LINDA CARDER and

TERESA STINE,

Grievants,

v. **Docket No. 05-14-267**

HAMPSHIRE COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Linda Carder and Teresa Stine ("Grievants") initiated this grievance on June 10, 2005, alleging entitlement to the same county supplement as the Coordinator of Purchasing. The grievance was denied at level one on June 29, 2005, and appealed to level two on June 30, 2005. A hearing was conducted at that level on July 7, 2005, and the grievance was denied in a decision dated July 8, 2005. Level three consideration was waived, and Grievants appealed to level four on August 3, 2005. A hearing was held in the Grievance Board's office in Westover, West Virginia, on November 4, 2005. Grievants were represented in this matter by John E. Roush, Esquire, of the School Service Personnel Association, and Respondent as represented by counsel, Kimberly S. Croyle. This grievance became mature for consideration upon receipt of the parties' fact/law proposals on December 2, 2005.

The following material facts have been proven by a preponderance of the evidence of record.

Findings of Fact

1. Grievant Stine has been employed by Respondent since 1979, and was originally classified as Accountant IV/Executive Secretary Finance Office. She beganreceiving a salary supplement in 1994 for her duties as "head" of the payroll department. Her current classification is Payroll Coordinator/Accountant III.

2. Grievant Carder has been employed by Respondent since approximately 1993, and her

original job title was Accountant/Accounting Clerk/Data Processing. She is currently employed as Accounts Payable Coordinator/Accountant III. (See footnote 1)

3. Grievants each receive a $3300 annual county supplement.

4. Nancy Biggs is employed by Respondent as Coordinator of Purchasing. She supervises another employee who is classified as an Accountant III/Truck Driver. She receives a $5500 annual county supplement.

5. Grievants and Ms. Biggs are all employed within the Finance Department, and their immediate supervisor is the Finance Director.

6. Grievant Carder is in charge of processing and paying invoices, and recording these transactions. Although Grievant prepares bills for payment, the actual checks are signed by higher administrators. She assists the Finance Director with all the county's bookkeeping and financial reports. Grievant keeps all account records updated in the computer system, reconciles bank statements, and also receives and records payments for food bills. 7. Grievant Stine is in charge of all transactions involving employee payroll, deductions, and benefits. She records and monitors all such activities in the computer system and prepares monthly reports associated with them. Grievant also assists in the preparation of the annual “certified list”, which is a report containing the classification and salary information for each and every one of Respondent's employees. In addition, she prepares and distributes all employees' W-2 forms at the end of each year and assists the Finance Director with the administration of all federal and state-funded projects.

8. Ms. Biggs' primary function is to act as purchasing agent for the county school system. She compares prices, determines how much to bid, and negotiates prices with vendors for all supplies and equipment purchased by Respondent, including food, gasoline, and heating fuel. Although all purchase orders must ultimately be signed and approved by the Finance Director, Ms. Biggs functions independently in negotiating bids and contracts. After purchase orders have been processed and invoices issued, Ms. Biggs forwards them to Grievant Carder for payment. Ms. Biggs also runs Respondent's warehouse, maintaining the inventory of supplies and making sure they are sent to the respective departments that need them. As discussed above, Ms. Biggs also supervises Eric Barner, an Accountant III/Truck Driver, who does some of the bids for supplies--which Ms. Biggs reviews and approves--and receives all deliveries. Mr. Barner also fills in during Ms. Biggs' absence by handling any needed purchase orders.

9. While Grievants work in the central office, adjacent to the Finance Director, Ms. Biggs' office is in the warehouse, which is in a separate building. However, Grievants and Ms. Biggs all have regular contact with the Finance Director, although they function independently much of the time.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their 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 (2004); 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 contend that their duties are like those of Ms. Biggs, entitling them to the same salary supplement she receives. They allege that Respondent's refusal to provide them with the same supplement is a violation of the uniformity statute, along with constituting discrimination and favoritism. The pertinent portion of the uniformity provision, i.e. W. Va. Code § 18A-4-5b, states:

> The county board of education may establish salary schedules which shall be in excess of the state minimums fixed by this article.
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> These county schedules shall be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation of equipment, or other requirements. Further, 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[.]

As both parties to this case have pointed out, this provision has been recently discussed and interpreted the West Virginia Supreme Court of Appeals, which has determined that boards of education are required only to provide uniform benefits and compensation to similarly situated employees, meaning those who have “like classifications, ranks, assignments, duties and actual working days.” Bd. of Educ. v. Airhart, 212 W. Va. 175, 569 S.E.2d 422 (2002); Covert v. Putnam County Bd. of Educ., Docket No. 99-40-463 (Feb. 29, 2000); Stanley v. Hancock County Bd. of Educ., DocketNo. 95-15-217 (Sept. 29, 1995). Grievants seeking to enforce the uniformity provisions must establish that their duties and assignments are like those of the employees to whom they are attempting to compare themselves. Locket v. Fayette County Bd. of Educ., Docket No. 01-10-477 (Dec. 28, 2001); Adkins v. Lincoln County Bd. of Educ., Docket No. 97-22-165 (Sept. 24, 1997).

In a case involving very similar circumstances, this Grievance Board has held that employees who were multiclassified as coordinators and secretaries were not entitled to the same salary supplement as employees classified only as directors or coordinators. In Strother/Knight v. Harrison County Board of Education, Docket No. 02-17-112 (March 31, 2003), it was noted that, because the grievants did not "serve as Directors on a full-time basis like the Directors who receive the supplement, and in fact, have duties which the other Directors do not have[,]" they were not similarly situated to those employees or thus entitled to the same compensation. Indeed, on a similar note, the Supreme Court has made this observation:

> Employees who do not have the same classifications are not performing 'like assignments and duties.' Even those employees who have some classifications in common with another service employee would not be performing 'like assignments and duties' because they have additional duties in relation to the other classifications they hold.

Flint v. Bd. of Educ., 207 W. Va. 251, 257, 531 S.E.2d 76, 82 (1999) (overruled on other grounds).

In the instant case, as in Strother, Grievants have failed to prove a uniformity violation has occurred under the circumstances presented. The evidence reveals that, in addition to their coordinator duties, both Grievants also perform various accounting functions and provide direct assistance to the Finance Director. Not only does their multi-classification status distinguish their positions from Ms. Biggs', but it is also clear that Ms. Biggs functions far more independently with administrative decision-making authority that Grievants do not possess, despite their ability to perform their duties without direct supervision.

Grievants likewise have failed to prove discrimination and/or favoritism. "'Discrimination' means 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." (See footnote 2) "'Favoritism' means unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees." (See footnote 3) In Board of Education v. White, 216 W. Va. 242, 605 S.E.2d 814 (2004), the West Virginia Supreme Court of Appeals clarified the legal test for discrimination claims raised under the grievance procedure definition. A grievant must establish a case of discrimination by showing:

> (a) that he or she has been treated differently from one or more similarly-situated employee(s);

(b) that the different treatment is not related to the actual job responsibilities of the employees; and,

(c) that the difference in treatment was not agreed to in writing by the employee.

Chaddock v. Div. of Corrections, Docket No. 04-CORR-278 (2005); Frymier v. Glenville State College, Docket No. 03-HE-217R (2004). An employee claiming favoritism must also show he is similarly-situated to another employee. Kincaid v. Div. of Corrections, DocketNo. 98-CORR-144 (1998); Prince v. Wayne County Bd. of Educ., Docket No. 90-50-281 (1990). As discussed above, by virtue of the differences in their classifications and job duties, Grievants are not similarly situated to Ms. Biggs.

The following conclusions of law are consistent with the foregoing.

Conclusions of Law

1. Grievants have the burden of proving their 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 (2004); 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. A board of education “may establish salary schedules which shall be in excess of the state minimums fixed by this article, such county schedules to be uniform throughout the county as to the classification of training, experience, responsibility and other requirements" and "[u]niformity also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county." W. Va. Code §18A-4-5b. 3. Boards of education are required only to provide uniform benefits and compensation to similarly situated employees, meaning those who have “like classifications, ranks, assignments, duties and actual working days.” Bd. of Educ. v. Airhart, 212 W. Va. 175, 569 S.E.2d 422 (2002); Covert v. Putnam County Bd. of Educ., Docket No. 99-40-463 (Feb. 29, 2000); Stanley v. Hancock County Bd. of Educ., Docket No. 95-15-217 (Sept. 29, 1995).

4. A grievant must establish a case of discrimination by showing:

(a) that he or she has been treated differently from one or more similarly-situated employee(s);

(b) that the different treatment is not related to the actual job responsibilities of the employees; and,

(c) that the difference in treatment was not agreed to in writing by the employee.

Board of Education v. White, 216 W. Va. 242, 605 S.E.2d 814 (2004); Chaddock v. Div. of Corrections, Docket No. 04-CORR-278 (2005); Frymier v. Glenville State College, Docket No. 03-HE-217R (2004).

5. An employee claiming favoritism must also show he is similarly-situated to another employee. Kincaid v. Div. of Corrections, Docket No. 98-CORR-144 (1998); Prince v. Wayne County Bd. of Educ., Docket No. 90-50-281 (1990).

6. Grievants have failed to prove by a preponderance of the evidence that they are similarly situated to Nancy Biggs, so they are not entitled to receive the same county salary supplement that Ms. Biggs receives.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Hampshire County. Any 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 theGrievance 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 9, 2006

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DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Within the last few years, Grievant had "informally" been given the title of "Accountant IV," although no official job description stating as much was adopted by Respondent. As there is no statutory job classification for Accountant IV, Grievants' most recent job descriptions, as adopted by the Board, clarified their classifications as Accountant III. Grievants disagreed with this alleged "demotion" in their classification titles, and refused to sign off on their most recent job descriptions; however, they filed no grievances regarding their classifications and agree that their job duties have been described accurately.

Footnote: 2

W. Va. Code § 18-29-2(m).

Footnote: 3

W. Va. Code § 18-29-2(o).