THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

JACQUELINE REYNOLDS,

Grievant,

v. **Docket No. 06-30-333**

Sue Keller

Senior Administrative Law Judge

MONONGALIA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Jacqueline Reynolds ("Grievant"), employed by the Monongalia County Board of Education ("MCBE") as a secretary, filed a level one grievance on May 17, 2006, in which she alleged violations of *W. Va. Code* §§ 18A-4-8b and 18A-4-8g during a reduction in force. For relief, Grievant seeks reinstatement with back pay and benefits. (See footnote 1) The grievance was denied at levels one and two. Grievant elected to bypass consideration at level three, as is permitted by *W. Va. Code* § 18-29-4(c), and filed an appeal to level four on September 29, 2006. An evidentiary hearing was convened in the Grievance Board's Westover office on December 5, 2006; however, the parties agreed at that time to submit the grievance for review based upon the lower level record. Grievant was represented by John E. Roush, Esq., of the West Virginia School Service Personnel Association, and MCBE was represented by Jennifer Caradine, Esq., of Dinsmore & Shoal, LLP. The grievance became mature for decision upon receipt of proposed findings of fact and conclusions of law filed by the parties on or before January 8, 2007. The following facts have been derived from a preponderance of the credible evidence made part of the level four record.

Findings of Fact

1. Grievant was first employed by MCBE on May 11, 2005, and held the classification of Secretary at all times pertinent to this grievance.

2. By letter dated April 20, 2006, MCBE Superintendent Frank Devono notified Grievant

pursuant to *W. Va. Code* § 18A-2-8a, that her name was not included on the list of probationary employees to be rehired for the 2006-2007 school year, due to a lack of seniority. 3. Monette Ammons is employed by MCBE as a Secretary with a seniority date of August 18, 2005. She also holds the classification of Accountant II, with a seniority date of November 30, 2005.

4. Jill Strahan is employed by MCBE as a Secretary III/Accountant with a seniority date of September 28, 2005.

5. Eleanor Molisee is employed by MCBE as a Secretary with a seniority date of November 2, 2005. Ms. Molisee is also employed as a Computer Operator with a seniority date of February 25, 2004.

6. Grievant's employment was not terminated, and she was not placed on the preferred recall list.

Synopsis

Grievant argues that she should have retained employment since she was not the secretary with least seniority. MCBE asserts that because this was not a reduction in force action, but was simply the nonrenewal of a probationary contract, seniority is not controlling, and Grievant failed to prove any statutory violation. MCBE properly applied the provisions of *W. Va. Code* § 18A-2-8a when Grievant's employment was not renewed.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (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. "The preponderance standard generally requires proof that a reasonable person would acceptas sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health and Human Res*., Docket No. 92-HHR-486 (May 17, 1993).

Grievant argues that MCBE terminated her employment in violation of the following statutory provisions:

W. Va. Code § 18A-4-8b

(h) All decisions by county boards concerning reduction in work force of service personnel shall be made on the basis of seniority, as provided in this section.

* * *

(j) If a county board is 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 the classification or grades of classification, he or she shall be employed in any other job classification which he or she previously held with the county board if there is a vacancy and shall retain any seniority accrued in the job classification or grade of classification.

(k) . . . the board shall not rescind the reduction in force of an employee until all employees with more seniority in the classification category on the preferred recall list have been offered the opportunity for recall to regular employment as provided in this section.

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(m) All employees whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a preferred recall list and shall be recalled to employment by the county board on the basis of seniority.

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(r) An employee released from employment for lack of need as provided in section eight-a or six, article two of this chapter shall be accorded preferred recall status on the first day of July of the succeeding school year if the employee has not been reemployed as a regular employee.

W. Va. Code § 18A-4-8g

(b) For all purposes including the filling of vacancies and reduction in force, seniority shall be accumulated within particular classification categories of employment as those classification categories are referred to in section eight-e of this article: Provided, That when implementing a reduction in force, an employee with the least seniority within a particular classification category shall be properly released and placed on the preferred recall list. The particular classification title held by an employee within the classification category shall not be taken into consideration when

implementing a reduction in force.

* * *

(i) School service personnel who hold multiclassification titles shall accrue seniority in each classification category of employment which the employee holds and shall be considered an employee of each classification category contained within his or her multiclassification title. Multiclassified employees are subject to reduction in force in any category of employment contained within their multiclassification title based upon the seniority accumulated within that category of employment: Provided, That if a multiclassified employee is reduced in force in one classification category, the employee shall retain employment in any of the other classification categories that he or she holds within his multiclassification title. In that case, the county board shall delete the appropriate classification title or classification category from the contract of the multiclassified employee.

Grievant's argument is incorrectly based on a misinterpretation of the April 20, 2006, letter from Superintendent Frank Devono to state that her employment was being terminated as part of a reduction in force. Because of school consolidations, MCBE did not require the same number of secretaries in 2006-07 that were necessary during the 2005-06 school year. However, the Superintendent's letter does not state that Grievant's employment was being terminated as part of a reduction in force, but that she was not being recommended for rehiring due to her “lack of seniority.” Thus, the controlling factor in this situation is not whether she was the least senior employee in the secretary classification. Because Grievant was a probationary employee who's employment was notrenewed MCBE correctly argues that the appropriate statute governing this situation is *W. Va. Code* § 18A-2-8a, which states

The superintendent at a meeting of the board on or before the first Monday in May of each year shall provide in writing to the board a list of all probationary teachers that he recommends to be rehired for the next ensuing school year. The board shall act upon the superintendent's recommendations at that meeting in accordance with section one of this article. The board at this same meeting shall also act upon the retention of other probationary employees as provided in sections four and five of this article. Any such probationary teacher or other probationary employee who is not rehired by the board at that meeting shall be notified in writing, by certified mail, return receipt requested, to such persons' last-known addresses within ten days following said board meeting, of their not having been

rehired or not having been recommended for rehiring.

See: Baker v. Hancock County Bd. of Educ., Docket No. 97-15-447 (May 5,1998), *aff'd* 207 W. Va. 513, 534 S.E.2d 378 (2000).

When a board of education decides not to renew a probationary employee's contract at the end of a school year, the provisions of *W. Va. Code* § 18A-2-8 do not apply. *Baker, supra; Cordray v. Wood County Bd. of Educ*., Docket No. 90-54-267 (Jan. 31, 1991). Grievant does not allege a violation of *W. Va. Code* § 18A-2-8a, and the evidence establishes that those provisions were followed.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (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. When a board of education decides not to renew a probationary employee's contract at the end of a school year, the provisions of *W. Va. Code* § 18A-2-8 do not apply. *Baker, supra; Cordray v. Wood County Bd. of Educ*., Docket No. 90-54-267 (Jan. 31, 1991).

Accordingly, this grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of the Monongalia 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 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 22, 2007**

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

.Grievant was subsequently temporarily employed by MCBE as a Secretary at Westover Elementary School for the 2006-2007 school year. With the closing of that school in January, Grievant has been hired on a part-time basis at Westwood Middle School.