CAROLE RICCA

v. Docket No. 95-15-101

HANCOCK COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Carole Ricca is presently employed by Respondent Hancock County Board of Education (HCBE) as a 240-day Secretary II assigned to Weir Senior High School (WHS). This case is another in what has become a series of grievances against HCBE wherein clerical service personnel have sought extended 260/261-day work terms. Following adverse decisions at the lower grievance levels, Grievant appealed to level four where a hearing was held April 27, 1995.1 Grievant filed a supporting brief on or about June 2, 1995. Thereafter, the case became mature for decision upon receipt of HCBE's fact/law proposals on June 7, 1995.

1At hearing, the parties supplemented the lower-level record with some brief testimony and a few documents. Of record are copies of the pleadings, the transcript/exhibits of the November 28, 1994, level two evidentiary hearing, and the lower-level decisions, including the January 25, 1995, level two decision.

Some background information is necessary. Essentially, service personnel are employed a minimum of 200 days per year. These days are broken down into twenty weekday work periods during the instructional session when students attend classes. Need dictates that some service workers be on hand to perform duties when school is not in session, thus, personnel may work

under an "extended contract" of 210, 220, 240 or 260/261 days (365/366 days less 104 weekend days). The 240-day worker is obligated to work for twelve twenty-day modules while the 260/261-day worker is obligated to work for thirteen twenty-day modules. Under an extended contract, the worker must be paid his or her regular daily rate for each extra contracted day. See W.Va. Code 18A-4-8. However, a year-round 260/261-day worker generally receives vacation days (paid) while the 240-day employee does not.

For budgetary reasons several years ago, HCBE sharply curtailed its practice of awarding service employees 260/261-day contracts and instead hired 240-day workers for virtual year-round work. As workers with existing 260/261-day contracts retired or left the system, new workers were hired under 240-day contracts. This apparently did not cause any problems until 1991 when HCBE revised its vacation allocation for 260/261-day employees. In Robb, et al. v. Hancock County Bd. of Educ., Docket No. 91-15-356 (Mar. 31, 1992), aff'd Cir. Ct. of Kanawha County, CA No. 92-AA-138 (Aug. 25, 1994), various clerical employees holding contract terms of 200, 210, or 240 days filed a grievance in which they alleged that HCBE "has established a non-uniform schedule of benefits" for service workers performing like assignments, in violation of Code 18A-4-5b.

The grievants in Robb protested because HCBE granted some employees, but not others allegedly performing like assignments, extended 260/261-day contracts, and because the 260/261-day workers received paid vacation days while those allegedly performing like assignments under lesser contract terms did not. In Robb at 5, it was noted (n.6) that either one or two long-term secretaries at HCBE's Oak Glen High School (OGHS) were

Secretary IIIs holding 261-day contracts. The Robb grievants did not show a violation of 18A-4-5b and, thus, did not prevail on their claim at level four.

Grievant began her initial assignment at WHS at the begin ning of the 1990-91 school year by filling in for a 240-day secretary on a leave of absence. Thereafter, in March 1991, Grievant was contracted as a 210-day Secretary II at WHS. Shortly after, Grievant became a party in the Robb grievance. On September 10, 1991, Grievant signed a continuing con tract which established her present status as a 240-day Secre tary II at WHS. In October 1994, Grievant filed this complaint in which she alleged, among other things, that HCBE "has estab lished a non-uniform schedule of benefits for employees perform ing [like] duties in violation of [W.Va. Code 18A-4-5b]." Grievant presented a virtually identical claim as she and other workers had presented in Robb.

The catalyst in this case appears to be the fact that Mary Taflan, also a secretary at WHS, was granted Secretary III status and a 260/261-day contract in July 1994. Ms. Taflan, who had previously been a 240-day Secretary II at WHS for several years, was also an unsuccessful party in Robb.2

Interestingly, Lois Robb and Karen Tate, other parties in Robb, were also awarded 260/261-day Secretary III contracts in July 1994 because their superior, a professional administrator in HCBE's central office, prevailed in some type of court action in which HCBE was ordered to promote her from a director to an assistant superintendent. This action prompted Debbie Hissom, also a party in Robb, to file a new grievance seeking an in crease in her 240-day employment term as a clerk to 260/261 days, because the promoted administrator directly supervised

her. Hissom v. Hancock County Bd. of Educ., Docket No. 94-15-568 (Jan. 31, 1995). Robb was applied in the Hissom grievance, and the grievant did not prevail in her case. Grievant offered a host of reasons in her grievance appeal in support of her claim that she should be granted a 260/261-day contract "and be made whole for all loss of wages and benefits, including back pay front pay and other fringe benefits." Among the reasons cited are that:

Grievant's duties are equal or substantially equal to those of other secretaries who have been conferred 260/261 day contracts;

Grievant is aware of other individuals who have been elevated to a 260/261 day contract and that such changes in contract were justified by promotions which

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2It appears Ms. Taflan attained her Secretary III rank at WHS by operation of law. Under Code 18A-4-8, after eight years' service, a Secretary II, generally a "school" secretary, attains Secretary III rank.

required essentially no changes in duties and whose duties are substantially the same as Grievant's;

Grievant has been requested and continuously been required to work the month of July, a job requirement and performance identical to another secretary who has been granted a 260/261 day contract;

In the specific factual analysis of the job, Grievant functions as a Class II Secretary, and it is conclu sive that her duties and responsibilities are substan tially the same as a Class III Secretary who is

currently under a 260/261 day contract;
All of the grievance evaluation reports firmly docu
ment that she has performed her work as secretary with
total competence and beyond the duties of her job;
The duties of Grievant, classified as a Secretary II,
and those of Mrs. Taflan, who performed services in
the same office, are so substantially identical as to
obliterate any distinction between a Class II and
Class III Secretary, as originally defined in West
Virginia Code Chapter 18A-4-8;
It is the specific recommendation of the principal of
Weir High, George P. Kohelis, that the grievant's
contract be converted to a 260/261 day contract.

To further bolster her case, Grievant called upon Ms.
Taflan and WHS Assistant Principal Martin Hudak to testify on
her behalf. Essentially, Ms. Taflan stated that she and
Grievant were equals in regard to the work they performed. She
however admitted that while Grievant worked for the school's two
assistant principals, she served as Principal Kohelis' private
secretary and she directly supervised the work of WHS's half-
time secretary. Mr. Hudak stated that he supported Grievant's
position because the administration had always tried to keep
everything equal between HCBE's two high schools, WHS and OGHS,
including staffing patterns. On that basis, he stated, because
OGHS had two 260/261 day secretaries, WHS should have the same.
Grievant also submitted a well-written position statement
at level four. Gr. Ex. 1. She feels WHS needs another 260/261
day secretary and that it is extremely unfair for OGHS to have
two secretaries with extended contracts while WHS has only one.
In her level four brief, Grievant cited Weimer-Godwin v.

Board of Educ. of Upshur County, 369 S.E.2d 726, 730 (W.Va. 1988), and argued, among other things, that her duties have the same distinctive qualities and character as Ms. Taflan's.3 This argument must be rejected. Basically, it could be said that the work of all secretaries has the same essential character. In this instance, the Legislature has created individual classes of secretaries. While the work performed by secretaries in suc ceeding classes might be quite similar in scope and character, ranking alone distinguishes these class titles. Thus a Secre tary II is not "like" a Secretary III, even if they both perform essentially the same chores.4

Finally, Grievant also posed an argument in her brief that HCBE somehow violated a 1985 policy statement by "having" her work in July. Gr. Brief at 6. No such statement is in the record. In short, July work is simply a non-issue. Superinten dent Daniel Curry testified that a 240-day worker's contract

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3In Grievant's level four brief, she alleged that her job is the same as that of the secretaries at OGHS. See GR Brief at 3. There was no evidence of record as to the duties performed by OGHS' secretaries.

4Grievant also cited Allman v. Harrison County Bd. of Educ., Docket No. 89-17-215 (June 29, 1990), and argued that "a board of education can not provide unequal benefits 'under the guise of a shorter employment term.'" She incorrectly likened her situation to that of the grievant in Allman. Notably, the grievant in Allman was a central office Secretary III seeking parity with other central office Secretary IIIs.

runs from July 1 through June 30 and has no stipulated actual

work days. T.56-57. Mr. Curry further stated, "[B]eginning July 1st, the 240-day employees work at the discretion of their supervisor between July 1st and June 30th." T.67. Clearly, Grievant's work year begins July 1 of the school year as denoted on her contracts for prior years. Joint Ex. 1 (4/27/95). In addition, WHS's principal asked Grievant to work in July, and Grievant agreed. See T.21, 45. Grievant admitted that other office staff were able to perform the scheduling work she performed in July.

HCBE does not dispute the fact that Grievant is a hard-working, competent secretary. However, it maintains that it is not legally obligated to extend Grievant's contract.

HCBE essentially relies on the holding in Robb and cited in Hissom. HCBE argues that:

No Class II Secretary within [HCBE's] school system has a 260 day contract. Grievant's assignment is sufficiently different from that of [Secretary III] Mary Taflan based upon her seniority, supervisory responsibilities and difference as "senior secretary" at [WHS].

Under the Level IV Decision of Robb, et al. v. Hancock County Bd. of Educ., Docket No. 91-15-356 (Mar. 31, 1992), employees do not have the right to force [HCBE] to issue 260 day contracts.

Grievant is not being discriminated against because her duties are sufficiently different from that of the "senior secretary" at [WHS] as to justify the differ ence in the contracts.

See the January 25, 1995, Level Two Decision at 2. It its level four brief, HCBE denies any violation of Code 18A-4-5b and

urges that Grievant has not met her burden of proof in this case.

Unfortunately for Grievant, HCBE is correct. Robb is controlling in this case, and Grievant has not distinguished Robb so that a different outcome is warranted in her grievance. Accordingly, the following conclusions of law are made.

Conclusions of Law

1. "Under W.Va. Code 18A-4-8 and 18A-4-5b, there is no requirement that boards of education provide uniform across-the-board or classification-related employment terms to its service personnel. Compare Workman v. Logan County Bd. of Educ., Docket No. 89-23-287 (Jan. 30, 1990)." Robb, et al. v. Hancock County Bd. of Educ., Docket No. 91-15-356 (Mar. 31, 1992), aff'd Cir. Ct. of Kanawha County, CA No. 92-AA-138 (Aug. 25, 1994).

2. W.Va. Code 18A-4-5b requires boards of education to provide uniform vacation benefits to similarly-situated service employees, that is, to employees with like classifications, ranks, assignments, duties and actual working days. See Allman v. Harrison County Bd. of Educ., Docket No. 89-17-215 (June 29, 1990).

3. Grievant, a Secretary II at Weir High School, has not established that she performs like assignments and duties as the school's "senior" secretary, a Secretary III who serves as the private secretary of the school's head principal and also directly supervises a half-time secretary.

4. Grievant failed to establish a violation of Code 18A-4-5b or any other statutes, policies or regulations.

5. Under the circumstances, HCBE is not legally bound to extend Grievant's contracted work term.

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock 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 Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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NEDRA KOVAL

Administrative Law Judge

Date: June 8, 1995