SHEILA BURNS, et al.,

Grievants,

v v.

Docket No. 98-22-245

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, Sheila Burns, James Nelson, and Forrest Cummings allege the Lincoln County Board of Education ("LCBOE") is required to compensate them for the six days they were required by the Center for Professional Development ("Center") to attend the Principal's Leadership Academy ("Academy") in the Summer of 1997 and 1998. (See footnote 1) Grievants seek their daily rate of pay for the days they attended the Academy and all expenses. This grievance was denied after an informal conference on May 21, 1998, and denied at Level II on July 8, 1998, after a hearing. Grievants appealed to Level IV, and agreed to submit the case on the record developed below. (See footnote 2) This case became mature for decision on August 7, 1998, the deadline for the parties' proposed findings of fact and conclusions of law.

After a review of the complete record in this case the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievants are principals employed by LCBOE.

2. The Legislature established the Center in 1990 to build and maintain "a superior force of professional educators." W. Va. Code § 18A-3A-1.

3. In 1996, the Legislature established the Academy within the Center. W. Va. Code § 18A-3-2c.

4. The purpose of the Academy is to train and retrain principals in the areas of staff relations, leadership, educational proficiencies, and administrative skills. Id.

5. Grievants were required by the Center, pursuant to W. Va. Code § 18A-3-2c, to attend the Academy to maintain their administrative certification.

6. LCBOE did not require or request Grievants to attend the Academy.

7. W. Va. Code § 18A-3-2c(c) sets out who should attend the Academy. The requirement that principals attend the Academy "shall be subject to the availability of funds for the principals," and "[i]f such funds are insufficient to provide for the total cost of admission to the Academy for those required complete the training," then the Center is to prioritize which of the principals shall attend.

8. The Center "[m]ay reimburse persons attending the Academy for reasonable and necessary expenses," and if the required attendance "occurs outside his or her employment term . . . [the principal] may be entitled to a stipend to be determined by the center for professional development . . .". W. Va. Code § 18A-3-2c (i).

9. Grievants, who attended the Academy during the Summer, outside their employment term, were not reimbursed for either their expenses or compensated for theirparticipation. (See footnote 3)

Issues

Grievants argued LCBOE is required to reimburse them for the days they were required by the Center to attend the Academy. LCBOE avers that because it did not require Grievants to attend the Academy, and indeed has no control over the Center it should not be held responsible for compensating Grievants. Both parties cited the recent Kanawha County Circuit Court Decision of Carvey v. West Virginia State Board of Education, Principals Standards Advisory Council, and The Center for Professional Development, Civil Action No. 97-C-2306 (July 24, 1998), dealing with this same issue, as supportive of their position.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving each element of their 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.

The Carvey Decision dealt with a Civil Action filed by the Principals' Association against the State Board of Education and the Center, (See footnote 4) and its reasoning and interpretationof the statute is persuasive. The Circuit Court found that principals have varying lengths of contracts, and requiring them to attend uncompensated training "creates an impermissible classification in which some principals receive their normal daily rate of pay while receiving mandated training, while other principals do not."

The Circuit Court held that "[t]he legislative intent [of W. Va. Code § 18A-3-2c] is that principals required to attend the Academy should do so during their normal employment contracts[,] and that those who are training at times other than when so employed, should be paid a stipend . . .". The Carvey Court also held that principals who attend outside their employment contracts are "entitled to full compensation at their normal contract daily rate of pay, and the defendant The Center of Professional Development is responsible for such payments." The Circuit Court also enjoined the Center

> from scheduling training for principals or assistant principals who are not under employment contracts during such training unless the Center for Professional Development provides[,] in addition to expenses as provided in the statute, compensation for such training at the principal's or assistant principal 's normal contract rate for each day of attendance.

A review of W. Va. Code § 18A-3-2c indicates the Center is expected to pay a stipend to those principals who attend outside their employment contract. If funds are insufficient for all to attend, the Center is expected to prioritize and select the principals who shall attend. There is no indication that a county board of education is expected to pay for a principal's attendance if it falls outside the employment term. Of course, if the Academy occurs during a principal's employment contract he is paid during his or her attendance.

A review of the evidence and law indicates that although Grievants are entitled to be paid for their attendance to the Academy, they have requested payment from the wrongentity, as Grievants have demanded payment only from LCBOE. The Center is responsible for this payment if principals attend the Academy outside their contracted employment. (See footnote 5)

Additionally, it must be noted that the failure of the Center to pay Grievants for their attendance is not a grievable event as the Center is not their employer, and a grievance may only be filed against an employer. W. Va. Code § 18-29-2(a). An employer, as defined by W. Va. Code § 18 -29-2(f), is the "institution contracting the services of the employee."

Grievants are correct that this Grievance Board has required county boards to pay service personnel for in service training which allowed the employee to either become certified or maintain certification. See Stickler v. Lincoln County Bd. of Educ., Docket No. 98-20-058 (July 9, 1998); Jarman v. Fayette County Bd. of Educ., Docket No. 97-10-541 (Apr. 13,1998). However, in Zirkle v. Hancock County Board of Education, Docket No. 94- 15-441 (Feb. 24, 1995), this Grievance Board held that regularly employed bus operators were not entitled to compensation for attending free, required training outside their regularly scheduled work day. The Administrative Law Judge noted that many workers are required to attend and finance their own continuing education. See Dieffenbauch v. Wetzel County Bd. of Educ., Docket No. 52-86-123-2 (Aug. 25, 1987); Davis v. Mingo County Bd. of Educ. , Docket No. 29-86-338-4 (Apr. 1, 1987). These cases are easily distinguished and differentiated from the grievance at hand. First, LCBOE did not require or even request that Grievants attend this training; second, this training and be compensation for it is governed by its own separate statute; third, the training is required by the Center; fourth, LCBOE has no control over who attends and when; and fifth and most important, it is clear from the statute, that the Center, not LCBOE is to compensate principals who attend the Academy outside their employment contracts.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving each element of their 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. Pursuant to W. Va. Code § 18A-3-2c, principals who are required to attend the Academy outside their employment contracts are to receive compensation from the Center.

3. Grievants have failed to prove they are entitled to compensation from LCBOE for their

attendance at the Academy.

4. The failure of the Center to pay Grievants is not a grievable event as the Center is not their employer.

Accordingly, this grievance is **DENIED**. Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln 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.

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Janis I. Reynolds

Administrative Law Judge

Dated: August 31, 1998

Footnote: 1

Grievant Burns attended the Academy in 1997, but did not plan to attend in 1998; Grievant Nelson attended the Academy in 1997 and planned to attend in 1998. It is unclear when Grievant Cummings attended the Academy as he did not testify at the lower level hearing because he was on jury duty. Anita Mitter, who represented all Grievants, stated that "[Grievant Cummings'] issue is the same as the other two grievants." Level II Trans. at 9. The grievance on the failure of LCBOE to pay expenses and compensation for the 1998 Academy was filed before Grievant Nelson attended the Academy. Respondent LCBOE was represented by Attorney Erwin Conrad.

Footnote: 2

Although the issue of timeliness was introduced at the Level II hearing, it was not addressed in the Level II Decision nor was the issue raised in the Level IV proposed findings of fact and conclusions of law. Thus, the argument was deemed abandoned.

Footnote: 3

The employment terms of principals and assistant principals varies. For example, the employment term for Grievant Burns is 208 days.

Footnote: 4

By the time the Decision was issued, the Center was the only remaining party. The Principals' Association won by

default, as the Center did not answer or file any response at any time with the circuit court.

Footnote: 5

It is noted that the Circuit Court Decision is dated July 24, 1998; however the parties were aware of the Court's ruling at least by the middle of May 1998, as the ruling is cited in Ms. Donna Martin's May 21, 1998 response to a informal conference held on May 13, 1998, as well as noted in the Level II hearing, and the Level II decision. This discrepancy in dates was not explained, but since all the parties were aware of the ruling, it makes no difference to the outcome of the decision.