DANIEL WEBB, .

.

Grievant, .

.

v. . Docket No. 94-20-210

.

KANAWHA COUNTY BOARD OF EDUCATION, .

.

Respondent. .

D E C I S I O N

This is a grievance by Daniel Webb (Grievant), currently employed by the Kanawha County Board of Education (KCBE) as a Coordinator of Community Education, alleging discrimination prohibited by W. Va. Code § 18-29-2(m) in regard to KCBE's establishment of two separate pay scales for administrators who serve as Coordinators. This grievance was waived to Level II as Grievant's supervisor was without authority to grant the grievance. A hearing was held at Level II on April 27, 1994. After denial at Level II on May 12, 1994, Grievant appealed to Level III where KCBE waived consideration of the grievance. Thereupon, Grievant timely appealed to Level IV on May 24, 1994 and an evidentiary hearing was conducted in this Board's office in Charleston, West Virginia on August 15, 1994. This matter became mature for decision at the conclusion of that hearing.

DISCUSSION

In order to prevail on claims of this nature, Grievant must prove the allegations in his case by a preponderance of the evidence. Williams v. Lincoln County Bd. of Educ., Docket No. 93-22-386 (Mar. 7, 1994); Steele v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989). W. Va. Code § 18-29-2(m) defines "discrimination" to mean "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." Under this Board's holding in Steele, supra, in order to establish a prima facie case of discrimination under W. Va. Code § 18-29-2(m), a grievant must demonstrate the following:

> (a) that he is similarly situated, in a pertinent way, to one or more other employee(s);
>
> (b) that he has, to his detriment, been treated by his employer in a manner that the other employee(s) has/have not, in a significant particular; and,
>
> (c) that such differences were unrelated to actual responsibilities of the grievant and/or other employee(s), and were not agreed to by the grievant in writing. Steele, supra, at 15.

In attempting to meet the foregoing burden, Grievant presented evidence that KCBE paid him an annual salary of $44,767 as a Community Education Coordinator from the lower of two pay schedules established for "Coordinators." A Community Education Coordinator is required to have a "Master's Degree in Education or in any related Social Services area." G Ex 5. Grievant serves as the "administrator of all Community Education programming and activities that take place in a community education center." G Ex 5.

Grievant further demonstrated that there are five employees whom KCBE pays from their higher pay scale (See footnote 1) . These five employees include the Coordinator of Transportation, School Relations Assistant, Coordinator of Operations, Coordinator of Maintenance & Energy Management and the Laidley Field Facility Manager. While the School Relations Assistant is required to have a master's degree in "Communications, Journalism, with Art/Graphic Design and/or related fields," (G Ex 3) the Coordinator of Transportation is only required to have a "high school education and three years of supervisory experience" (G Ex 4) while the Laidley Field Facility Manager needs only a "[b]achelor's degree from an accredited college" (no major field of study specified) and certain managerial level experience. G Ex 2.

The Laidley Field Facility Manager is hired by KCBE to "manage and operate all aspects of

the public facility known as Laidley Field Athletic and Recreation Center; to administer and oversee all activities taking place at said facility." G Ex 2. The Coordinator of Transportation has the following relatively verbose job goal:

> To plan and implement the special education transportation system within the regulations established by the State of West Virginia and the Kanawha County Board of Education; developing and implementing bus routes and procedures for the efficient delivery of special education students within the school system; assist the Director of Transportation in providing safe and efficient transportation for all students to and from school for regular and curricular instruction and other schoolrelated programs; provide leadership and guidance to all terminal supervisors and maintenance employees in providing a successful maintenance program; serve as a liaison between transportation and special education to ensure proper communications; initiate and supervise the most efficient, economical, time saving, and safest student transportation system for the special education students of Kanawha County by maintaining accurate records, and working with parents and school personnel in solving problems.

G Ex 4.

Mr. Bill Milam, KCBE's Director of Personnel, testified at Level II that the five positions at issue are paid from a higher pay scale than Grievant in order to attract qualified people from private industry to fill vacancies in these positions. L II HT at 21-22.

Based upon all of the evidence presented at Levels II and IV, it is evident that Grievant's duties and qualifications are sufficiently different from the "Coordinators" which KCBE pays from a higher pay scale so that Grievant is not "similarly situated in a pertinent way" to those other employees so as to meet the requirements of the first test under Steele, supra. Without delving into the details of the job requirements, it is apparent that the duties and responsibilities of a community education coordinator and a sports complex manager are significantly different. Thus, comparing Grievant's qualifications and training with that of the person employed as the Laidley Field Facility Manager becomes a meaningless exercise since the focus of the two jobs is substantially different. Grievant's argument that he should be paid the same as these other "Coordinators" requires application of a "comparable worth" theory. Grievant has not citedany basis in law for applying a comparable worth theory in deciding grievances of this nature and this Grievance Board finds no meritorious reason for adopting this theory. See, e.g., Plemer v. Parsons-Gilbane, 713 F.2d 1127 (5th Cir. 1983); Moore v. W.

Va. Dept. of Health & Human Resources, Docket No. 94-HHR-126 (Aug. 26, 1994).

It is further noted that even if Grievant has established that he is similarly situated to other KCBE personnel paid from the higher pay schedule for coordinators, KCBE has articulated legitimate non-discriminatory reasons for such differences by explaining that these salaries are set to compete with the private sector for personnel bearing the necessary skills and experience. Steele, supra, at 15. See Burdine v. Tex. Dept. of Community Affairs, 450 U.S. 248 (1981); Prince v. Wayne County Bd. of Educ., Docket Nos. 90-50-281/295/296/311 (Jan. 28, 1990). The fact that the current Laidley Field manager may have been hired from within the school system rather than from private industry, standing alone, does not refute KCBE's rationale or establish that the cited reason is pretextual. See, e.g., Dadino v. Delaware River Port Auth., 703 F. Supp. 331 (D. N.J. 1988); Crockett v. Eckerd Drugs, 615 F. Supp. 528 (W.D. N.C. 1985).

In Wright v. Mason County Board of Education, Docket No. 26-86-029 (Oct. 7, 1986) and Keesecker v. Lewis County Board of Education, Docket No. 21-86-020-2 (Nov. 26, 1986), this Board addressed similar questions in regard to an "Attendance Director" and a "Director of Social Services and Attendance," respectively,who were not being paid the same salary supplement as other personnel employed by the same county board of education who held the title of "Director." While these cases were decided by applying the "uniformity" clause in W. Va. Code § 18A-4-5a, the undersigned concurs with the Respondent's contention that the logic of these decisions is persuasive in evaluating Grievant's present claim of discrimination under § 18-29-2(m).

In addition to the foregoing discussion, the following findings of fact and conclusions of law are appropriate in this matter:

FINDINGS OF FACT

1. Grievant is employed by KCBE as a Coordinator of Community Services.

2. Grievant is paid from the lower of two salary schedules adopted by KCBE for payment of personnel employed as "Coordinators."

3. As Coordinator of Community Education, Grievant serves as the administrator of all Community Education programming and activities throughout the county.

4. Other "Coordinators" paid from the higher pay scale which KCBE has adopted for "Coordinators" include the Coordinator of Transportation, School Relations Assistant, Coordinator of Operations, Coordinator of Maintenance & Energy Management and the Laidley Field Facility Manager.

5. Each of the positions described in Finding of Fact Number 4 have duties and responsibilities which are different from thoseassigned to Grievant's position as Community Education Coordinator.

CONCLUSIONS OF LAW

1. Grievant has the burden of proving each element of a grievance of this nature by a preponderance of the evidence. Stout v. Harrison County Bd. of Educ., Docket No. 93-17-081 (Apr. 12, 1994); Randolph v. Harrison County Bd. of Educ., Docket No. 17-88-001-2 (June 30, 1988).

2. Grievant failed to establish a prima facie case of discrimination under W. Va. Code § 18-29-2(m) in regard to his being paid from the lower of two salary schedules which KCBE has established for employees performing various duties but all holding the similar title of "Coordinator." See Williams v. Lincoln County Bd. of Educ., Docket No. 93-22-386 (Mar. 7, 1994); Steele v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989).

3. Assuming that Grievant did establish a prima facie case of discrimination, Respondent KCBE articulated legitimate, nondiscriminatory reasons for its actions sufficient to refute such charges. See Burdine v. Tex. Dept. of Community Affairs, 450 U.S. 248 (1981); Williams, supra; Steele, supra.

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha 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 intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

LEWIS G. BREWER

Administrative Law Judge

Dated: November 22, 1994

Footnote: 1*There was no evidence presented setting forth the specific dollar amounts paid to other employees in accordance with this higher scale.*