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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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DANNY L. PARSONS

v.

DOCKET NO. 06-87-067-1

CABELL COUNTY BOARD OF EDUCATION

DECISION

Grievant, Danny Parsons, is employed by the Cabell County Board of Education as a school bus operator and filed two grievances which were the subject of a level two evidentiary hearing on February 9, 1987. The grievances were appealed to the Education Employees Grievance Board and an evidentiary hearing was conducted on October 23, 1987; proposed findings of fact and conclusions of law were filed by counsel on November 16, 1987.¹

¹ The level four hearing had been scheduled on two prior occasions and continued on motion of counsel for the parties.

The grievance was submitted to the hearing examiner on the transcript of evidence of the level two hearing, (footnote continued)

Grievant became a regular employee of Cabell County Schools in 1983 as a full time/part time employee and prior thereto and during that time was employed at Marshall University as a security guard, i.e., 1978-81 and 1983-85 (T.6). The first grievance seeks to obtain sick leave credit for the time worked at Marshall University and to transfer it to Cabell County Schools. The records reveal that grievant accumulated 76.66 days of sick leave during his employment at Marshall University and was informed that other employees of Cabell County Schools had transferred sick leave from Marshall as well as from other State employment. Specifically, he understood that Donna Gibson had received sick leave credit for accumulated sick leave from Marshall University (T.8); that Leonard Dunkle had transferred sick leave to Cabell County Schools from his employment at the Rehabilitation Center at Institute, (T.9),

(footnote continued)

hereinafter (T.____), the testimony of Robert Brewster, associate superintendent of Cabell County Schools, and the affidavit of H. Thomas McCray, treasurer of Cabell County Schools; the grievant did not testify at level four.

as had Anthony Mounts, a school bus operator (T.10).²

The evidence in the second grievance is uncontroverted and reveals that grievant worked in a summer temporary job from July 7 through August 19 classified as painter/handyman/furniture finisher/maintenance department, (T.25,28) after which he resumed his duties as school bus operator. In November a job was posted for a general maintenance/handyman position and grievant bid thereon (T.25). No formal interviews were conducted and the position was awarded to a custodian with more seniority than grievant but without any prior experience in the general maintenance/handyman classification (T.26).

Mr. William Zban, school service personnel director for Cabell County Schools, testified at level two that the general maintenance/handyman position was posted November 6 through November 13, 1986 and was awarded to Steve Adkins, a custodian from Monroe Elementary School (T.35). He stated that although

² The affidavit of H. Thomas McCray, treasurer of Cabell County Schools, recites that affiant had testified more than once under oath that no employee of Cabell County Schools had received sick leave credit for days earned with another employer other than a West Virginia county board of education; that Donna Gibson and Anthony Mounts did not receive credit for sick days transferred from Marshall University or any other employer. (Employer's Exhibit 1). This was also the finding of the grievance evaluator at level two in the written decision issued on March 2, 1987.

As to the Dunkle case, see Leonard Dunkle v. Cabell County Board of Education, Docket No. 06-87-169, decided December 31, 1987.

interviews were not conducted he considered grievant for the position and that all of the fifteen applicants for the position were considered qualified but that none had any seniority for the position posted (T.39). Accordingly, Mr. Zban stated that he selected the applicant with the longest employment history with Cabell County Schools and had not determined if any of the applicants had previous summer experience in either general maintenance or handyman work (T.39).³

Counsel for grievant contends that Marshall University and Cabell County Schools are educational institutions operating under the auspices of the state government and that W.Va. Code, 18A-4-10⁴ provides for the transferability within the State of a county board of education employee's accumulated personal leave; that, accordingly, the personal leave accrued by grievant at Marshall University is transferable to the

³ Mr. Zban was aware that grievant had experience working for the school board in the general maintenance/handyman position in the summer but either failed to recognize that summer work or failed to consider it (T.40,41).

⁴ W.Va. Code, 18A-4-10 provides, in pertinent part, that a full time employee of a county board of education is entitled annually to at least one and one-half days personal leave for each employment month and that unused leave shall be accumulated without limitation and be transferable within the State; that a county board may supplement the leave provisions in its discretion.

The grievance evaluator at level two held that the Cabell County board had not enacted a policy allowing sick leave to be transferred from any other institution.

Cabell County board of education. It is also contended that the school board erred in awarding the general maintenance/handyman position to Steve Adkins because the board failed to establish that he was qualified; that W.Va. Code, 18A-4-8b provides that an applicant qualifies for a job by either holding a classification title in that category of employment or by meeting the definition of the job title that relates to the promotion or vacancy and that grievant qualified for the position by meeting the definition.⁵

Counsel for the school board contends that there was no promise made to give grievant credit for accrued sick leave at Marshall University when he became employed with Cabell County Schools and no employee has ever received transferred sick leave under similar circumstances; that the payroll records of all of the employees whom grievant asserts were granted sick leave credit reveal that none received such credit. Counsel further contends that the evidence shows clearly that grievant and the other fourteen employees who bid on the general maintenance/handyman position were all qualified to do the

⁵ The position of general maintenance/handyman grievant seeks involves less salary than he currently earns so he does not seek back pay in this grievance (T.27).

work of said position and the person selected had more seniority with Cabell County Schools than any of the fifteen applicants; that none of the applicants were classified or working in that job classification and the State Superintendent of Schools has interpreted W.Va. Code, 18A-4-8b to mean that service employees keep seniority earned in any job classification but are entitled to use it only when they are working in the particular classification or when there is a reduction in force.

In addition to the foregoing factual narrative the following specific findings of fact are appropriate.

FINDINGS OF FACT

1. Grievant is employed by Cabell County Board of Education as a regular school bus operator under a ten month contract.

2. At the time of his employment as a regular employee with Cabell County Schools in 1983 he had accrued 76.66 days of earned sick leave pursuant to his employment at Marshall University as a security guard during the years 1978 through 1985. Commencing in 1983 he contends that he received sick leave and other benefits from Cabell County Schools and Marshall University simultaneously.

3. There is no evidence that grievant was informed by county school officials that the accumulated sick leave was transferable to Cabell County Schools and there is no showing that there was an existing policy or practice by Cabell County Schools to permit such transfer. On the contrary the probative evidence is that no employee of Cabell County Schools had been given credit for sick leave accumulated for any type of public employment other than that in another county school system. Similarly, administrative notice is taken that during this time period there was no policy concerning transferability of prior work experience credit for employees having previous employment with a state agency. See, Leonard Dunkle v. Cabell County Board of Education, Docket No. 06-87-169.

4. Grievant worked from July 7 through August 19, 1986 in a summer job classified as painter/handyman/furniture finisher/maintenance department and bid on a position posted as a general maintenance/handyman position in November, 1986. Fifteen applicants filed for the position and all of them were considered qualified by the school service personnel director; however, the director determined that none of the applicants had seniority in the classification and did not consider the previous summer employment of grievant toward

seniority. Accordingly, the director selected the applicant with the longest employment history with Cabell County Schools upon the basis of an opinion of the State Superintendent of Schools.

CONCLUSIONS OF LAW

1. In the grievance procedure it is incumbent upon the person alleging a violation of law or policy or other right to relief to prove the material elements of the grievance by a preponderance of the evidence.

2. In the instant grievance the grievant failed to prove these elements as a matter of law.

Accordingly, the grievances are Denied.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Cabell County and such appeal must be filed within thirty days of receipt of this decision. (W.Va. Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.