THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

TAMMY HILL, et al.,
Grievants,

v. **Docket No. 2009-1503-CONS**

BARBOUR COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

Grievants Tammy Hill, Angie Jones, Karen Menear, Luella Saffle, and Janis Zambelli filed this grievance against their employer, the Barbour County Board of Education, on April 21, 2009. Their Statement of Grievance indicates that, "[G]rievants, who all hold the class title of Auditor in addition to other class titles, will have the Auditor class title removed for the 2009-2010 school year and their compensation reduced. Grievants assert a violation of W.V.C. 18A-4-8(i)(12) & 18A-4-8(m)."[1] Grievants' relief sought reads as follows, "[G]rievants seek reinstatement of the Auditor classification and the appropriate compensation with compensation for all lost wages and benefits with interest."

This grievance was initiated at level one with a request for a hearing noted on the grievance form; however, the parties entered into a mutual agreement to waive this grievance to level three on June 12, 2009. The undersigned Administrative Law Judge conducted a level three hearing on November 2, 2009, at the Grievance Board's Westover

[1]At the level three hearing, counsel for the Grievants moved to amend the Statement of Grievance to reflect 18A-4-8(i)(12) should read 18A-4-8(i)(13). This request was granted without objection.

location. This matter became mature for consideration upon receipt of the parties' proposed findings of fact and conclusions of law on December 3, 2009.

Synopsis

Respondent terminated Grievants' contracts for the purpose of reclassification. Respondent asserts that a review of the Grievants' job classification revealed that they were not performing duties that fell within the Auditor job classification. The record established that Grievants continued to perform the same duties which correspond to the limited definition of the class title of Auditor after termination of their contracts and reduction of compensation. This is specifically prohibited by statute, and runs counter to the West Virginia Supreme Court of Appeals interpretation of the non-relegation clause.

The following findings of facts are based upon the record of this matter developed before the Barbour County Board of Education and at level three:

Findings of Fact

1. Grievants have been regularly employed by Respondent as multiclassified school service personnel for numerous years.

2. In the 2008-2009 school year, each of the Grievants held a multiclassification title consisting of the Secretary II or III classification title and the Auditor classification title.

3. Respondent terminated the contracts of Grievants in order to remove the Auditor classification title from the Grievants' contracts. This action came about after a reported review of Grievants' job classification and a determination that they were not performing duties that fell within the Auditor job classification. The modified contract

resulted in a loss of pay to Grievants as a result of receiving a lower classification pay grade.

4. The job duties and responsibilities of the Grievants for the 2009-2010 school year were identical to those duties performed by Grievants in the 2008-2009 school year.

5. Grievant Tammy Hill received money, counted it, and issued receipts. She kept the accounts for various athletic teams and other clubs at her school. She assisted other board employees, coaches, and sponsors to keep their records accurate.

6. Grievant Angie Jones worked with the hot lunch program including collecting and verifying money for extra cartons of milk sold to students and guest meals served. She assists Grievant Hill and other staff members at the school to keep accurate records.

7. Grievant Karen Menear collects, counts, and verifies funds for the vocational clubs. She prepares purchase orders. During these activities she assists the sponsor of the vocational club, who are board employees, to maintain accurate records.

8. Grievant Luella Saffle reconciles breakfast and lunch reports and the appropriate statements for the bank accounts on a monthly basis. She assists the principal and the cooks to keep accurate records.

9. Grievant Janis Zambelli did not testify to her specific duties before the Barbour County Board of Education. She did not appear in person at the level three hearing to provide testimony addressing her specific duties as it relates to this grievance.

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. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); *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). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

This grievance presents the undersigned with a somewhat atypical factual pattern in evaluating a reclassification case. In this case, Grievants are not seeking the addition of a new classification but are seeking to maintain a class title they have been contracted under for numerous years. Respondent voted to terminate Grievants' contracts and remove the Auditor class title from their classification titles with a corresponding reduction in compensation. This action was undertaken following a review of the Grievants' job classifications and a determination that they are not performing duties that fall within the Auditor job classification.[2] Grievants counter that they continue to perform job duties of the Auditor class title and the action of the Respondent was a violation of the clear intent of W. VA. CODE § 18A-4-8(m).

Grievants point to two statutes which are pivotal to the outcome of this grievance. W. VA. CODE § 18A-4-8(m) provides as follows:

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[2]This review was conducted pursuant to the requirements of W. VA. CODE § 18A-4-8(l).

> Without his or her written consent, a service person may not be:
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> (1) Reclassified by class title; or
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> (2) 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 for which he or she would qualify by continuing in the same job position and classification held during that fiscal year and subsequent years.

On this point, Grievants take a somewhat extreme interpretation of this statute and argue that the Respondent could not legally reclassify Grievants and lower their compensation without written consent of the Grievants regardless of the justification. Respondent points out that, based upon its responsibility to review the classification titles of service personnel, the Respondent was compelled to take such action. Fortunately, for the undersigned, the facts of this grievance are better suited for an outcome that follows the West Virginia Supreme Court of Appeals interpretation of the non-relegation statute cited above in *Crock v. Harrison County Bd. of Education*, 211 W. Va. 40, 560 S.E.2d 515 (2002).[3]

The record of this grievance establishes by a preponderance of the evidence that Grievants do continue to perform auditor duties and have been relegated to a condition of employment resulting in a reduction of salary. In *Crock*, *supra*, the Supreme Court of Appeals held that the non-relegation clause prohibits a board of education from terminating an employee's contract and reissuing it with altered compensation. In that case, the board had attempted to reissue the grievants' contracts without the previously granted credit for prior experience which had been incorporated into grievants' salaries. The Court noted

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[3]Grievants cite to this case in support of their grievance.

that, since there were no changes in the employees' employment terms or the positions they held, taking this action merely to alter their salaries was clearly prohibited by the statute. This case presents a similar fact pattern.

The second statute which is pivotal in the outcome of this grievance can be found at W. VA. CODE § 18A-4-8(i)(13), which provides:

> "Auditor" means a person employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts.

Respondent concedes that Grievants perform bookkeeping responsibilities; however, their duties do not extend to the audit or review of the financial record keeping practices of others. In support of this proposition Respondent offered the testimony of Whitney Kinds, Respondent's Chief Financial Officer and Treasurer. Ms. Kinds pointed out that a characteristic of an audit involves an outside review. She opined that an individual may not audit the financial records that he or she is responsible for maintaining. Another characteristic of the performance of an audit is the preparation of an audit report. Respondent established that none of the Grievants prepare audit reports. This view is likely true in the generally accepted definition of that term in an accounting setting; however, the undersigned is bound to follow the definition set out by the legislature that is applicable to service personnel.

The record of this grievance establishes by a preponderance of the evidence that Grievants Hill, Jones, Menear, and Saffle keep account records accurate and help to maintain complete records of their accounts, in a limited way they examine and verify accounts of their school. See findings of fact 5, 6, 7, and 8 above. Under this very general definition of auditor, the duties of Grievants do correspond to the definition.

Pursuant to W. VA. CODE § 18A-4-8(m), Respondent is not permitted to alter Grievants' compensation for performing the same duties they performed during the previous school year. The undersigned is convinced with Grievants' contention that their duties do continue to correspond to the definition of auditor. In addition, Respondent was not justified in modifying its original decision to classify Grievants in the multiclassification title of Secretary/Auditor nor to modify Grievants' contracts without their written consent. Accordingly, Grievants Hill, Jones, Menear, and Saffle are entitled to the relief requested, i.e., reinstatement of the Auditor classification and the appropriate compensation for all lost wages and benefits with interest. Grievant Janis Zambelli did not meet this burden of proof and her grievance is denied.

The following conclusions of law support this Decision.

Conclusions of Law

1. 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. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); *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).

2 Pursuant to the provisions of W. VA. CODE § 18A-4-8(m), a board of education is prohibited from terminating an employee's contract and reissuing the contract with altered compensation terms, if the employee is serving in exactly the same position as the previous school year. *Crock v. Harrison County Bd. of Education*, 211 W. Va. 40, 560 S.E.2d 515 (2002).

3. Grievants Hill, Jones, Menear, and Saffle have proven by a preponderance of the evidence that Respondent acted improperly when it altered the compensation provisions of their contracts. Grievant Zambelli did not offer evidence sufficient to establish that she continued to perform the duties of auditor and her grievance is denied.

Accordingly, this grievance is **Granted**, in part, and **Denied**, in part. Respondent is **ORDERED** to reinstate the Auditor classification to Grievants Hill, Jones, Menear, and Saffle and compensate them for lost wages and benefits with interest at the statutory rate. Grievant Zambelli's grievance is **Denied**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. 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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (eff. July 7, 2008).

Date: March 10, 2010

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Ronald L. Reece
Administrative Law Judge