PATRICIA YOKUM,

Grievant,

v. **Docket No. 00-DOE-343**

WEST VIRGINIA DEPARTMENT OF EDUCATION/SCHOOLS FOR THE DEAF AND THE BLIND,

Respondent.

DECISION

Patricia Yokum ("Grievant") initiated this grievance on October 2, 2000, challenging the method by which her employer, Respondent Schools for the Deaf and the Blind ("SDB"), calculates her sick leave. She seeks to be granted sick leave at the beginning of each school term, and also seeks reimbursement for all days her salary has been docked for insufficient leave during the 1999-2000 school year. The grievance was denied at level one on October 5, 2000. A level two hearing was held on October 23, 2000, followed by a written decision, denying the grievance, dated October 26, 2000. Level three consideration was bypassed, and Grievant appealed to level four on October 28, 2000. Upon appeal to level four, the parties agreed that a decision could be rendered based upon the record developed below, supplemented by proposed findings of fact and conclusions of law. Grievant was represented throughout this proceeding by Harvey M. Bane, of the West Virginia Education Association, and Respondent was represented by counsel, Rebecca M. Tinder. This matter became mature for consideration upon receipt of the parties' written proposals on December 14, 2000.

The following facts are undisputed by the parties.

Findings of Fact

1. Grievant is employed as a full-time classroom teacher at SDB.

2. SDB's Employee Policy Handbook provides as follows regarding sick leave for employees:

> [E]ach regular salaried full-time employee shall earn one and one-half (1½) days sick leave for each completed calendar month of service, or major portion thereof. . . . Such leave must be earned before using said leave and shall be accumulated without limit.

3. During the 1999-2000 school year, Grievant was absent on several occasions, and did not have sufficient sick leave accumulated. Accordingly, her pay was reduced in the total amount of $460.92.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her claims 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 contends that SDB's method of calculating sick leave is contrary to the provisions of W. Va. Code § 18A-4-10, which provides full-time county board of education employees with fifteen leave days at the beginning of each school term. Grievant believes that this provision should apply to SDB employees, not the monthly accrual method set forth in SDB's handbook. If Grievant had been credited with fifteen days of sick leave at the beginning of the school year, she would not have utilized all her accrued leave, thus docking of her pay would not have been necessary during 1999-2000.

The specific language of W. Va. Code § 18A-4-10 states:

> At the beginning of the employment term, any full-time employee of a county board of education shall be entitled annually to at least one and one-half days personal leave for each employment month or major fraction thereof in the employee's employment term. Unused leave shall be accumulative without limitation and shall be transferable within the state. . .

Respondent contends that its sick leave policy comports with the leave provisions promulgated for state employees by the West Virginia Division of Personnel, and that it is not required to follow the provisions of Code § 18A-4-10, because SDB employees are not "employee[s] of a county board of education." In further support of its argument, Respondent refers to the following portion of W. Va. Code § 18A-4-17(c):

> Nothing contained in this section shall be construed to mean that professional personnel . . . employed by the . . . West Virginia schools for the deaf and the blind are other than state employees.

In addition, W. Va. Code § 18-17-1 states that the state board of education will control and manage all affairs of SDB and that the state board "shall employ the superintendent, principals, teachers and other employees" of SDB. Accordingly, Respondent contends that it is only required to provide sick leave benefits afforded to all state employees by the Division of Personnel, which provides for accrual of one and one-half days per month.

However, yet another portion of W. Va. Code § 18A-4-17 sheds additional light on the issue at hand. Subsection (b) of that statute states as follows:

> Professional personnel employed by the department . . . in the West Virginia schools for the deaf and the blind shall be afforded all the rights, privileges and benefits established for the professional personnel under this article . . . Provided, however, That benefits shall exclude salaries unless explicitly provided for under this or other sections of this article: Provided further, That seniority for the professional personnel shall be determined on the basis of the length of time that the employee has been professionally employed at the facility, regardless of which state agency was the actual employer.

"In the interpretation of statutory provisions the familiar maxim expressio unius est exclusio alterius, the express mention of one thing implies the exclusion of another, applies." Syl. Pt. 9, Manchin v. Dunfee, 174 W. Va. 532, 327 S.E.2d 710 (1984). The statutory construction rule of in pari materia requires that "[s]tatutes which relate to the same subject matter should be read and applied together so that the Legislature's intention can be gathered from the whole of the enactments." Syl. Pt. 3, Smith v. State Workmen's Compensation Comm'r, 159 W. Va. 108, 219 S.E.2d 361 (1975).

Applying the rules of statutory construction to the provisions cited above leads to the conclusion that employees of SDB were meant to be afforded the sick leave benefits granted to county board of education employees pursuant to W. Va. Code § 18A-4-10. As the quoted portion of W. Va. Code § 18A-4-17(b) clearly states, SDB employees are to be given all benefits conferred upon professional personnel employed by county boards of education, and the only exceptions mentioned are salaries and seniority. Therefore, it must be assumed that the legislature knowingly chose not to exclude the sick leave "benefits" afforded professional personnel under W. Va. Code § 18A-4-10, or it would have also specifically excluded them. Moreover, "[s]chool 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).

The additional portions of W. Va. Code §§ 18-17-1 and 18A-4-17 cited by Respondent merely reinforce that SDB employees are employed by and are under the management and control of the state board of education and not of any county board of education. However, these provisions do not clearly exclude SDB's employees from receiving benefits afforded to county board employees, such as sick leave.

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

Conclusions of Law

1. In non-disciplinary matters, Grievant has the burden of proving her claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); 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. "At the beginning of the employment term, any full-time employee of a county board of education shall be entitled annually to at least one and one-half days personal leave for each employment month or major fraction thereof in the employee's employment term." W. Va. Code § 18A-4-10.

3. Professional employees of the West Virginia schools for the deaf and the blind are to be afforded all rights, privileges and benefits afforded to other professional employees under W. Va. Code §§ 18A-4-1, et seq. W. Va. Code § 18A-4-17(b).

4. "Statutes which relate to the same subject matter should be read and applied together so that the Legislature's intention can be gathered from the whole of the enactments." Syl. Pt. 3, Smith v. State Workmen's Compensation Comm'r, 159 W. Va. 108, 219 S.E.2d 361 (1975).

5. "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).

6. As a full-time professional employee of the West Virginia schools for the deaf and the blind, Grievant is entitled to the sick leave benefits set forth in W. Va. Code § 18A-4-10.

Accordingly, this grievance is **GRANTED**. Respondent is **ORDERED** to credit Grievant with fifteen days of personal leave as of the beginning of the 1999-2000 school year, and each ensuing school year. Grievant's use of sick leave for 1999-2000 shall then be recalculated, and if docking of her pay would not have been necessary, Respondent is **FURTHER ORDERED** to reimburse Grievant for any salary withheld for insufficient sick leave.[1]

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Hampshire 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: January 10, 2001

_____
DENISE M. SPATAFORE
Administrative Law Judge

---

[1]Respondent did not raise a timeliness or laches defense, so Grievant's relief will not be limited.