementary athletic programs, including the maintenance of the bylaws and scheduling; assisting in the preparation of the monthly reports to the West Virginia Department of Education; maintenance of the "bell to bell" forms; support for early admission testing; support for out-of-district student transfers; support for the Universal Pre-K program,

including preparation of an annual Pre-K plan; support for textbook adoption; support for staff development.

The primary focus of Ms. Mooney's position concerns the assignment of substitute bus operators for regular runs and midday runs, the assignment of bus operators to field trips, and the assignment of bus operators for extra-duty trips. Ms. Mooney does not perform duties performed by Grievant such as maintaining the fuel log, ordering office supplies, typing correspondence, arranging in-service training for bus operators, maintenance of warranty documentation, credit card purchase reconciliation, and opening and processing mail.

As noted before, Grievant is responsible for answering telephone calls; directing callers to appropriate employees within the Maintenance Department; preparing the payroll and maintaining a daily labor report; organizing work orders; directing work orders to crew leaders; maintaining personnel records of Maintenance Department employees; ordering supplies for the Maintenance Department and supplies needed for specific work orders.

Because Grievant does not perform like assignments and duties as Ms. Willis and Ms. Mooney, she is not entitled to uniform compensation. Grievant failed to demonstrate by a preponderance of the evidence that Respondent engaged in a statutory violation, or that she was otherwise entitled to the 261-day contract provided to Ms. Willis and Ms. Mooney.

Grievant also argues that her lack of a 261-day employment term constitutes unlawful discrimination pursuant to the statutory grievance procedure. For purposes of the grievance procedure, discrimination is defined as "any differences in the treatment of similarly situated employees, unless the differences are related to the actual job

responsibilities of the employees or are agreed to in writing by the employees." W. VA. CODE § 6C-2-2(d). In order to establish a discrimination claim asserted under the grievance statutes, an employee must prove:

> (a) that he or she has been treated differently from one or more similarly-situated employee(s);
>
> (b) that the different treatment is not related to the actual job responsibilities of the employees; and,
>
> (c) that the difference in treatment was not agreed to in writing by the employee.

Frymier v. Higher Education Policy Comm'n, 655 S.E.2d 52, 221 W. Va. 306 (2007); *Harris v. Dep't of Transp.*, Docket No. 2008-1594-DOT (Dec. 15, 2008).

Grievant is not similarly situated with Ms. Willis and Ms. Mooney. While they are in the same classification title, and perform similar types of work, the record established that Ms. Willis and Ms. Mooney perform duties that were clearly different and distinct from those performed by Grievant. Ms. Willis is employed in the central office, assigned to Assistant Superintendents Racine Thompson and Janet Lilly. As previously noted, she performs an array of duties not performed by Grievant. Ms. Mooney is employed as a Secretary III in the Transportation Department. Her duties concern assignments related to bus operator scheduling. Finally, Grievant works for the Maintenance Department and her assignments and duties are substantially different than the employees to whom she compares her work.

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 his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 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. Pursuant to W. VA. CODE § 18A-4-5b, boards of education are required to provide uniform benefits and compensation to similarly situated employees, meaning those who have like classifications, ranks, assignments, duties, and actual working days. *Cutright v. Lewis County Bd. of Educ.*, Docket No. 05-21-335 (Jan. 18, 2006); *Covert v. Putnam County Bd. of Educ.*, Docket No. 99-40-463 (Feb. 29, 2000).

3. Grievant did not prove by a preponderance of the evidence that her assignments and duties were sufficiently similar to Ms. Willis and Ms. Mooney to trigger the uniformity requirements of W. Va. Code § 18A-4-5b.

4. In order to establish a discrimination claim asserted under the grievance statutes, an employee must prove:

> (a) that he or she has been treated differently from one or more similarly-situated employee(s);
>
> (b) that the different treatment is not related to the actual job responsibilities of the employees; and,
>
> (c) that the difference in treatment was not agreed to in writing by the employee.

Frymier v. Higher Education Policy Comm'n, 655 S.E.2d 52, 221 W. Va. 306 (2007); *Harris v. Dep't of Transp.*, Docket No. 2008-1594-DOT (Dec. 15, 2008).

5. Grievant did not prove by a preponderance of the evidence that she was similarly situated to the employees to whom she compared her duties and therefore she is not subject to unlawful discrimination.

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: April 30, 2011

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Ronald L. Reece
Administrative Law Judge