THE WEST VIRGINIA PUBLIC EMPLOYEES

GRIEVANCE BOARD

SGT. MAJOR CRAIG ADKINS,

Grievant,

v.

Docket No. 06-22-368

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

DISMISSAL ORDER

Grievant initiated this grievance on September 25, 2006, alleging an incorrect calculation of employment compensation by Respondent Lincoln County Board of Education ("LCBOE"). After denials at the lower levels, this matter was appealed to level four on October 20, 2006. Respondent filed a Motion to Dismiss on the basis of *res judicata* on December 31, 2007. Grievant was provided an opportunity to respond to this motion, and they filed a responsive document on January 16, 2008. Grievant was represented by William B. McGinley, Esq., West Virginia Education Association, and Respondent was represented by Rebecca M. Tinder, Esq., Bowles Rice McDavid Graff & Love LLP.

The following material facts are undisputed:

Findings of Fact

1. On May 31, 2005, Grievant filed a level one grievance, which contained the following statement of grievance:

> My monthly employment changed from "twenty" (20) days equal to one (1) month to "fourty" [sic] days equal to one (1) month when I went from "Normal School Employment Days" to "Additional or Extended Calender Days". This causes my daily

> rate to change from $206.89 to $189.
>
> Relief sought: Either pay me my correct daily rate of $206.89 for 240 days or correct my employment to 220 days equal to eleven (11) months.

2. The above-described grievance (hereafter referred to as *Adkins 1*) was denied at level four on the basis that Grievant only worked 11 months a year, a 240 day contract, but wanted to be paid for a 12 month, 261 day contract. No other employee with LCBOE, with the exception of the Superintendent, had a 12 month contract. *See Adkins v. Lincoln County Bd. of Educ.*, Docket No. 05-22-331D (May 31, 2006).

3. In that decision, Administrative Law Judge Reynolds issued a decision which included the following:

> Through a combination of fuzzy math, erroneous logic, and a comparison of apples to oranges, Grievant has come to believe his 240-day contract is a 12 month contract, and he is under paid. It would be clearly wrong and contrary to law to pay Grievant, who through his own testimony agreed he works only 11 months, for 12 months of work.

4. On appeal, the Kanawha County Circuit Court affirmed this Board's decision and added the following analysis:

> Dissatisfied with a previous employment contract, the Petitioner negotiated and signed a new and more favorable contract. Not content with the new and more favorable contract, the Petitioner now attempts to require the Respondent to pay more than agreed upon in the contract. However, according to syl. pt. 3, *Estate of Tawney v. Columbia Natural Resources, L.L.C.*, 633 S.E.2d 22 (W. Va. 2006), “[a] valid written instrument which expresses the intent of the parties in plain and unambiguous language is not subject to judicial construction or interpretation but will be applied and enforced according to such intent.”
>
> Furthermore, the Petitioner's method of calculating entitlement to more pay is flawed. The Petitioner's calculation fails to distinguish between a thirteen month school calendar and a twelve month Gregorian calender. By failing to differentiate between the two, the Petitioner erroneously concludes that teachers are given preferential treatment. In actuality, the Petitioner already receives what he argues for: two months' pay more than teachers.

5. The West Virginia Supreme Court of Appeals on September 20, 2007, refused to hear an appeal of this order affirming the Grievance Board's decision.

6. Grievant initiated this grievance on September 25, 2006, alleging that:

> The Lincoln County Board of Education pays me on the basis of calendar months instead of the 20 day school month used to calculate the salary of other school employees and teachers. These actions violate Cadet Command Regulation 145-2; *West Virginia Code §* 18A-4-5a; *West Virginia Code §* 18-5-45.

The relief sought in the grievance is:

> That my salary and employment term be calculated like that of other teachers in Lincoln County and like other JROTC instructors in the State.

7. Contrary to the assertion of Grievant, there was a final adjudication in *Adkins 1*

on the merits of the grievance. While this decision was couched in terms of a motion for default filed by Grievant, the body of the decision addresses the merits of the grievance when discussing the calculation of Grievant's salary under the employment contract. As set out in the decision, it noticed the parties that it was a final decision appealable by the parties to circuit court.

8. Grievant concedes that the basic issue in both grievances is the calculation of the daily rate of his employment compensation. Once again, Grievant seeks a change in his negotiated contract terms. Level Two Transcript pp. 2-9.

9. Craig Adkins and the LCBOE were the same parties that appeared in the previous grievance.

10. Grievant acknowledged at level two that the only difference between this grievance and the previous grievance was the school year. In fact, as in the previous grievance, Grievant negotiated and signed an employment contract with the LCBOE. While this contract was a 220 day contract as opposed to a 240 day contract, theapplicable daily rate calculation principle was the same as in the previous grievance. Level Two Transcript pp. 2-9.

Discussion

The doctrine of *res judicata* may be applied by an administrative law judge to prevent the "relitigation of matters about which the parties have already had a full and fair opportunity to litigate and which were in fact litigated." *Vance v. Jefferson County Bd. of Educ.*, Docket No. 03-19-018 (May 27, 2003); *Liller v. W. Va. Human Rights Comm'n*, 376 S.E.2d 639, 646 (W. Va. 1988); *Hunting v. Lincoln County Bd. of Educ.*, Docket No. 01-22- 629 (Apr. 16, 2002). *See Boyer v. Wood County Bd.*

of Educ., Docket No. 95-54-309 (Sept. 29, 1995); *Peters v. Raleigh County Bd. of Educ.*, Docket No. 95-41-035 (Mar. 15, 1995). (See footnote 1) Before the prosecution of a lawsuit may be barred on the basis of *res judicata*, three elements must be satisfied:

First, there must have been a final adjudication on the merits in the prior action by a court having jurisdiction of the proceedings.

Second, the two actions must involve either the same parties or persons in privity with those same parties. Third, the cause of action identified for resolution in the subsequent proceeding either must be identical to the cause of action determined in the prior action or must be such that it could have been resolved, had it been presented, in the prior action. (See footnote 2)

All of the above criteria have been met in this case. As in the previous grievance, Grievant negotiated and signed a new employment contract with the LCBOE for the 2006 school year. Once again, Grievant's method of calculating entitlement to more pay is flawed. Grievant continues to erroneously conclude that teachers are given preferential treatment. Grievant continues to argue in each grievance that he is paid on the basis of calender months instead of the 20 day school month used to calculate the salary of other school employees. These issues were decided in *Adkins 1* and cannot be relitigated here.

The following conclusions of law support this decision.

Conclusions of Law

1. The doctrine of *res judicata* may be applied by an administrative law judge to

prevent the "relitigation of matters about which the parties have already had a full and fair opportunity to litigate and which were in fact litigated." *Vance v. Jefferson County Bd. of Educ.*, Docket No. 03-19-018 (May 27, 2003); *Liller v. W. Va. Human Rights Comm'n*, 376 S.E.2d 639, 646 (W. Va. 1988); *Hunting v. Lincoln County Bd. of Educ.*, Docket No. 01-22-629 (Apr. 16, 2002). *See Boyer v. Wood County Bd. of Educ.*, Docket No. 95-54-309 (Sept. 29, 1995); *Peters v. Raleigh County Bd. of Educ.*, Docket No. 95-41-035 (Mar. 15, 1995). 2. The exact issue presented here was fully litigated by the parties hereto, and a final decision was issued in *Adkins v. Lincoln County Board of Education*, Docket No. 05- 22-331D (May 31, 2006), which is binding upon the parties.

Accordingly, this grievance is **DISMISSED**.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the “circuit court

of the county in which the grievance occurred." Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7 (repealed, *See Footnote 1, supra*). Neither the West Virginia Public 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 Grievance Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: February 5, 2008

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Ronald L. Reece

Administrative Law Judge

Footnote: 1

In 2007, the Legislature, 2007 Acts ch. 207, abolished the West Virginia Education and State Employees Grievance Board, replacing it with the Public Employees Grievance Board. W. Va. Code §§ 18-29-1 to 18-29-11 and W. Va. Code §§ 29-6A-1 to 29-6A-12 were repealed and replaced by W. Va. Code §§ 6C-2-1 to 6C-2-7 and W. Va. Code §§ 6C- 3-1 to 6C-3-6 (2007). Grievances which were pending prior to July 1, 2007, are decided under the former statutes, W. Va. Code §§ 18-29-1 to 18-29-11, for education employees, and W. Va. Code §§ 29-6A-1 to 29-6A-12, for other state and higher education employees. See Executive Order No. 2-07, May 8, 2007. References in this decision are to the former statutes and rules, which continue to control the proceedings in this case.

Footnote: 2

Syl. pt. 4, Blake v. Charleston Area Med. Ctr., Inc., 201 W. Va. 469, 498 S.E.2d 41 (1997); Harmon v. Fayette County Bd. of Educ., Docket No. 03-10-035 (May 6, 2003).