SHIRLEY CROCK and

GRACE WASHINGTON,

Grievants,

v. **Docket No. 99-17-431**

HARRISON COUNTY BOARD

OF EDUCATION,

Respondent.

DECISION

Shirley Crock and Grace Washington (Grievants) contest the termination of their contracts and the reinstatement of new contracts without pay for prior experience credit. They seek reinstatement of their prior salaries, which included the experience credit, with back pay and interest. The grievance was filed at level one on April 12, 1999, and denied by Grievants' immediate supervisor on April 14, 1999. A level two hearing was held on August 31, 1999, followed by a written decision, denying the grievance, dated October 13, 1999. Level three consideration was bypassed, and Grievants appealed to level four on October 22,1999. On December 10, 1999, the scheduled date for the level four hearing, the parties agreed to submit this matter for a decision based upon the record developed below. (See footnote 1) This grievance became mature for consideration upon receipt of the parties' final written submissions on January 31, 2000.

The following findings of fact are made from a preponderance of the evidence ofrecord.

Findings of Fact

1. Both grievants are currently employed as aides by the Harrison County Board of Education (the Board).

2. Grievant Washington began employment with the Board in September of 1979 as an aide.

The Board gave her five years of experience credit, for salary purposes, based upon prior related experience with a previous employer.

3. Grievant Crock began employment with the Board in February of 1998. Prior to that time, she had worked in a private nursing home for over ten years. She was not given any credit for her prior experience by the Board.

4. Grievant Crock filed a grievance regarding the Board's refusal to grant her credit for her prior experience. This grievance was granted by the Grievance Board in Crock v. Harrison County Bd. of Educ., Docket No. 98-17-290 (Sept. 30, 1998). It was held that the Board's granting of experience credit to Ms. Washington and not to Ms. Crock was discriminatory, and the Board was directed to grant Grievant Crock experience credit for salary purposes. This decision was affirmed by the Harrison County Circuit Court. (Board of Education of the County of Harrison v. Crock, Civil Action No. 98-C-518-2, April 26, 1999.)

5. Subsequent to the Grievance Board's ruling, the superintendent and the Board decided that, in order to prevent future budgetary problems, it would have to avoid awarding prior experience credit to aides employed by the Board.

6. By correspondence dated March 17, 1999, Superintendent Robert Kittlenotified Grievants that he would be recommending to the Board that their current contracts be terminated and replaced with new contracts eliminating experience credit for work in the private sector, with a corresponding reduction in their salaries.

7. At the Board's meeting on March 29, 1999, the superintendent's recommendation was approved by the Board, and Grievants were awarded new contracts for the 1999-2000 school year without experience credit included in their salaries.

8. The new contracts issued to Grievants were identical to their previous contracts, except for the deduction of prior experience credit from their salaries, and their positions have remain unchanged in all other aspects.

Discussion

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

Grievants have posed several arguments in this case, most of which relate to the alleged impropriety of the Board's "reduction in force" of Grievants. However, the undersigned finds, after review of the evidence of record, that no reduction in force took place. The records of the superintendent's recommendation and the Board meeting minutes during which Grievants' contracts were addressed state clearly that their current contracts were to be terminated at the end of the school year, and they would be replaced with new contracts which would not contain the prior experience credit. Accordingly, thiscase involves contract termination, not a reduction in force. Even representatives for the Board and its counsel have erroneously referred to this action as a reduction in force; however, a reduction in force simply did not occur, and that is not the decision which was voted upon by the Board at its March, 1999, meeting.

The Board contends that its action here is identical to that which was upheld by the Supreme Court of Appeals in Lucion v. McDowell County Bd. of Educ., 191 W. Va. 399, 446 S.E.2d 487 (1994). There, in order to reduce costs, the board of education terminated the contracts of numerous service personnel and issued them new contracts with reduced employment terms and proportional decreases in salary. The central issue in Lucion was whether or not a board of education must implement a reduction in force and reduce the actual number of people employed when attempting to cut costs, rather than reduce employees' contract terms. The Court found that, for employees with continuing contract status, a board of education need only follow the provisions of W. Va. Code § 18A-2-6, and replacement of their old contracts with new ones with modified provisions is permissible, after notice and hearing before the board of education. The pertinent portion of W. Va. Code § 18A-2-6 states that service personnel with continuing contracts shall have their contracts remain in full force and effect "unless and until terminated with written notice, stating cause or causes . . . before the first day of April of the then current year."

Just as in the instant case, the employees affected in Lucion argued that the non- relegation clause of W. Va. Code § 18A-4-8 would prohibit the board's action. That provision states:

> No service employee . . . without his or her written consent, [may] berelegated to any condition of employment which would result in a reduction of his or her salary, rate of pay, compensation or benefits earned during the current fiscal year or which would result in a reduction of his or her salary, rate of pay, compensation or benefits for which he or she would qualify by continuing in the same job position and classification held during that fiscal year and subsequent years.

The Court rejected this argument in Lucion, finding that the modifications to the employees' contracts rendered their positions different from the ones they had held the previous year; thus, they did not continue in the "same job position." Therefore, the non-relegation provision was not violated, nor was it violated in the instant case.

The undersigned agrees with Respondent that its replacement of Grievants' contracts with modified contracts is the same decision which was upheld by the Supreme Court in Lucion. The Board here was faced with having to implement some sort of measures to avoid having to grant prior experience credit to other aides, and possibly all of its service personnel, which could easily escalate into enormously increased expenses for the county. (See footnote 2) It provided notice to Grievants in accordance with W. Va. Code §18A-2-6, (See footnote 3) which is all that is necessary under the principles set forth in the Lucion opinion.

Consistent with the foregoing, the following conclusions of law are made in this matter.

Conclusions of Law

1. In non-disciplinary matters, Grievants have the burden of proving 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. No service employee may, without his or her written consent, be relegated to any condition of employment which would result in a reduction of his or her salary, rate of pay, compensation or benefits earned during the current fiscal year or which would result in a reduction of his or her salary, rate of pay, compensation or benefits for which he or she would qualify by continuing in the same job position and classification held during that fiscal year and subsequent years. W. Va. Code § 18A-4-8.

3. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious." Syllabus Pt. 3, Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986).

4. Service personnel with continuing contracts shall have their contracts remain in full force and effect "unless and until terminated with written notice, stating cause or causes . . . before the first day of April of the then current year." W. Va. Code § 18A-2-6.

5. The termination of Grievants' contracts, and their replacement with modified contracts without prior experience credit, did not violate any law, policy, rule, regulation, or written agreement.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Harrison 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: February 10, 2000 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Grievants were represented by counsel, Kathleen Abate, and Respondent was represented by counsel, Basil Legg, Jr.

Footnote: 2

The "uniformity provision" in W. Va. Code §18A-4-5b requires that employees "performing like duties and assignments" throughout a county receive uniform compensation.

Footnote: 3

As a probationary employee, Grievant Crock was not entitled to the protections of this statute, but the Board afforded them to her anyway.