MARCIA KOBILY, et al.

v. Docket No. 95-15-200

HANCOCK COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants are ten service employees of Respondent Hancock County Board of Education (HCBE). They allege HCBE "has a nonuniform pay scale in violation of W.Va. Code 18A-4-5b and 18A-4-8a" and seek "a restoration of uniformity with backpay." HCBE denies any wrongdoing, and basically contends the pay scale in existence for service workers for the 1994-1995 school year was not violative of any statute. Although Grievants initially requested a level four hearing, they subsequently agreed the matter could be decided on the basis of the lower-level record.1 The case became mature for decision on September 18, 1995, the designated day for the completion of a briefing schedule, including a rebuttal period.

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1The record consists of the pleadings, lower-level adverse decisions and transcript and exhibits of the April 19, 1995, level two hearing.

Based on all matters of record, the following findings of fact are made.

Findings of Fact

1. Grievants are service employees classified variously as bus operator, cook, aide, custodian, maintenance worker, secretary and mail clerk.2

2. When former HCBE Superintendent Daniel Curry assumed the superintendent's post, effective the 1990-91 school year, he

had concerns about existing complexities in the pay scales for service personnel.

3. Mr. Curry worked with service employee representatives to resolve, to some extent, the pay-scale situation. Sometime in June 1993, HCBE approved Mr. Curry's recommendations to simplify the pay scales, effective the 1993-94 school year. No employee lost any wages under the "new" pay scale, and a few employees received a slight salary increase. T.40.

4. W.Va. Code 18A-4-8a sets forth a minimum pay scale for service personnel. The statutory pay scale includes salary increments for each higher pay grade (PG), A through H (horizon tal between-grade salary steps), assigned to the various

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2The record below indicates approximately 153 service employees signed prepared sheets (fourteen sheets plus a separate "add-on" sheet) to join the grievance titled "Non-Uniformity of Pay Scale." However, besides Marcia Kobily, the grievants named in the level four appeal statement (separate hand-written sign-up sheet) are Don Sage, Sandra Stanley, Sharon K. Thoman, Margaret Wagoner, E. Ronald Stanley, Edward S. Chamberlain, Penny Dotson, Sandra Drury, Reida Lojszczyk, and Debbie Hissom.

classifications, as well as annual (experience) increments for each succeeding year of employment within a pay grade (vertical within-grade or within-class salary steps).

5. The salaries on HCBE's new pay scale exceed the minimum amounts set forth in Code 18A-4-8a. Moreover, service employees within each pay grade, A through H, receive the same annual increment for each specific year of employment.3

6. More specifically, for zero (0) years experience, the new salary scale includes a salary adjustment of $20.00 between A and B, $40.00 between B and C, $50.00 between C and D, $50.00 between D and E, and $86.00 between E and F. However, within-grade annual increments for A through F may vary from $25.00 to $75.00 for each succeeding year of employment, and in some cases, the higher increments occur with less years of service rather than with more years of service.

7. Grievants specifically disagreed with the amounts of the salary adjustments between pay grades A through F and also with the amounts of the within-grade annual increments.

3According to the record, during 1994-95, HCBE had only one classification within the A pay grade, Cook I. Within B are Supervisory Aide I, Aide II, Cook II, Custodian II, and Groundsman/Handyman; within C, Supervisory Aide II, Cook III, Custodian III, and Clerk III; within D, Receptionist, Supervisory Aide III, Cook IV, Custodian IV, Inventory Supervisor, Warehouse, Mail Person, Secretary I, and Truck Driver; within E, Supervisory Aide IV, Computer Operator, Auto Mechanic, Helper, Painter, Plumber Helper, and Secretary II; and within F, Carpenter II, Auto Mechanic, and Secretary III. HCBE's bus operators, who have varying contracted work hours, from five and three quarter hours to eight hours, have an entirely separate salary schedule. Their salary scale was not in issue in this grievance.

8. Grievants met with administrators and presented their own suggested salary scales, which include a "uniform" within-class annual increment of $25.00 and a salary adjustment of

$30.00 between A and B, $45.00 between B and C, $60.00 between C and D, $39.00 between D and E, and $60.00 between E and F. Grievants admitted their own recommendations for between-grade salary adjustments were not "strictly" uniform.

9. Grievants' suggestions would benefit approximately 220 employees, in monthly increases of $1.00 to $44.00, and would cost HCBE almost $42,000.00, at the onset.

10. Although Mr. Curry believed some of the suggestions presented by Grievants had merit, he declined to present to HCBE any recommendations for further salary modifications relative to the 1995-96 school year, basically because of fiscal restraints, and also because he believed the currant salary scale was not violative of any statutory scheme.4

11. On February 16, 1995, Grievants filed a grievance at level two and sought adoption of their proposed pay scale and back wages, where applicable, retroactive to September 1994.

Discussion

Grievants argue that HCBE's new salary scale for service personnel is violative of legislative intentions and statutory requirements. In Grievants view, Code 18A-4-5b "would require" a "payroll scheme" which provided "equalized" salary increments

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4Mr. Curry left the Hancock County School system at the end of the 1994-95 school year.

for each succeeding year of within-grade service and a "uniform progression" and "constant mathematical relation" for between-grade salary adjustments for the various pay grades, A through F, as reflected in the minimum pay scale found in Code 18A-4-8a. See T.4, 8.

HCBE argues that its current pay scale for service person nel, and in particular, the pay scale for the 1994-1995 school year, "is uniform throughout the county with regard to training, classification, experience and duties." HCBE also argues that "no requirement of the law requires uniformity in annual incre ments." Finally, HCBE raised a timeliness defense at level two with respect to the filing of the grievance and the issue of retroactive pay.5

The weight of the evidence and the law favors HCBE in this situation. In short, Grievants have shown no violation of W.Va. Code 18A-4-5b and 18A-4-8a. Code 18A-4-5b requires uniform salaries and benefits for employees performing like duties and assignments. All of HCBE's within-class annual increments are uniformly applied, even if the amounts that are paid are not equal. Thus, each employee within a specific letter pay grade receives the same increment for each additional year of

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5Due to the outcome of this case, the issue of retroactive pay will not be addressed. It is noted that this grievance would be timely with respect to the 1995-96 school year. Additionally, while there was no evidence presented that Grievants were in any way discouraged from filing a grievance in Fall 1994 (1994-95 salaries), it appears that HCBE's administrators did work with local union representatives and/or Grievants on some kind of ongoing basis to resolve their concerns about the pay scale situation.

employment. Moreover, every within-grade salary in HCBE's salary scale exceeds those found in Code 18A-4-8a. Finally, HCBE is correct in that there is no requirement in Code

18A-4-5b and 18A-4-8a that any supplementary within-grade annual increments supplied by a board of education be equal. Neither does Code 18A-4-8a require some mathematically precise between-grade salary adjustment. Therefore, no violations of Code 18A-4-5b and 18A-4-8 are found.

Conclusions of Law

1. A grievant must prove all the allegations constituting the grievance by a preponderance of the evidence. Rupich v. Ohio County Bd. of Educ., Docket No. 89-35-719 (June 29, 1990); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. In the matter of HCBE's salary schedule for service employees, Grievants have failed to demonstrate a violation of W.Va. Code 18A-4-5b and 18A-4-8a.

Accordingly, this grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock 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 18, 1995