DIANE L. STRIPPEL

v. Docket No. 94-52-192

WETZEL COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Diane L. Strippel is employed by Respondent Wetzel County Board of Education (WCBE) as a teacher. She alleges WCBE violated W.Va. Code 18A-4-6 when it applied its own arbitrary and capricious policy and refused to grant her a wage increment for attaining additional graduate hours until the second semes ter of the 1993-94 school year. As relief, she seeks the salary differential for the first semester of the 1993-94 school year. WCBE claims Grievant neglected to follow policy directives and promptly file for the upgrade in Fall 1993 and also failed to timely file a grievance about her claim. The parties agreed that a decision could be based on the evidence adduced below and some supplementary materials.1

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1The record includes a copy of the transcript and exhibits of the April 12, 1994 level two hearing. The parties completed responsive briefing on September 1, 1994.

According to Grievant's testimony and level one grievance statement, in June 1993 she qualified for the West Virginia Department of Education's (DOE) advanced salary classification of "Master's Plus 30" (MA+30). The minimum salary level for MA+30 appears in the statutory salary scale for professional education employees, W.Va. Code 18A-4-2 (1993). In addition Code 18A-4-6 spells out that

Upon the change of the training classification of any

teacher, his salary shall be made to comply with
requirements of this article and of any county sched
ule, where such exist, based upon his new classifica
tion and allowable years of experience.

Implicit in this statutory provision is the fact that both DOE
and county boards of education must be informed by affected
personnel of proposed classification changes before any new
licenses can be processed and issued by DOE and before any
salary adjustments can made by county boards.
In 1990, WCBE amended its policy "GCB" to include a re
quirement that persons qualifying for advanced salaries had to
complete application forms by September 30 for first semester
adjustments and by January 31 for second semester adjustments.
After WCBE instituted the policy, it published this information
in its September 1990, 1991, 1992 and 1993 school newsletters.
In particular, under a front-page caption, "SALARY UPGRADE
INFORMATION," the September 1993 newsletter stated, in relevant
part, "In order to be paid from a higher pay scale for the first
semester, FORMS MUST BE RECEIVED BY SEPTEMBER 30." WCBE Ex. 1.
As noted above, this grievance arose because Grievant was
not granted any salary increment for the first semester of the
1993-94 school year due to the fact she had not complied with
WCBE's policy directive that she file for the upgrade within the
designated time. Grievant testified, see T.6-7, that she did
know until sometime in September 1993, after seeing the notice
in WCBE's September 1993 school newsletter, that she was re
quired to submit a "form" by September 30 for the MA+30 salary
upgrade.2
Grievant stated that after she saw the newsletter she
called school officials about the matter "within a day or two,"

obtained the necessary form "as soon as possible," and, finally, completed and filed the form, possibly by October 5, 1993, because that was the date on the cancelled checks for fees she had to submit for processing. Although Grievant admitted she had been informed by school officials at that time that she would not be "paid until January," she said she had not realized then that she would not be given the salary upgrade retroactively. T.7. By letter dated November 12, 1993, DOE informed Grievant that her application for advanced salary classification had been approved for the MA+30 salary level/status, effective

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2Under cross-examination, Grievant agreed that she routinely read the school newsletters because they often contained important information. She explained that she had not really noticed any printed requirements in previous years' newsletters for advanced salary status because that information did not pertain to her at the time. Grievant also stated that she had never availed herself of the opportunity to review WCBE's written policies and procedures. T.16-17.

August 12, 1993. Gr. Ex. "B" (8/26/94).3 WCBE officials received Grievant's revised teaching certificate reflecting her MA+30 status from DOE on November 17, 1993.

Grievant said that in December 1993, she called school officials "just to make sure" she "had everything." At that time, Grievant said, "it became apparent" (to her) that she would not receive any salary upgrade for the first semester of the 1993-94 school year when the new semester began. She said she then "started checking into things." T.7.

By letter dated December 18, 1993, Grievant informed WCBE

Assistant Superintendent Paul Barcus that she had missed WCBE's deadline (by about a week) for the submission of paperwork for the fall salary upgrade and asked if an exception to the "time policy" could be made in her case. Gr. Ex. 1. In a January 10, 1994 reply letter, Mr. Barcus wrote that he doubted anything could be done about retroactive payment due to WCBE's policy that forms for first semester salary upgrades had to be received by school officials by September 30.4 WCBE Ex. 2.
WCBE began paying Grievant the salary advancement in early 1994 at the onset of the second semester of the 1993-94 school year. At the level two hearing, Grievant recalled she began

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3By agreement of the parties, Grievant submitted three unmarked exhibits with her level four brief. The undersigned has designated them as A, B and C.

4According to Mr. Barcus, WCBE has consistently applied its policy for salary adjustments since 1990. He claimed at least two other teachers were denied first semester advanced salary adjustments during the 1993-94 school term because they had not filed their forms after by cut-off date of September 30.
receiving the increment on one of the two January 1994 paydays, either January 15 or January 28, 1994; however, evidence submit ted on her behalf at level four established that the "first pay during the second semester" was February 15, 1994.5
In any event, the record establishes that Grievant filed a written level one grievance on March 2, 1994. WCBE raised a timeliness issue at level two. During cross-examination at the level two hearing, Grievant stated she had not been aware of any fifteen-day time period within which to file a grievance.

T.20-21.

On the issue of timeliness, WCBE contends in its level four brief that Grievant knew at the latest when she received Mr. Barcus' January 10, 1994, letter that she would not receive the salary advancement retroactively. WCBE argues that Grievant's claim on March 2, 1994 is thus untimely.

Grievant counters that, since the initial paycheck for the second semester was not issued until February 15, 1994, her grievance filing date of March 2, 1994 occurred within ten working days after she knew for certain that she had not re ceived any "retroactive" increment for the first semester.

While Grievant also admits in her level four brief that she was aware during the first semester that she "might not be paid retroactively", she argues that she attempted to resolve the

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5The information about the first payday of the second semester was contained in Gr. Ex. "C" (8/26/94), a letter to Grievant's representative dated August 23, 1994 and signed by a school official.

problem with WCBE prior to the start of the second semester, the time when the salary adjustment would begin. She then cites and quotes Steele v. Wayne County Bd. of Educ., Docket No. 50-87-062-1 (Sept. 29, 1987), as follows: "'An employee who makes a good faith, diligent effort to resolve a grievable matter with school officials and relies in good faith upon the representations of these officials that the matter will be rectified will not be barred from pursuing the grievance pursu ant to W.Va. Code, 18-29-1, et seq., upon the denial thereof.'"

The grievance statute, Code 18-29-4(a)(1), requires that

grievance proceedings be initiated within fifteen days following "the occurrence of the event upon which the grievance is based, . . . the date on which the event became known to the grievant or . . . the most recent occurrence of a continuing practice giving rise to a grievance . . .." The Grievance Board has consistently denied grievants' claims when respondents properly raise and prove the affirmative defense of untimeliness, and grievants do not establish good cause for their delay. Cox v. Kanawha County Bd. of Educ., Docket No. 93-20-049 (Mar. 31, 1993); Winland v. Wetzel County Bd. of Educ., Docket No. 92-52-490 (Feb. 16, 1993); Seckman v. Brooke County Bd. of Educ., Docket No. 92-05-106 (Jan. 29, 1993).

The record herein clearly establishes that Grievant did not timely file a grievance with respect to a salary adjustment for the first semester of the 1993-94 school year based on her MA+30 status, effective August 23, 1993. Arguably, Grievant had a statutory right to a salary increment for the first semester upon WCBE's receipt of her upgraded license on November 17, 1994. However, Grievant did not receive such salary increase at that time or even at any later pay period within the first semester. Under the circumstances, Grievant had fifteen work days after each occurrence of non-payment to initiate a griev ance to assert her rights.6 This she failed to do.

Furthermore, Grievant failed to establish any justification for her lack of diligence in pursuing a grievance within the allowable time(s). In Steele v. Wayne County Bd. of Educ., supra, the grievant demonstrated good cause for delay in filing a grievance in that administrative assertions had been made that the work-related problem would be corrected at a future time. In this case, Grievant presented absolutely no evidence that

WCBE's administrators made any promises to her concerning rectification of her salary status for the first semester. In fact, there were no representations made to Grievant that she would ever receive any increment for the first semester of the 1993-94 school year, either at the time she finally submitted her application form in October 1993 or throughout the remainder of the first semester. Moreover, Mr. Barcus declined to grant Grievant an exception to WCBE's "time policy" in his January 1994 letter to her. Even then Grievant failed to initiate a

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6Since Grievant does not prevail on her claim for relief with respect to any first semester salary adjustment on the basis that her grievance was not timely filed, the undersigned declines to comment on the propriety of WCBE's GCB policy at issue herein.

grievance. In short, Grievant has not shown good cause for delay in initiating a grievance.

Finally, it must be noted that the second semester payday, that is February 15, 1994, when Grievant actually began receiv ing the proper MA+30 salary, is not relevant to Grievant's claim for the salary advancement for the first semester. The first semester ended on January 28, 1994, and said date was also the last payday of the first semester. At the very most, Grievant had fifteen working days from January 28 to initiate a claim. She was much too late by March 2, 1994, to file a claim for payment of the salary advancement for the first semester of the 1993-94 school year. See Lilley v. Summers County Bd. of Educ., Docket No. 93-45-399 (June 16, 1994) (In June, Grievant knew of questionable transfer from one school to another but waited

until after the new school year began and the transfer effectu ated to file grievance; ruled untimely); Booth v. Brooke County Bd. of Educ., Docket No. 92-05-386 (Mar. 2, 1993) (Grievant knew of and inquired about a wage dispute but delayed too long to file a grievance).

Findings of Fact

1. Grievant qualified for the MA+30 advanced salary status by at least August 1993, according to the new certificate she was issued by DOE in November 1993.

2. WCBE did not pay Grievant the adjusted salary for the first semester of the 1993-94 school year because Grievant failed to apply on the due date established and prominently publicized by WCBE for first semester salary adjustments.

3. Grievant knew during the course of time from November 1993 through January 1994 that she was not being paid the MA+30 salary increment for the first semester which ended January 28, 1994.

4. By letter dated January 10, 1994, WCBE's assistant superintendent notified Grievant she would not be paid for the MA+30 upgrade for the first semester because she failed to submit the required paperwork by the September 30, 1993 dead line.

5. Grievant filed a grievance on March 2, 1994 seeking retroactive payment, and WCBE raised a timeliness issue at the level two hearing.

Conclusions of Law

1. Pursuant to W.Va. Code 18-29-4(a)(1), a grievant is required to initiate a grievance within fifteen days following "the occurrence of the event upon which the grievance is based, . . . the date on which the event became known to the grievant

or . . . the most recent occurrence of a continuing practice giving rise to a grievance . . .."

2. Because Grievant initiated this grievance on March 2, 1994, more than fifteen days after she knew WCBE had not paid her any salary upgrade for the first semester which ended on January 28, 1994, the grievance was untimely filed.

Accordingly, this grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wetzel 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. Any appealing party must advise this office of the appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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NEDRA KOVAL

Administrative Law Judge

Date: September 30, 1994