ROBERT RIDINGER, et al.,

Grievants,

v. DOCKET NO. 97-15-452

HANCOCK COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievants, Robert Ridinger, Edward Stanley, Randall Waite, William Glover, David White and Harry Spence, are employed in various classifications by the Hancock County Board of Education ("HCBOE") in its maintenance department. They allege HCBOE has engaged in discrimination and favoritism and violated uniformity requirements, because the Supervisor of Maintenance for HCBOE was awarded a 261-day contract, while Grievants work under 240-day contracts. They request that their contracts be extended to 261 days for the 1997-1998 school year and all years following. The grievance was denied at level one on July 14, 1997. A level two hearing was held on August 25, 1997, followed by a written decision denying the grievance, dated October 3, 1997. Grievants appealed to level four on October 15, 1997, and a level four hearing was conducted in the Grievance Board's office in Wheeling, West Virginia, on December 18, 1997. This matter became mature for decision upon receipt of the parties' fact/law proposals on January 22, 1998.

The following findings of fact are appropriate in this matter, based upon a preponderance of the evidence of record.

Findings of Fact

1. Grievants are employed in various multi-classifications in the maintenance department for HCBOE, as follows:

Robert Ridinger	Heating & Air Conditioning Mechanic/Plumber
Edward Stanley	Plumber/Carpenter/Mason
Harry Spence	Plumber/Heating & Air Conditioning Mechanic
Randall White	Locksmith/Carpenter
William Glover	Painter/Groundsman/Handyman
David White	Groundsman/Handyman

2. Grievant's contracts of employment are for a 240-day term under which they receive no paid vacation days. They are expected to take off 21 unpaid days throughout the year.

3. Wilmon Culley is employed by HCBOE as Supervisor of Maintenance. He originally worked under a 240-day contract, but his contract term was extended to 261 days for the 1997-1998 school year. Under the 261-day contract, Mr. Culley receives paid vacation days, but it is unknown how many he receives.

4. Under the 261-day contract, Mr. Culley works more days than Grievants. 5. Mr. Culley's contract was extended to 261 days, because he is called for most maintenance emergencies, regardless of the nature of the particular work needed. Also, Mr. Culley is the only certified electrician for HCBOE, and he must be present for all jobs requiring electrical work of any kind.

Discussion

Grievants contend that it is unfair for HCBOE to employ them under a shorter contract term than their supervisor, because they are all maintenance employees. While admitting that their duties are different, they contend that, because they all report to the same work station, and perform work under the general title of "maintenance," they should be treated the same. Grievants argue uniformity violations of W. Va. Code § 18A-4-5b, along with discrimination and favoritism under W. Va. Code §§ 18-29-2(m) and 18-29-2(o).

It is well-settled that employment terms and vacation benefits are, indeed, "benefits" which must be uniformly granted to employees, based upon W. Va. Code §18A-4-5b. That statute provides that "uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county." The pivotal question in such cases is whether the grievants are actually "performing like assignments and duties" to those to whom they have compared themselves. See Stanley v. Hancock County Bd. of Educ., Docket No. 95- 15-217 (Sept. 29, 1995); Robb v. Hancock County Bd. of Educ., Docket No. 9-15-356 (March 31, 1992); Allman v. Harrison County Bd. of Educ., Docket No. 89-17-215 (June 29, 1990) (reversed on other grounds, Harrison County Bd. of Educ. v. Allman, Circuit Court of Harrison County, Civil Action No. 90-P-86-2, April 15, 1992). It was concluded in Stanley, supra, that, in order to be

entitled to the same benefits, employees must have "likeclassifications, ranks, assignments, duties and actual working days." Even employees holding the exact same classification have been determined to have been properly granted different contract terms, based upon different work sites and duties. See Robb, supra. Although the employees' duties need not be identical, a grievant must show that their duties are substantially similar to other employees in order to prevail in a non-uniformity claim. See Weimer-Godwin v. Bd. of Educ., 179 W.Va. 423, 369 S.E.2d 726 (1988). In cases in which employees have prevailed on their claims of entitlement to the same contract term, the grievants and those to whom they compared themselves worked in the same location or office, had the same schedule, performed similar duties, and worked the same hours and number of days. Flint v. Harrison County Bd. of Educ., Docket No. 97-17- 348 (Jan. 22, 1998); Allman, supra.

The decision in Stanley is particularly informative here, because it involved some of the same grievants and was based upon similar allegations. In that case, several maintenance employees grieved the fact that two employees of that department, who had been employed since before HCBOE had discontinued its practice of granting all employees extended contracts, still retained those 261-day contracts. However, the administrative law judge ruled against the grievants, because they were not employed in the same multi-classifications as those employees, therefore failing to demonstrate that they performed the same duties, and there was no showing that all the employees worked the same number of days.

Grievants concede that their duties differ, not only from Mr. Culley's, but from each other's. Depending on the nature of repairs or maintenance which needs to be done, all of the grievants may be scattered to various locations within the county. Mr. Culley isresponsible for assigning their work, supervising it, and performing various recordkeeping responsibilities. In addition, the evidence clearly shows that Mr. Culley works more days than his subordinates, and he is quite obviously employed in a different classification, Supervisor of Maintenance, with different duties and responsibilities than Grievants. The uniformity provision has not been violated in this case.

Grievants have also raised allegations based upon discrimination and favoritism. "Discrimination" is defined by W. Va. Code § 18-29-2(m) as "any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the

employees or agreed to in writing by the employees." W. Va. Code §18-29-2(o) defines "favoritism" as "unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees." This Grievance Board has determined that a grievant seeking to establish a prima facie case of discrimination or favoritism must demonstrate the following:

> **(a) that he is similarly situated, in a pertinent way, to one or more other employees;**
>
> **(b) that he has, to his detriment, been treated by his employer in a manner that the other employees have not, in a significant particular, or the other employees have been given advantage or treated with preference in a significant manner not similarly afforded him;**

and

> **(c) that such differences were unrelated to actual job responsibilities of the grievant and/or the other employees and were not agreed to by the grievant in writing or that the difference in treatment has caused a substantial inequity to him and has no apparent or known justification.**

See McFarland v. Randolph County Bd. of Educ., Docket No. 96-42-214 (Nov. 15, 1996); Prince v. Wayne County Bd. of Educ., Docket Nos. 90-50-281/296/311 (Jan. 28, 1991); Steele v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989).

In this case, Grievants have not established that they are "similarly situated" to Mr. Culley, and there is ample evidence that the difference in treatment here was the result of Grievants' and Mr. Culley's different job responsibilities and the nature of their differing classifications. Therefore, Grievants have not established a prima facie case of discrimination or favoritism.

Consistent with the foregoing findings and discussion, the following conclusions of law are appropriate in this matter.

Conclusions of Law

1. In a non-disciplinary matter, the grievant bears the burden of proving each element of his claim by a preponderance of the evidence. See W. Va. Code § 18-29-6; Holly v. Logan County Bd. of Educ., Docket No. 96-23-164 (Apr. 30, 1997).

2. W. Va. Code § 18A-4-5b provides that "uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county."

3. Boards of education must provide uniform vacation benefits and employment terms to employees who have "like classifications, ranks, assignments, duties and actual working days." Stanley v. Hancock County Bd. of Educ., Docket No. 95-15-217 (Sept. 29, 1995). 4. In order to prevail in a pay uniformity claim under W. Va. Code § 18A-4-5b, a grievant must show that his duties are substantially similar to another service employee. See Weimer-Godwin v. Bd. of Educ., 179 W.Va. 423, 369 S.E.2d 726 (1988).

5. Grievants did not prove by a preponderance of the evidence that they perform like duties and assignments to Mr. Culley, Supervisor of Maintenance.

6. In order to establish a prima facie case of discrimination or favoritism under W. Va. Code § 18-29-2, a grievant must demonstrate the following:

> **a) that he is similarly situated, in a pertinent way, to one or more other employees;**
>
> **(b) that he has, to his detriment, been treated by his employer in a manner that the other employees have not, in a significant particular, or the other employees have been given advantage or treated with preference in a significant manner not similarly afforded him;**

and

> **(c) that such differences were unrelated to actual job responsibilities of the grievant and/or the other employees and were not agreed to by the grievant in writing or that the difference in treatment has caused a substantial inequity to him and has no apparent or known justification.**

See McFarland v. Randolph County Bd. of Educ., Docket No. 96-42-214 (Nov. 15, 1996); Prince v. Wayne County Bd. of Educ., Docket Nos. 90-50-281/296/311 (Jan. 28, 1991); Steele v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989).

7. Grievants did not establish a prima facie case of discrimination or favoritism, because they are not similarly situated to Mr. Culley, and Respondent provided job-related reasons for

the difference in treatment.

Accordingly, this grievance is DENIED.

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

Date: March 31, 1998 _____

V. DENISE MANNING

Administrative Law Judge