RALPH GREEN and ABIGAIL REYNOLDS,

Grievants,

v. DOCKET NO. 00-DOE-311

DEPARTMENT OF EDUCATION,

Respondent.

D E C I S I O N

This grievance was filed by Grievants, Ralph Green and Abigail Reynolds, against Respondent, Department of Education, on or about June 28, 2000, when their salaries were reduced. The statement of grievance reads:

> The position of "Lead Coordinator" was first defined and implemented by the Department of Education in 1992 and was used in lieu of the title "Supervisor" while "Program Specialist" titles were changed to Coordinators. At the time of this job title change, Ralph Green and Abigail Reynolds did supervise the activities of other employees known as Program Specialist. In the following years as employees either resigned or their positions were eliminated due to a reduction in work force, Mr. Green and Ms. Reynolds were not involved in the discussion to eliminate these positions assigned to them for supervision. Mr. Green and Ms. Reynolds were expected to assume the additional workload of the employees they once supervised. Mr. Green has requested all policies, rules and regulations regarding positions/salary in force up to the time of this arbitrary decision (see attachment). To this date there has been no response from the Department of Education for this date certain request.
>
> The reduction of salaries for Mr. Green and Ms. Reynolds is an arbitrary and capricious decision by the State Department of Education's administrative staff and the WV State Board of Education in an attempt to satisfy other employee's salary needs. The salary reductions were based on decisions made without consideration to Mr. Green's or Ms. Reynolds's current workload and without their input or knowledge.

As relief Grievants sought reinstatement of their former salaries. (See footnote 1)

The following Findings of Fact are made based upon the record developed at Levels II and IV.

Findings of Fact

1. Grievant Green has been employed by the Department of Education ("DOE") since August 1, 1986. He was hired as a Coordinator II, which was a supervisory position, for Industrial and Technical Education, at a salary of approximately $31,000. When he began his employment with DOE he supervised three employees, two Program Specialists and one Secretary. He was in charge of approximately 60 programs. Four to five programs have been added to his responsibilities since he began his employment with DOE.

2. Grievant Reynolds has been employed by DOE since February 6, 1985. She began her employment as a Coordinator I, Program Specialist. In February 1986, she was placed in a Coordinator II position, supervising one employee, a Program Specialist.

3. Effective July 1, 1988, DOE employees' salaries were based upon the pay scale of the Kanawha County Board of Education, pursuant to Legislative action. Grievants' job titles were changed at that time to Lead Coordinator. Their duties did not change.

4. Grievant Green has not supervised any employees since 1996. He has assumed the duties of his former subordinates.

5. In 1992, Grievant Reynolds' subordinate left, and the decision was madenot to fill the position. Grievant Reynolds retained the Lead Coordinator job title even though she did not have any supervisory responsibilities.

6. On July 1, 1999, DOE adopted a new salary schedule for its employees. The new salary schedule initially omitted the Lead Coordinator position. On August 18, 1999, the salary schedule was revised. It set the salary of a Lead Coordinator at $51,656 for an employee with a Masters Degree; $52,451 for an employee with a Masters plus 15 hours; $54,787 for an employee with a Masters plus 30 hours; $55,462 for an employee with a Masters plus 45 hours; and $56,495 for an employee with a Doctorate. The revised salary schedule set the salary for a Coordinator with a Masters Degree at $48,541; $49,601 for an employee with a Masters plus 15 hours; $52,715 for an employee with a Masters plus 30 hours; $53,615 for an employee with a Masters plus 45 hours; and $54,993 for an employee with a Doctorate.

7. On August 23, 1999, Mike McKown notified Grievant Green that effective July 1, 1999, his title would be Lead Coordinator, his base salary would be $55,462, and he would receive back pay for the three pay periods since July 1, 1999.

8. Grievant Green holds a Masters Degree and has earned 45 additional credit hours. Grievant

Reynolds holds a Masters Degree and has earned 30 additional credit hours.

9. DOE reviewed the Coordinator and Lead Coordinator classifications, and determined that the distinction between the two was that a Lead Coordinator had supervisory duties.

10. Grievants were advised in April of 2000, that their salaries would be frozen, because they did not supervise anyone and therefore did not meet the criteria to be classified as a Lead Coordinator. Grievants' job titles were changed to Coordinator.

11. A grievance was filed by DOE employees classified as Coordinators, challenging the salary of Grievants Green and Reynolds. DOE determined that thesalaries of Grievants Green and Reynolds should be reduced to the level of a Coordinator as shown on the salary schedule.

12. Grievant Green was advised by Tony Smedley, Executive Director, Office of Human Resources, in May of 2000, that his salary would be cut at the June State Board of Education meeting. His salary was reduced by approximately $1,800 per year, so that his salary matches the salary set by the salary schedule for a Coordinator with a Masters plus 45 hours.

13. Grievant Reynolds was advised by Mr. Smedley that her salary would be cut. Her salary was reduced by $2,072 annually, so that her new salary matches the salary schedule for a Coordinator with a Masters plus 30 hours.

Discussion

Grievants bear the burden of proving their allegations by a preponderance of the evidence. W. Va. Code § 29-6A-6. Mowery v. W. Va. Dep't of Nat. Resources, Docket No. 96-DNR-218 (May 30, 1997). Grievants argued the reduction of their salaries was an arbitrary and capricious action, arguing their higher salaries were justified by their duties and responsibilities, which they believed were greater than other Coordinators, and pointing to the confusing manner in which this action was taken.

Respondent argued Grievants are Coordinators, and the reduction of their salaries was a reasonable response to the grievance filed by other Coordinators who viewed the pay differential as inequitable.

Generally, an agency's action is arbitrary and capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects of the problem, explained its decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot

be ascribed to a difference of view. Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985).

Certainly, DOE's actions with regard to Grievants' classifications and salary havebeen confusing. Testimony was offered that in order to be a Lead Coordinator an employee must supervise other employees, although the source of this premise is unknown. Nonetheless, the State Board of Education determined that Grievants should be classified as Coordinators, rather than Lead Coordinators, and Grievants offered no evidence to dispute this, other than their belief that there should be some consideration of their non-supervisory duties in this analysis. Once the determination was made that Grievants were Coordinators, the salary schedule for Coordinators became applicable to them. Grievants did not question the salary schedules. The only question then was whether to freeze Grievants' salaries, or reduce them to the salary levels provided in the applicable salary schedule for a Coordinator. DOE first froze Grievants' salaries. However, when other Coordinators continued to challenge the pay disparity, the determination was made that, in fairness to these other employees, Grievants' salaries should be reduced to the proper level. This Grievance Board has held in a case involving school service personnel who had their salaries reduced when they accepted a job in a lower pay grade, “[t]he compensation of service personnel employees in a pay grade higher than that assigned to the position they hold would result in discrimination and favoritism as defined in W.Va. Code §18-29-2 (m) and (o).” Kuhn and Newhouse v. Marion County Bd. of Educ., Docket No. 93-24-402 (July 26, 1994). DOE's action in reducing Grievants' salaries was a reasonable response.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. Grievants bear the burden of proving their allegations by a preponderance of the evidence. W. Va. Code § 29-6A-6. Mowery v. W. Va. Dep't of Nat. Resources, Docket No. 96-DNR-218 (May 30, 1997).

2. Generally, an agency's action is arbitrary and capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects of theproblem, explained its decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of view. Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985).

3. DOE's action in reducing Grievants' salaries to the proper level on the salary schedule for a Coordinator was a reasonable response to a grievance filed by other employees who challenged the propriety of allowing Grievants to continue to receive a higher salary than the salary schedule allowed.

Accordingly, this 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. 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. 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 appealing party must also provide the Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

BRENDA L. GOULD

Administrative Law Judge

Dated: July 20, 2001

Footnote: 1

The Level I response was made on June 28, 2000. Grievants appealed to Level II, where a hearing was held on August 21, 2000. A Level II decision denying the grievance was issued on September 9, 2000. Grievants elected to bypass Level III, appealing to Level IV on September 14, 2000. A Level IV hearing was held on April 23, 2001. Grievants were represented by Jerry A. Wright, Esquire, and Respondent was represented by Heather L. Deskins, Esquire, and Rebecca M. Tinder, Esquire. This matter became mature for decision on June 11, 2001, upon receipt of Respondent's reply brief.