IRENE SANDERS,

Grievant,

v. **Docket No. 97-40-459**

PUTNAM COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Irene Sanders (Grievant), a regular Secretary III employed by Respondent Putnam County Board of Education (PCBE), grieves PCBE's failure to reinstate her vacation days in the process of complying with a previous ruling by this Grievance Board in Sanders v. Putnam County Board of Education, Docket No. 96-40-382 (May 28, 1997) (Sanders I). As there was no disagreement over the applicable facts, the parties agreed to waive processing of this grievance through the lower levels of the grievance procedure provided in W. Va. Code § 18-29-4, submitting this matter directly to Level IV at a telephonic hearing conducted on October 22, 1997. The parties further agreed to waive written arguments to supplement their joint stipulations, and this matter became mature for decision at the conclusion of that hearing.

The following Findings of Fact are made from the joint stipulation submitted by the parties.

FINDINGS OF FACT

1. Grievant is employed by the Putnam County Board of Education (PCBE) as a regular Secretary III.

2. On May 28, 1997, the West Virginia Education and State Employees Grievance Board issued a decision in the matter of Irene Sanders v. Putnam County Board of Education, Docket No. 96-40-382.

3. PCBE was ordered to reinstate Grievant's employment term to 261 days for the 1996-97

school year, and to award Grievant all pay and benefits she should receive, including but not limited to backpay with interest, sick leave, and holiday pay, as a result of a determination that PCBE had improperly reduced Grievant's employment term to 250 days.

4. Grievant has been paid for 11 additional days, with interest, and has been credited with an additional 0.75 day of sick leave.

5. PCBE employees whose employment term extends to 250 days per year receive 15 paid vacation days per year. Employees whose employment term extends to 261 days receive 21 paid vacation days per year. Employees are allowed to carry over up to 30 days of unused vacation from year to year.

6. PCBE has refused to grant Grievant the 6 additional vacation days she would have accrued had she worked a 261-day term of employment.

DISCUSSION

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of her grievance by a preponderance of the evidence. ProceduralRules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); 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). See W. Va. Code § 18-29-6.

The relief provided to Grievant by this Grievance Board in Sanders I was a "make- whole" remedy, intended to restore Grievant to her rightful place as an employee of PCBE. See W. Va. Code § 18-29-5(b); Graf v. W. Va. Univ., 189 W. Va. 214, 429 S.E.2d 496 (1992). See also W. Va. Dept. of Natural Resources v. Myers, 191 W. Va. 72, 443 S.E.2d 229 (1994); Monteith v. Bd. of Educ., 180 W. Va. 31, 375 S.E.2d 209 (1988). See generally Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975); Newman v. Piggie Park Enterprises, 390 U.S. 400 (1968); W. Va. Inst. of Technology v. W. Va. Human Rights Comm'n, 181 W. Va. 525, 383 S.E.2d 490 (1989). PCBE does not contend that Grievant failed to mitigate her damages properly. See Mason County Bd. of Educ. v. State Supt. of Schools, 170 W. Va. 632, 295 S.E.2d 719 (1982). Rather, PCBE believes granting additional vacation days to Grievant to be unwarranted because Grievant did not work the 11 days which ordinarily generate an entitlement to 6 additional vacation days for its service employees. Thus, from PCBE's perspective, Grievant should not receive 6 paid vacation days in addition to 11 days' pay she received for days not actually worked. (See footnote 1) PCBE's contention is not persuasive. It is

apparent that additional vacation days are part of the total compensation package PCBE provides to its 261-day service employees. See Motor Car Dealers Ass'n of Kansas City v. Int'l Ass'n of Machinists, 49 Lab. Arb. (BNA) 55 (1967) (Beatty, Arb.). See generally Frank Elkouri & Edna J. Elkouri, How Arbitration Works 688-90 (1973). Had PCBE not improperly prevented Grievant from working her entire 261-day contract, as determined in Sanders I, she could have worked 11 additional days, and been allowed to "bank" 6 vacation days. Just as Grievant is entitled to sick leave and back pay for the 11 days she would have worked but for PCBE's failure to comply with portions of the W. Va. Code applicable to her employment, Grievant is likewise entitled to the benefit of the additional vacation days awarded to all other PCBE service employees holding 261-day contracts. Otherwise, Grievant will not be made whole and restored to her rightful place as an employee of PCBE.

In addition to the foregoing discussion, the following Conclusions of Law are appropriate in this matter.

CONCLUSIONS OF LAW

1. In a nondisciplinary grievance, the grievant has the burden of proving each element of her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. LoganCounty 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). See W. Va. Code § 18-29-6.

2. "School personnel laws and regulations are to be construed strictly in favor of the employee." Syl. Pt. 1, Morgan v. Pizzino, 163 W. Va. 454, 256 S.E.2d 592 (1979).

3. Hearing examiners at Level IV of the grievance procedure for education employees are authorized to "provide such relief as is deemed fair and equitable." W. Va. Code § 18-29-5(b). See Graf v. W. Va. Univ., 189 W. Va. 214, 429 S.E.2d 496 (1992).

4. Where county board of education was ordered to reinstate Grievant to 261- day employment term and "to award Grievant all pay and benefits she should receive, including, but not limited to, back pay with interest, sick leave, and holiday pay" (Sanders v. Putnam County Bd. of Educ., Docket No. 96-40-382 (May 28, 1997)), Grievant was entitled to receive six (6) additional vacation days awarded to all service employees holding 261-day contracts.

Accordingly, this Grievance is **GRANTED**. Respondent Putnam County Board of Education is hereby **ORDERED** to award Grievant six (6) additional days of vacation.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Putnam 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 ofthe intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

LEWIS G. BREWER

ADMINISTRATIVE LAW JUDGE

Dated: December 3, 1997

Footnote: 1

In this context, it is apparent that the dispute between the parties, although resulting from implementation of this Grievance Board's decision in Sanders I, involves an alleged misinterpretation of a rule relating to compensation, and is a matter on which the employer is vested with authority to act as contemplated by W. Va. Code § 18-29-2(a). Accordingly, this dispute has been recognized as a new grievance, rather than a request for reconsideration of this Board's decision in Sanders I. To this extent, this Grievance Board's previous decisions refusing to clarify or interpret a prior decision of an Administrative Law Judge andrefusing to reconsider a prior decision involving the same parties are distinguished. See Clay v. Mingo County Bd. of Educ., Docket No. 95-29-208 (Aug. 30, 1995); Peters v. Raleigh County Bd. of Educ., Docket No. 95-41-035 (Mar. 15, 1995).