SANDRA L. PARKINS,

Grievant,

v. **Docket No. 99-15-212**

HANCOCK COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Sandra L. Parkins, employed as a Secretary III by the Hancock County Board of Education (HCBE), filed a level one grievance in April 1999, in which she asserted violations of W. Va. Code §§18A-4-8b and 18A-4-8g when her employment term was reduced from 261 days to 200 days. She requested reinstatement of the 261 employment term, with back pay and benefits, including but not limited to vacation, retirement, and accumulated personal leave, plus interest. Grievant's immediate supervisor lacked authority to grant the requested relief at level one. Following a hearing at level two, Dr. Charles Chandler, Superintendent of HCBE, denied the grievance, which was then advanced to level four. A hearing was convened on July 14, 1999, at which time Grievant was represented by John E. Roush, Esq., WVSSPA, and HCBE was represented by William T. Fahey, Esq. The matter became mature for decision on September 3, 1999, the due date for submission of proposed findings of fact and conclusions of law.

The following findings of fact are derived from the record in its entirety, including the level two transcript, level two decision, and all materials submitted at level four.

Findings of Fact

1. Grievant has been employed by HCBE for approximately 28 years, and has held the classification title of Secretary III at all times pertinent to this grievance. 2. Prior to 1980, Grievant was assigned to the central office and held a 261 day employment term. At that time Grievant was placed on the transfer list and was ultimately assigned contracts to work 210 days at Allison Elementary School and 51 days in the central office.

3. Subsequent to Grievant's transfer and split assignment, she continued to accrue paid vacation, and was otherwise treated as a 261 day employee.

4. In Spring 1999, Grievant was notified that Dr. Chandler would recommend that her 51 day

assignment at the central office be terminated. Grievant requested and received a hearing prior to the board voting to accept the recommendation.

5. HCBE continues to employ at least 3 secretaries with less seniority than Grievant, who hold 261 day contracts.

6. In April 1999, Grievant bid on, and received, a position with a 240 day employment 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.

Grievant asserts that when a board of education reduces the number of employees who hold a particular employment term within a particular classification, it must do so onthe basis of seniority. Since she is not the least senior secretary who works 261 days, Grievant argues that her employment term was improperly reduced. HCBE responds that Grievant held 2 contracts, and only the 51 day contract was eliminated. As such, HCBE argues that Grievant did not hold a 261 day contract, and therefore the provisions of W. Va. Code §18A-4-8b, requiring that seniority be the determinative factor in a reduction- in-force, were not applicable. In response, Grievant asserts that the distinction HCBE makes exalts form over substance, and that whatever number of contracts were issued, she was employed for 261 days, and was listed a 261 day employee on the certified list from the State Department of Education. This list establishes that HCBE received funding under the state formula as if she were a 261 day employee. Finally, Grievant notes that she received a paid vacation, a benefit granted only to employees with 261 day employment terms.

Notwithstanding the number of contracts HCBE issued, Grievant must prevail in this matter. Certainly, if HCBE had awarded Grievant a regular 240 day employment term, and then granted her summer employment at the central office, its position at this time could be supported. However, Grievant presented a service personnel employment list generated by the West Virginia State Department of Education, School Finance Division, which provides a certified accounting of funds provided to HCBE for the 1998-99 fiscal year. This list, dated February 1999, clearly indicates that Grievant is a 261 day employee. Further, HCBE does not deny Grievant's claim that she has received

a paid vacation every year she has held the multiple contracts. Under these circumstances, it is determined that Grievant was a 261 day employee when HCBE effectuated a reduction-in-force in March 1999.

W. Va. Code §18A-4-8b provides in pertinent part:

Should a county board of education be required to reduce the number of employees within a particular job classification, the employee with the least amount of seniority within that classification or grades of classification shall be properly released and employed in a different grade of that classification if there is a job vacancy: Provided, That if there is no job vacancy for employment within such classification or grades of classification, he shall be employed in any other job classification which he previously held with the county board if there is a vacancy and shall retain any seniority accrued in such job classification or grade of classification.

Seniority for regular school employees is defined in W. Va. Code §18A-4-8g as “begin[ning] on the date the employee enters upon regular employment duties pursuant to a contract . . . .” HCBE reduced the number of secretaries in its employ by a percentage of one position. Although HCBE's action was the most reasonable alternative from a practical standpoint, Grievant was not the least senior secretary with a 261 day employment term, and was improperly subject to the reduction in her employment term. If a board of education decides to reduce the number of jobs for service personnel, the board must follow the reduction in force procedures of W.Va. Code, 18A-4-8b. Berry v. Kanawha County Bd. of Educ., 191 W. Va. 422, 446 S.E.2d 510 (1994). Further, a board of education must accomplish a reduction in force not only within a designated classification, but also within specified employment terms. Newhouse v. Marion County Bd. of Educ., Docket No. 93-24-212 (Aug. 30, 1994). In addition to the foregoing findings of fact and discussion, it is appropriate to make the following conclusions of law.

Conclusions of Law

1. 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.

2. Grievant has proven that she was not the least senior secretary with a 261 day employment term, and should not have been subject to the reduction-in-force.

Accordingly, the grievance is **GRANTED**, and Respondent Ordered to reinstate Grievant to the 261 day employment term, with all back pay with interest and benefits, less set-off, to which she is entitled.

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. However, the appealing party is required by W. Va. Code §29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: October 20, 1999 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE