IRENE SANDERS,

Grievant,

v. **Docket No. 96-40-382**

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), initiated this grievance pursuant to W. Va. Code §§ 18-29-1, et seq., on June 13, 1996, alleging that PCBE violated W. Va. Code § 18A-2-6 when it rescinded its action extending her 250-day employment term to 261 days. The grievance was waived to Level II where a hearing was conducted on July 30, 1996. A decision denying the grievance was issued by the Superintendent's designee, Harold L. Hatfield, on August 29, 1996. Grievant elected to waive Level III, as permitted under W. Va. Code § 18-29-4(c), appealing to Level IV on September 5, 1996. A Level IV hearing was conducted in this Grievance Board's office in Charleston, West Virginia, on November 18, 1996. Thereafter, this matter became mature for decision on December 16, 1996, upon receipt of Grievant's written post-hearing argument. The pertinent facts in this matter are not in dispute. Accordingly, the following Findings of Fact have been developed from the record created at Levels II and IV.

FINDINGS OF FACT

1. Grievant is employed by the Putnam County Board of Education (PCBE) as a regular Secretary III assigned to Maintenance and Transportation Services. L II HT at 16.

2. On May 3, 1996, PCBE Assistant Superintendent Jack Coyner, Grievant's immediate supervisor, wrote Dr. Sam Sentelle, PCBE's Superintendent, requesting Grievant's 250-day

employment term be extended to 261 days. Mr. Coyner provided justification for his request, noting that his position and all extended positions under his supervision were for 261 days, and explaining the duties that Grievant needed to perform during the additional days. G Ex 1 at L II.

3. On May 6, 1996, PCBE approved, by a 4-1 vote, extending Grievant's employment contract to 261 days for the 1996-97 school year. G Ex 2 at L II.

4. On May 6, 1996, Superintendent Sentelle wrote Grievant advising her that "the Putnam County Board of Education in a meeting May 6th extended your employment as secretary, transportation, from 250 to 261 days, effective July 1, 1996." G Ex 5 at L II.

5. On June 6, 1996, PCBE approved, by a 5-0 vote, a motion to rescind the extension of Grievant's employment term which it approved one month earlier. G Ex 4 at L II. PCBE did not state a basis for this decision.

6. Grievant received no advance notice of PCBE's action to rescind the extension of her contract term.

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. Procedural Rules 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.

W. Va. Code § 18A-2-6 provides that a service personnel employee's contract "shall remain in full force and effect except as modified by mutual consent of the school board and the employee, unless and until terminated with written notice, stating cause or causes, to the employee, . . . before the first day of April of the then current year...." Further, the "employee shall have the right of a hearing before the board, if requested, before final action is taken by the board upon the termination of such employment." W. Va. Code § 18A-2-6. These provisions have been held to apply whenever a county board of education reduces the term of an employee's regular contract of employment. Bd. of Educ. v. Hunley, 169 W. Va. 489, 288 S.E.2d 524 (1982); Newhouse v. Marion County Bd. of Educ., Docket No. 92-24-212 (Aug. 30, 1994); Shepherd v. Wyoming County Bd. of Educ., Docket No. 89-55-103 (July 3, 1989); Williams v. Ritchie County Bd. of Educ., Docket Nos. 43-88-246/247 (Mar 31, 1989). See Berry v. Kanawha County Bd. of Educ., 191 W. Va. 422, 446 S.E.2d 510 (1994); Lucion v.

McDowell County Bd. of Educ., 191 W. Va. 399, 446 S.E.2d 487 (1994).

PCBE argues that because Grievant was already employed for more than 200 days, it was relieved by the terms of W. Va. Code § 18A-4-19 from any obligation to notify her of a change in her employment term in compliance with W. Va. Code § 18A-2- 6 and the cases cited above. The pertinent provision of the statute relied upon by PCBE states as follows:

> (b) Notwithstanding the provisions of section eight-b [§ 18A-4-8b] of this article relating to school service personnel or any other section of this code to [the] contrary, any alteration of an employment contract of a service employee who is employed for more than two hundred days, which alteration changes the number of days in the employment term, shall not be deemed a creation of a new position, nor shall such alteration require posting of the position.

The foregoing provision allows PCBE to either increase or decrease the term of Grievant's employment without creating a new position, or having to post her position to be filled competitively. However, the plain language of the statute does not support PCBE's position that it did not have to give proper notice to Grievant before it reduced her employment term. See Watts v. Dept. of Health & Human Resources, 195 W. Va. 430, 465 S.E.2d 877 (1995). See generally Morgan v. Pizzino, 163 W. Va. 454, 256 S.E.2d 592 (1979).

Once PCBE's Superintendent notified Grievant that her contract had been extended for the 1996-97 school year, this became her new term of employment under her continuing contract, and PCBE was obligated to comply with the procedures in W. Va. Code § 18A-2-6 to reduce that term. See Bd. of Educ. v. Hunley, supra. See generally Morgan, supra. Here, PCBE simply unilaterally rescinded her contract, replacing it with the term of employment she had previously held. Accordingly, Grievant has established that she is entitled to be restored to her previous status as a 261-day employee, and to receive any and all benefits which accrue to a school service employee holding such term of employment.

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. 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.

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. When a county board of education seeks to reduce the contract term of a school service employee, it must comply with the procedures set forth in W. Va. Code § 18A-2-6. Lucion v. McDowell County Bd. of Educ., 191 W. Va. 399, 466 S.E.2d 487 (1994); Bd. of Educ. v. Hunley, 169 W. Va. 489, 288 S.E.2d 524 (1982); Drown v. Cabell County Bd. of Educ., Docket No. 96-06-323 (Feb. 28, 1997).

4. Once PCBE voted to extend the term of Grievant's regular continuing contract of employment from 250 days to 261 days, and PCBE's Superintendent officially notified Grievant that her contract term had been extended, PCBE could not thereafter reduce the term of her employment without complying with the procedures contained in W. Va. Code § 18A-2-6. See Lucion, supra; Hunley, supra. See also Bonnell v. Carr, 170 W. Va. 493, 294 S.E.2d 910 (1982); Doss v. Mason County Bd. of Educ., Docket No. 96- 26-108 (Sept. 30, 1996). See generally Morgan, supra.

Accordingly, this Grievance is **GRANTED**. Respondent Putnam County Board of Education is hereby **ORDERED** to reinstate Grievant's term of employment at 261 days for the 1996-97 school year, 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, as a result of holding such extended term of employment.

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 of the 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: May 28, 1997