MARY SITES AND JUANITA MURPHY,

Grievants,

v. DOCKET NO. 97-36-113

PENDLETON COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievants, Mary Sites and Juanita Murphy, filed this grievance against their employer, the Pendleton County Board of Education (Respondent). Grievants allege "that Respondent has failed to compensate them a[t] pay grade G in violation of West Virginia Code §[§] 18A-4-8a and 18A-5-8." As relief, Grievants seek "compensation at pay grade G retroactive to the beginning of the 1996-1997 school year with interest."

Grievants were denied relief at Levels I and II. Grievants elected to bypass Level III, pursuant to W. Va. Code §18-29-4(c), and appealed directly to Level IV on March 3, 1997. At Level IV, the parties agreed to submit the case on the record developed at the lower levels of the grievance procedure, with the right to file proposed findings of fact and conclusions of law. On May 6, 1997, the case matured upon receipt of Grievants' proposed findings of fact and conclusions of law.

In lieu of a Level II hearing the parties stipulated to the following facts:

> 1. Mary Sites and Juanita Murphy, Grievants, are employed by the Pendleton County Board of Education as school service personnel and each is currently multi-classified as [a] Para-Professional/Aide IV. (See footnote 1)
>
> 2. Mary Sites is assigned to Circleville Elementary School for the 1996-97 school year.
>
> 3. Juanita Murphy is assigned to Brandywine Elementary School for the 1996-97 school year.

4. Both Grievants supervise students without the presence of a teacher or other certified personnel at their respective schools. Grievants contend that the supervision of students qualify them for supervisory aide status and pay pursuant to West Viginia Code [§] 18A-5-8.

5. At the beginning of the 1996-97 school year, Grievant Sites and Grievant Murphy were paid in accordance with the “G” pay grade. This action was based on the fact that “F” pay grade is the base pay grade for a Paraprofessional/Aide IV and the supervisor aide duties performed by the Grievants entitled them to the payment of one pay grade above “F” pay grade. The Respondent compensated Grievants on the “G” pay grade based upon advice of the WV School Service Personnel Association.

6. On or about November 8, 1996, Grievants were informed that their compensation would be reduced from pay grade “G” to pay grade “F” and the Respondent recouped the difference between the two pay grades from the Grievants.

7. The above-stated reduction of pay grade was not based upon any change of duties on the part of either of Grievants. This reduction of pay grade was based upon a letter from Dr. Henry Marockie, State Superintendent of Schools, to Pocahontas County Schools Superintendent Thomas Long dated October 17, 1996. A copy of this letter is attached as Attachment No: One[,] and [it] is hereby incorporated by reference as if fully and textually set out herein.

8. The West Virginia Department of Education is reimbursing County Boards of Education at pay grade “F” rather than pay grade “G” for employees in the Paraprofessional/Aide IV classification even if said employees supervise students without the presence of a teacher or other certified personnel.

9. The foregoing stipulations of fact are for the purposes of the above-styled grievance only. No further evidence of these facts contained in these stipulations need be introduced in order to establish such facts.

DISCUSSION

Grievants cite W. Va. Code §18A-5-8(a). It, in pertinent part, provides:

> An aide designated by the principal under this subsection shall receive a salary not less than one pay grade above the highest pay grade held by the employee under section eight-a [§ 18A-4-8a], article four of this chapter, and any county salary schedule in excess of the minimum requirements of this article.

In their Level IV proposed findings of fact and conclusions of law, Grievants asserted:

> Prior to the 1996 legislative session the above quoted portion of West Virginia Code

> §18A-5-8(a) contained the word “aide” in place of “employee” in the third line. The legislative intent of this alteration was to permit a multi-classified employee who is performing supervisory duties to receive one pay grade above the highest pay grade said employee is currently receiving. The highestpay grade that a teacher's aide may receive is the D pay grade, whereas a paraprofessional/aide IV is compensated on the F pay grade. Clearly, this amendment only makes sense if it is applied to permit multi[-]classified aides, such as the grievants, to receive the additional pay grade. If this were not the intent, there would be no reason to change the word “aide” to “employee”.

> Grievants also note that in the 1996 legislative session, the class title of “paraprofessional” was incorporated into the Aide classification category. West Virginia Code §18A-4-8b. Therefore, when the cited portion of West Virginia Code §18A-5-8(a) refers to an “aide”, that reference would also include the “paraprofessional” classification title.

The 1996 Legislature's intent is not as clear as Grievants propose. State Superintendent of Schools Henry Marockie takes an opposing position. He contends “[t]he Legislature amended the Code with regard to classification of paraprofessionals for one reason only - seniority.” See Attachment No. One.

Not only is the State Superintendent's opinion, in this case, more persuasive, it is also entitled to great weight unless it is clearly erroneous. Lincoln County Bd. of Educ. v. Adkins, 188 W.Va. 430, 424 S.E.2d 775 (1992); Smith v. Bd. of Educ., 176 W.Va.

65, 341 S.E.2d 685 (1985). See Security Nat'l Bank v. First W. Va. Bancorp, 166 W.Va. 775, 277 S.E.2d 613 (1981).

The rest of Grievants allegations are based on a distinction in duties between the paraprofessional and aide IV classification. Grievants further allege that based on the possible distinction in duties, W. Va. Code §18A-5-8(a) entitles them to an additional pay grade, from pay grade “F” to pay grade “G”. Grievants' reasoning is flawed. Grievants are multi-classified paraprofessional/aide IVs, and are in pay grade “F”. Their aide IV classification pay grade is “D”. W. Va. Code §18A-4-8a. If Grievants are supervisory aides, W. Va. Code §18A-4-5 entitles them to “one additional pay grade.” One additional pay grade would bump their aide classification pay grade to an “E”. The pay grade for the paraprofessional classification is “F”. Grievants failed to cite any authority which would allow Respondent to add one additional pay grade to the paraprofessional classification pay grade set forth in the Code. W. Va. Code §18A-4-8, in pertinent part, provides: “'Multiclassification' means personnel employed to perform tasks that involve the combination of two or more class titles in this section. In such instances the minimum salary scale shall be the higher pay

grade of the class titles involved." (Emphasis added.) In this case, the classifications Grievants hold do not rise above a "F" pay grade. Therefore, they are only entitled to be compensated at the "F" pay grade rate. Grievants failed to prove by a preponderance of the evidence that either of their classifications which comprise their "multiclassification" is higher than a "F" pay grade.

In addition to the foregoing findings of fact and narration, it is appropriate to make the following conclusions of law.

CONCLUSIONS OF LAW

1. In a nondisciplinary action, Grievants have the burden of proving their case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995).

2. Under the West Virginia Supreme Court of Appeals' well-settled doctrine regarding interpretation of statutes by bodies charged with their administration, a State Superintendent's opinion is entitled to great weight unless it is clearly erroneous. Lincoln County Bd. of Educ. v. Adkins, 188 W.Va. 430, 424 S.E.2d 775 (1992); Smith v. Bd. of Educ., 176 W.Va. 65, 341 S.E.2d 685 (1985). See Security Nat'l Bank v. First W. Va. Bancorp, 166 W.Va. 775, 277 S.E.2d 613 (1981). Grievant failed to prove by a preponderance of the evidence that the opinion of the State Superintendent of School was clearly wrong.

3. Grievants failed to cite any authority which would allow Respondent to add one additional pay grade to the paraprofessional classification pay grade set forth in the Code.

4. Grievants failed to prove by a preponderance of the evidence that either of their classifications which comprise their "multiclassification" is higher than a "F" pay grade.

Accordingly, the grievance is **DENIED**.

Any party may appeal this DECISION to the Circuit of Kanawha County or to the Circuit Court of Pendleton 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 andprovide the civil action number so that the record can be prepared and transmitted to the appropriate court.

DATED: 8/28/97_____ _____

JEFFREY N. WEATHERHOLT

ADMINISTRATIVE LAW JUDGE

Footnote: 1 W. Va. Code *18A-4-8 defines Aide IV as:*

> *personnel referred to in the "Aide I" classification who hold a high school diploma or a general educational development certificate and who have completed eighteen hours of state board-approved college credit at a regionally accredited institution of higher education, or who have completed fifteen hours of state board- approved college credit at a regionally accredited institution of higher education and successfully completed an in-service training program determined by the state board to be the equivalent of three hours of college credit.*

W. Va. Code *§18A-4-8 defines paraprofessional as:*

> *a person certified . . . to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of pupils under the direction of a principal, a teacher, or another designated professional educator: Provided, That no person employed on the effective date of this section in the position of an aide may be reduced in force or transferred to create a vacancy for the employment of a paraprofessional.*