JOYCE MATHIS, et al.,

Grievants,

v v.

Docket No. 03-50-257

WAYNE COUNTY BOARD OF EDUCATION,

Respondent,

D E C I S I O N

Grievants, all Secretaries II or III, filed this grievance on or about June 5, 2003, against their employer, the Wayne County Board of Education ("WCBOE" or "Board"). Their Statement of Grievance states:

> Violation of uniformity WV Code 18A-4-5b, with regard to pay increases being given to only certain secretaries employed by the Wayne County Board of Education.
>
> Relief sought: Relief sought is the same salary increase for all classified secretaries with compensation due.

This grievance was waived at Level I and denied at all other lower levels. Grievants appealed to Level IV on August 27, 2003, and a Level IV hearing was held on October 7, 2003, at WCBOE's Board office, at the request of the parties. This case became mature for decision on October 29, 2003, after receipt of the parties' proposed findings of fact and conclusions of law. (See footnote 1)

Issues and Arguments

Grievants assert that because they perform like or similar duties as Executive Secretaries, they are entitled to the salary increase these employees received. Grievantsdo not assert they are misclassified, and they are not seeking to be classified as Executive Secretaries.

Respondent maintain Grievants are not similarly situated to the employees to whom they compare themselves, as they are not within the same classification and do not perform like

assignments and duties.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievants are all employed as Secretaries II and III. Seven of the Grievants are elementary school secretaries; two are middle school secretaries, two are high school secretaries, and eight are Central Office secretaries.

2. In July 2003, WCBOE's four Executive Secretaries received an additional salary supplement. These four secretaries work for the four highest administrative positions at WCBOE, the Superintendent, two Assistant Superintendents, and the Administrative Assistant.

3. Pursuant to W. Va. Code § 18A-4-8, an "Executive secretary" is defined as "personnel employed as the county school superintendent's secretary or as a secretary who is assigned to a position characterized by significant administrative duties."

4. Pursuant to W. Va. Code § 18A-4-8, "Secretary II" is defined as "personnel employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks, transcribing from notes or stenotype or mechanical equipment or a sound-producing machine, preparing reports, receiving callers and referring them to properpersons, operating office machines, keeping records and handling routine correspondence. There is nothing implied in this subdivision that would prevent the employees from holding or being elevated to a higher classification."

5. Pursuant to W. Va. Code § 18A-4-8, "Secretary III" is defined as "personnel assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities of purchasing and financial control or any personnel who have served in a position which meets the definition of 'secretary II' or 'secretary III' in this section for eight years."

6. Grievants who work at the Central Office are Secretary III's and work in the areas identified in Finding of Fact 5.

DISCUSSION

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving

their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6. Grievants allege WCBOE is violating W. Va. Code §18A-4-5b. W. Va. Code § 18A- 4-5b discusses county salary supplements for school service personnel and grants counties the right to establish salary schedules in excess of the state minimums. This Code Section also states, in pertinent part:

> These county schedules shall be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation ofequipment or other requirements. Further, uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county: . . .

This Code Section clearly reflects salary supplements may differ based on many factors, including classification, responsibilities, and duties. While there is no question that all secretaries perform some similar duties, and many of these are identified in W. Va. Code § 18A-4-8 in the definition of Secretary II, it is also clear that W. Va. Code § 18A-4- 8a recognizes differences among these Secretary classifications, as Secretary II's are in Pay Grade E, Secretary III's are in Pay Grade F, and Executive Secretaries are in Pay Grade G. Additionally, as stated in Flint v. Board of Education, 207 W. Va. 251, 531 S.E.2d 76 (1999), that while W. Va. Code § 18A-4-5b requires uniformity in salaries, benefits, etc., for employees who are performing "like assignments and duties," obviously, employees who are in different classifications are not performing "like assignments and duties," and this Section does not bar a school board from employing such employees on different terms.

Although it is certainly true the duties Grievants perform are essential, numerous, and support the operation of the school, program, or department in which they work, Grievants are performing the duties within their classification, and their classification did not receive an additional supplement at this time.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rulesof the W. Va. Educ. &

State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. Id.

2. Employees in different classifications are not performing like assignments and duties. Flint v. Bd. of Educ., 207 W. Va. 251, 531 S.E.2d 76 (1999).

3. Grievants have not met their burden of proof and demonstrated they are performing "like assignments and duties" as those employees to whom they compare themselves. Flint, supra.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Wood 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 byW. 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 Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

JANIS I. REYNOLDS

ADMINISTRATIVE LAW JUDGE

Dated: December 17, 2003

Footnote: 1

Grievants are represented by Susan Hubbard of the West Virginia Education Association, and WCBOE is represented by Attorney David Lycan.