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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**

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SAMUEL B. CHILTON

v.

Docket No. 89-20-114

KANAWHA COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, a special education teacher at Stonewall Jackson High School (Stonewall), began proceedings on September 9, 1988, alleging that Respondent Kanawha County Board of Education had illegally reduced him from full-time to half-time employment. The grievance was denied at Level I on September 23, 1988, and at Level II on March 9, 1989, after hearing of November 22, 1988. Level III review was waived March 17, 1989, and Grievant advanced his case to Level IV on March 21, 1989. A hearing was waived.¹ With receipt of proposed findings of fact and conclusions of law on and before July 20, 1989, this matter may be decided.

¹Grievant initially requested a hearing at Level IV and, upon receipt of the lower level decisions, a hearing was scheduled for May 12, 1989. However, the hearing was continued and cancelled upon notification from Grievant that he wished to have the decision based on the evidentiary record compiled at Level II. That record was received on June 20, 1989.

Grievant testified that he had a full-time probationary contract to teach at Stonewall during the 1987-1988 school year. He stated that he had been contacted by the Principal of Stonewall, Alvin Anderson, that there would possibly be a reduction-in-force at Stonewall during the 1988-1989 school year. In order to stay at Stonewall Grievant signed an agreement wherein he accepted half-time employment at Stonewall with the expectation that he would be moved into a severely learning disabled-intensive service unit (SLD-ISU) position that would open at Stonewall. Grievant answered, "That's correct," to the question, "When you had your conversations with the principal, was this particular position referred to or focused upon as the prospect for full-time employment at the school?" (Tr. 8). The agreement, which was a March 10, 1988, letter from Grievant to the Associate Superintendent of Personnel for Respondent, provided,

I am currently assigned as a full day EMI/ISU special education teacher at Stonewall Jackson High School. I understand that 1.5 resource room positions are being recommended for reduction commencing next school year and that I can continue my full day employment by going on transfer. As it is my desire to remain at Stonewall Jackson High School, I hereby agree to be reduced to a half time resource room special education teaching position at Stonewall Jackson High School commencing with the 1988-89 school year and further agree to a corresponding reduction in salary. I hereby waive any right I may have to a hearing before the Board of Education.

(KSC² Exhibit 1).

He further testified regarding a probationary contract for the 1988-1989 school year that provided for full-time employment at Stonewall (EE³ 2), which he received "on the first of July and brought it to the school board and had it notarized on that very day." (Tr. 6; see also Tr. 15). No communication or cover letter came with the contract (Tr. 6). Nevertheless, when he went to an introductory meeting at the school, he found out he was assigned only a few students and only during the morning hours of the school day. He stated he was surprised and "dumbfounded" since he had received the full-time contract (Tr. 9) "and had been given verbal acknowledgment that I was to move into a position."⁴ He stated, "I did contact Mr. Cope [Director of Personnel for Respondent] one day, as a matter of fact, on the very day that I found that out. And, I believe it was either the 31st of August or the 1st of September." (Tr. 9) He also said he received a letter dated August 22, 1988 (KSC Exhibit 3), postmarked August 28,⁵ which notified him that

²Kanawha County Schools.

³Employee's Exhibit.

⁴On cross-examination Grievant made clear that the verbal acknowledgement he referred to was that of the principal of Stonewall at that time, Alvin Anderson (Tr. 16).

⁵Grievant stated, "I wondered why it would take them from the 22nd of August to the 1st of September to mail a
(Footnote Continued)

he had been transferred from full-time to half-time. He testified that at the very first of September he received a second contract, providing for half-time employment, which was also unaccompanied by any communication (Tr. 7). He did not sign the second contract (Tr. 7). During the school year he worked only half-days but remained at the school full-time because of the contract he had signed.

While during questioning Grievant did not have a copy of the contract he had signed, later in the hearing he retrieved it from his car. The contract, introduced into evidence as Employee's Exhibit 2, provides that it was "made and entered into this 1st day of July, 1988[,]" and was marked "received" by the Personnel Division of Respondent July 29, 1988. Accompanying it also was a "Teacher's Oath" signed by Grievant and notarized July 29, 1988, which Grievant then stated he signed on "the 29th of July, the day that I received the contract" (Tr. 26).

On cross-examination Grievant was asked to identify a letter dated July 18, 1988, properly addressed to him and notifying him that he was employed for 200 days as "Teacher at Stonewall Jackson High at an annual salary of \$9,967.90," (KSC 2), which is his salary for half-time employment. The letter also states, "If you are probationary or first year tenure, please sign one copy of the contract enclosed and

(Footnote Continued)

letter to me." (Tr. 9). The envelope, which would have shown the postmark date, was not submitted into the record.

return to the Personnel Office." Grievant denied ever having seen the letter (Tr. 14).

Respondent's witness Luther Cope testified that the July 18th letter is called an "employment letter," (Tr. 17), which is sent to all probationary employees and employees with first-year tenure. He could not swear that the individual letter was properly mailed because approximately 4000 such letters are sent yearly (Tr. 18) but he stated that normal procedure is to send one to the employee and keep another in the employee's personnel file. He had found the exhibit in Grievant's personnel file (Tr. 19).

Mr. Cope also testified that the first contract was sent by mistake. He explained,

We have several people that are getting transferred at that time of the year. We have three or four days that we have to get all these transfers into the computer for it to make the appropriate indication of assignments on the contract. So, Mr. Chilton...evidently his information was not placed into the computer in time for the contract to show half-day work, half-time salary.

(Tr. 19). He stated that it was "definitely" a mistake

because all the information I had was his request to go to...half-time. I received no request from Mr. Anderson making him a full-time employee after this half-time request was received.

(Tr. 20). On cross-examination he did not remember sending any cover letter explaining the mistake to the second contract, stating that he would have simply asked the secretary to correct the error (Tr. 20). He also testified that the change to half-time could not have been approved until after July 1, explaining that before changes are sent

to the Board of Education they are made in the computer and, if the changes were made earlier, the employee's salary would be changed too early.⁶ He furthermore stated that there was no half-time contract in Grievant's file since Grievant had not returned it. He said no other communications regarding Grievant's full-time or half-time employment were in the file.

This evidence contains several inconsistencies. Grievant first said that he received the full-time contract on the first of July and returned it immediately, but, upon viewing the contract, said he received it and returned it on July 29th. Since the contract itself is dated July 1st, that evidence supports Grievant's initial statement that he received it at the beginning of July. The record supports that he returned it on July 29th because that is the date marked returned and the teacher's oath, which Grievant said accompanied the contract, was signed and dated by Grievant on that date.

The change in Grievant's testimony upon his examination of the full-time contract tends to lessen his credibility as to when he received the half-time contract. It is found that the July 18 employment letter was sent to him at that time and that it accompanied the half-time contract.

⁶Mr. Cope testified that he had a document dated August 9, 1988, where he authorized the change "from half-time to full-time" (Tr. 21). Clearly the witness meant to say "from full-time to half-time."

Accordingly, when he returned the signed full-time contract he already had in his possession the corrective half-time contract, which he refused to sign. Grievant also submitted no evidence corroborating his position that his acceptance of half-time employment was on condition that he be provided the SLD-ISU position.

Grievant argues that the "transfer" requirements of W.Va. Code §18A-2-7 were violated. However, it is not necessary to address whether reducing Grievant's employment from full-time to half-time involves a transfer under that provision, for, even if it does, Grievant voluntarily waived those requirements with his letter of March 10, 1988.⁷ Finally, the Level II evaluator properly determined,

The full-time contract executed by the grievant involved a mistake of expression of one of the terms thereof and was therefore unenforceable. In such a case the contract may be reformed to comply with the intent of the offerer. Gregory Crowder v. Kanawha County Board of Education, WVEGB #20-86-307-1 [June 25, 1987].

That no legally-cognizable right of Grievant was abrogated is especially true here since, when Grievant accepted the full-time contract, he had already received the half-time

⁷There is no support for Grievant's contention that, while he waived his right to a hearing, he did not "waive requirements placed upon the board to make transfers by the legal deadline." Grievant's Conclusion of Law 6. Firstly, the letter clearly waived Grievant's interest in full-time employment, not merely his right to a hearing. Secondly, while Code §18A-2-7 imposes deadlines for notifying personnel of involuntary transfers and holding hearings thereon, there is no legal timeframe set thereby for voluntary, employee-requested job shifts.

contract, which corrected the error of the first-received contract.

In addition to the foregoing discussion, the following findings of fact and conclusions of law are appropriate:

Findings of Fact

1. Grievant, a special education teacher at Stonewall Jackson High School (Stonewall), by letter of March 10, 1988, agreed that his employment be reduced to half-time so that he could stay at Stonewall during the 1988-89 school year.

2. A contract mistakenly providing for full-time employment was sent Grievant at the beginning of July, 1988.

3. On or about July 18, 1988, a second contract providing for half-time employment, consistent with Grievant's letter of March 10, 1988, was sent Grievant, which he did not sign.

4. On July 29, 1988, Grievant signed and returned the contract providing for full-time employment.

Conclusions of Law


1. It is incumbent upon a grievant to prove the allegations of his complaint by a preponderance of the evidence. Hanshaw v. McDowell Co. Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988); Andrews v. Putnam Co. Bd. of Educ., Docket No. 40-87-330-1 (June 7, 1988).

2. By his letter of March 10, 1988, Grievant waived any rights provided by W.Va. Code §18A-2-7 that may apply to the facts of this case.

3. The contract providing for full-time employment executed by Grievant "involved a mistake of expression of one of the terms thereof and was therefore unenforceable. In such a case the contract may be reformed to comply with the intent of the offeror." Crowder v. Kanawha Co. Bd. of Educ., Docket No. 20-86-007-1 (June 25, 1987).

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.


SUNYA ANDERSON
HEARING EXAMINER

Dated: August 7, 1989