

# WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

SANDY PINSON and KYRSTYN NOE,

Grievant,

v.

Docket No. 2022-0011-CONS

MINGO COUNTY BOARD OF EDUCATION,

Respondent.

## DECISION

Sandy Pinson and Kyrstyn Noe, Grievants, filed grievances against their employer the Mingo County Board of Education, ("MCBE"), Respondent, protesting the length of their respective employment contract. The grievances as filed on July 6, 2021 were subsequently consolidated. A representation of the grievance statement provides:

Mingo County Schools is in violation of West Virginia Code 18A-4-5a County salary supplements for teachers regarding [Grievants] contract days. Additionally, Mingo County Schools is in violation of State Board Policy 5902: Employee Code of Conduct...

Relief Sought:

[Grievants] respectfully requests that Mingo County schools be directed to fairly and uniformly provide her an equitable contract extension to 261 days. A contract extension was requested and recommended by her immediate supervisor and the Superintendent at the June 14, 2021, board meeting.

A conference was held at level one on October 7, 2021 and the grievance was denied at that level on November 16, 2021. Grievants appealed to level two on November 17, 2021. A mediation session held on February 23, 2022. Grievants appealed to level three on March 2, 2022. Grievants moved to amend the relief sought to include back pay for one year. A level three hearing was held before the undersigned Administrative Law Judge on August 3, 2022, at the Grievance Board's Charleston office. Grievants appeared in person and were represented by their representative, Susan

Lattimer Adkins. Respondent appeared by and through Johnny Branch, Superintendent of Mingo County Schools and was represented by its counsel Leslie Tyree, Attorney at Law. At the conclusion of the level three hearing, the parties were invited to submit written Proposed Findings of Fact and Conclusions of Law. Both parties submitted fact/law proposals, and this matter became mature for decision on or about September 15, 2022, on receipt of the last of these proposals.

### **Synopsis**

Grievants filed grievances against Mingo County Board of Education, Respondent regarding their respective contract terms. Respondent chose to extend/enlarge the contract days of identifiable central office employees. Grievants contracts were not enlarged. Grievants allege that Respondent's actions constitute disparate treatment and violation of West Virginia Code §18A-4-5a. Grievants, individually contend entitlement to additional contracts days.

Grievants applied for and accepted the positions which they currently hold or held at the time of the filing. Respondent maintains it is not obligated to extend Grievants contract terms. Grievants did not establish by a preponderance of the evidence that Respondent violated any applicable rule, regulation, or law by not providing Grievants employment contracts equivalent to that of Central Office Directors or employees reporting directly to the Superintendent. Accordingly, this grievance is **DENIED**

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

### **Findings of Fact**

1. Sandy Pinson and Kyrstyn Noe, Grievants, were both full-time Special Education Curriculum Specialists with Mingo County Board of Education, Respondent, at the time this grievance was filed. Subsequent to the filing, Kyrstyn Noe changed jobs and is now a Coordinator in the Office of Human Resources.

2. In 2017, Grievant Pinson bid on and received a 240- day position and contract as a Special Education Curriculum Specialist within the special education department of the Mingo County Board of Education. See R Ex 2. As a Special Education Curriculum Specialist, Sandy Pinson is employed on a 240-day contract of employment with Respondent.

3. In 2019, Grievant Noe bid on and received a 200-day position and contract as a Special Education Curriculum Specialist within the special education department of the Mingo County Board of Education. R Ex 1. When employed as a Special Education Curriculum Specialist, Kyrstyn Noe was employed on a 200-day contract.

4. The contract terms of Grievants employment in 2017 and 2019 were based on the needs of the county and the special education department. Accordingly, Grievants were employed within the special education department with 200 and 240-day contracts.

5. Grievants are supervised by the Director of Special Education department, Janet Varney. Grievants do not report to the school superintendent.

6. In 2021, then Superintendent Don Spence recommended to the Mingo County Board of Education that all “central office employees” be moved to 261-day

contracts, to include the custodians, secretaries, Directors and anyone employed in the central office.

7. With the recommendation of the Superintendent, multiple central office administrators listed as Directors, Supervisors, Facilitators, Coordinators, etc. were granted 261-day contracts by the Mingo County Board of Education, Respondent, at a Board meeting on June 4, 2021. All central office administrators who were not previously on a 261-day contract were granted a contract extension except for Sandy Pinson and Kyrstyn Noe. G Ex 4.

8. The minutes of the June 14, 2021 meeting of the Mingo County Board of Education detail at page 4, line 166 through line 173, that the Mingo County Board of Education specifically refused to approve a change in contract terms for Grievants Noe and Pinson. G Ex 5 Respondent specifically voted not to approve the motion to extend Grievants employment contract terms. G Ex 5.

9. The Mingo County Board of Education did not approve all employees to be moved to a 261-day contract. The rationale for Respondent's action of not extending the employment contracts of Grievants Kyrstyn Noe (200 to 240 days) and Sandy Pinson (240 to 260 days) is not provided in the minutes the June 14, 2021 board meeting. Respondent approved 261-day contracts for central office Directors and staff which report directly to the Superintendent. G Ex 5.

10. Dr Johnny Branch assumed the position of Mingo County Superintendent on July 1, 2021.

11. Janet Varney, Grievants supervisor, Director of Special Education, received a contract extension to 261 days. Ms. Varney is the director of an entire department.

12. Grievants are not Central Office Directors or staff which report directly to the Superintendent. Grievants are employed within the Special Education Department; Grievants level of authority is not equal to that of a central office Director.

13. Grievants with their respective Special Education Curriculum Specialists employment contracts are not similarly situated employees that report directly to the Superintendent (central office personnel).

### **Discussion**

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their case by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2018). "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." *Lechlitter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. *Id.*

“County 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 Board of Education*, 177 W. Va. 145, 351 S.E.2d 58 (1986).” Syl. Pt. 2, *Baker v. Bd. of Educ.*, 207 W. Va. 513, 534 S.E.2d 378 (2000).

Grievant Noe bid upon and received a 200-day position and Grievant Pinson bid upon and received a 240-day position. The Mingo County Board of Education chose to extend the contract days of the central office Directors and central office employees reporting directly to the Superintendent in 2021. See G Ex 5. Grievants employment contracts were not extended to 261-day contracts. Grievants contend they too are entitled to extended employment contracts. Grievants lodge a disparate treatment argument alleging a violation of West Virginia Code §18A-4-5a. Grievants seek to compare themselves to central office administrators who received an extension of their employment contract in 2021. Respondent maintains it is not obligated to extend Grievants contract terms. Grievants seeking to enforce the uniformity provisions must establish that their duties and assignments are like those of the employees to whom they are attempting to compare themselves. *Lockett v. Fayette County Board of Education*, Docket No. 01-10-477 (Dec. 28, 2001); *Affirmed*, Kan. Cir. Ct., Civil Action No. 20-AA-24, (Jun 12, 2022); *Affirmed*, *Lockett v. Fayette County Bd. Of Educ.*, 214 W. Va. 554; 591 S.E. 2d 112 (2003). Respondent maintains it has not violated any applicable rule, regulation, or law in not providing Grievants employment contracts equivalent to that of Central Office Directors and/or employees reporting directly to the Superintendent.

It is well-settled in school personnel law that equal pay and benefits are only required for employees with similar jobs, duties, and contract arrangements. West Virginia Code §18A-4-5a allows county boards of education to “establish salary schedules . . . in excess of the state minimums” and these schedules must be uniform for employees with similar “training, experience, responsibility and other requirements” . . . “[u]niformity also shall apply to . . . addition salary increments or compensation for all persons performing like assignments and duties within the county.” County boards of education are required to provide uniform benefits and compensation only to similarly situated employees, meaning those who have “like classifications, ranks, assignments, duties and actual working days.” *Bd. of Educ. v. Airhart*, 212 W. Va. 175, 569 S.E.2d 422 (2002); *Covert v. Putnam County Bd. of Educ.*, Docket No. 99-40-463 (Feb. 29, 2000).

At the time of filing the instant Grievants performed the duties of a Special Education Curriculum Specialist within the special education department of the Mingo County Board of Education. Grievants provided support in the area of diagnostic/behavior services. Directors and staff which report directly to the Superintendent tend to effect county wide initiatives effecting a variety of objectives. “Although the employees’ duties need not be identical, a grievant must show that their duties are substantially similar to other employees in order to prevail in a nonuniformity claim. See *Weimer-Godwin v. Bd. of Educ.*, 179 W.Va. 423, 369 S.E.2d 726 (1988).” *Allison v. Hancock County Board of Education*, Docket No. 97-15-454 (Mar. 31, 1998), *Miller, et al. v. Boone County Board of Education*, Docket No. 99-03-410 (Feb. 17, 2000). Other than their own testimony, Grievant provided little to no evidence to support their

contention that their duties were similar to the other employees, who's employment contracts were extended. Grievants provided their respective job description, but little to no comparative factors regarding the activities of central office personnel. G Ex 7.

The instant Grievants have not established that they are similarly situated employees as central office Directors or staff which report directly to the Superintendent. Grievants, Kyrstyn Noe and Sandy Pinson, testified at the August 3, 2022 level three hearing. However, their testimony and limited opinion regarding what they perceive to be fair does not satisfy the burden of proof necessary to prevail pursuant to the theory of the grievance presented. Grievants failed to establish that Respondent is obligated to grant Special Education Curriculum Specialists the same benefits as staff which report directly to the Superintendent. The Superintendent may make requests and recommendations to the Board regarding salaries, but the Board is not obligated to accept such requests as a mandate. Respondent specifically voted not to approve the motion to extend Grievants employment contract terms. G Ex 5. The rationale for Respondent's action of not extending the employment contracts of Grievants Kyrstyn Noe (200 to 240 days) and Sandy Pinson (240 to 260 days) is not provided in the minutes the June 14, 2021 Board meeting. Nevertheless, it is clear despite the then Superintendent's request, the Board specifically choose not to approve the motion to extend Grievants employment contract terms. G Ex 5.

A variety of individuals received an increase in employment contracts pursuant to Respondent's action. The criteria used to determine who would, and who would not, receive an increase in employment is debatable. Grievants have the obligation to



establish that Respondent's actions were arbitrary and capricious.<sup>1</sup> Grievants did not achieve this undertaking. It is not established that the professional individuals who received the increase in employment contracts were unduly enriched. Grievants level of authority is not equal to that of a Central Office Director. Grievants with their respective Special Education Curriculum Specialists employment contracts are not similarly situated employees that report directly to the Superintendent.

County boards of education are required to provide uniform benefits and compensation only to similarly situated employees, meaning those who have "like classifications, ranks, assignments, duties and actual working days." *Bd. of Educ. v. Airhart*, 212 W. Va. 175, 569 S.E.2d 422 (2002); *Covert v. Putnam County Bd. of Educ.*, Docket No. 99-40-463 (Feb. 29, 2000). Grievants did not establish that their positions are similarly situated to that of central office personnel.

It is within Respondent's discretion to determine the needs of the school system for management personnel, employment contracts, and compensation, within the

---

<sup>1</sup> Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of opinion. See *Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *Eads, supra (citing Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute his judgment for that of the authoritarian agency. See generally *Harrison v. Ginsberg*, 169 W. Va. 162, 286 S.E.2d 276, 283 (1982).

requirements of school personnel law. “County 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 reasonable, in the best interests of the schools, and in a manner which is not arbitrary and capricious.” Syl. pt. 3, *Dillon v. Wyoming County Board of Education*, 177 W. Va. 145, 351 S.E.2d 58 (1986). An action is recognized as arbitrary and capricious when “it is unreasonable, without consideration, and in disregard of facts and circumstances of the case.” *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996).

While it is understandable that Grievants disagree with Respondent’s selective increase in employment contracts, Grievants have not proven that Respondent reached a determination that is so implausible that it cannot be ascribed to a difference of opinion. Respondent has some discretion pertaining to salaries and conditions of employment. Grievants did not prove by a preponderance of evidence that Respondent exceeded its discretion pertaining to the instant events. Respondent chose to approve and extend the contract from 240 days to 261 days of central office Directors and staff that report directly to the Superintendent. Neither Grievant is a Central Office Director. Nor did Grievants establish their duties are equivalent to that of an office personnel that report directly to the Superintendent. Grievants seeking to enforce the uniformity provisions must establish that their duties and assignments are like those of the employees to whom they are attempting to compare themselves. Grievants have failed to establish by a preponderance of the evidence a violation of the uniformity provision or that any other law or policy has been violated with respect to the contract extension of limited central office personnel.

Grievants did not establish by a preponderance of the evidence that Respondent was obligated (required) to extend their contract terms.

The following conclusions of law are appropriate in this matter:

### **Conclusions of Law**

1. Because the subject of this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2018). ). "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). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. *Id*

2. "County 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 Board of Education*, 177 W. Va. 145, 351 S.E.2d 58 (1986)." Syl. Pt. 2, *Baker v. Bd. of Educ.*, 207 W. Va. 513, 534 S.E.2d 378 (2000).

3. County boards of education are required to provide uniform benefits and compensation only to similarly situated employees, meaning those who have “like classifications, ranks, assignments, duties and actual working days.” *Bd. of Educ. v. Airhart*, 212 W. Va. 175, 569 S.E.2d 422 (2002); *Covert v. Putnam County Bd. of Educ.*, Docket No. 99-40-463 (Feb. 29, 2000).

4. Grievants failed to establish that Grievants were performing similar assignments or duties to those employees directing district wide departments or other employees reporting directly to the Superintendent.

5. Grievants have not met their burden of proof. Grievants failed to establish by a preponderance of the evidence a violation of the uniformity provision or that any other law or policy has been violated with respect to the contract extension of identified central office personnel.

6. Grievants did not establish by a preponderance of the evidence that Respondent is required to extend their contract terms.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Intermediate Court of Appeals.<sup>2</sup> Any such appeal must be filed within thirty (30) days of receipt of this decision. W. VA. CODE

---

<sup>2</sup> On April 8, 2021, Senate Bill 275 was enacted creating the Intermediate Court of Appeals. The act conferred jurisdiction to the Intermediate Court of Appeals over “[f]inal judgments, orders, or decisions of an agency or an administrative law judge entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County pursuant to 29A-5-4 or any other provision of this code[.]” W. VA. CODE § 51-11-4(b)(4). The West Virginia Public Employees Grievance Procedure provides that an appeal of a Grievance Board decision be made to the Circuit Court of Kanawha County. W. VA. CODE § 6C-2-5. Although Senate Bill 275 did not specifically amend West Virginia Code § 6C-2-5, it appears an appeal of a decision of the Public Employees Grievance Board now lies with the Intermediate Court of Appeals.

§ 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 named as a party to the appeal. However, the appealing party is required to serve a copy of the appeal petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b).

**Date:** October 26, 2022

---

**Landon R. Brown**  
**Administrative Law Judge**