THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

PAMELA GOOTS and

JOYCE ALLENBAUGH,

Grievants,

v. **Docket No. 07-50-105**

Sue Keller

Senior Administrative Law Judge

WOOD COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Pamela Goots and Joyce Allenbaugh ("Grievants"), employed by the Wood County Board of Education ("WCBE") as Assistant Principals, filed identical, individual level one grievances in November 2006, alleging:

Currently, some high school administrative personnel are being paid via a system based on a teacher's daily rate, daily supplement and supervis[ory] supplement multiplied by his or her contractual days. Grievants are being paid on an index of 1.355 multiplied by their teacher's salary. This system has created an inequity between those assistant principals who have a 261 day contract and paid under the index and those with a 220 day contract and paid under the scale that includes each assistant principal's responsibility.

For relief, Grievants request "that 261 day high school assistant principals be paid according to the county's daily rate schedule and have the same daily supplement rates available." Grievants' immediate supervisors lacked authority to grant the requested relief at level one. The grievance was denied following an evidentiary hearing at level two, and Grievants elected to bypass level three. Grievants' representative, Bruce W. Boston of the West Virginia Education Association, and WCBE counsel Dean A. Furner, agreed to submit the grievance for level four review based on the lower-

level record. The grievance became mature for decision on April 27, 2007, the due date for submission of proposed findings of fact and conclusions of law.

Synopsis

Grievants allege that WCBE's method of calculating their administrative increment based on a 1.355 index is contrary to *W. Va. Code* § 18A-4-3. WCBE asserts that it has compensated all 261-day assistant principals uniformly, and has not engaged in discrimination. Grievants have proven that the index based increment is not in compliance with the statutory provision addressing minimum salary increments for principals and assistant principals.

The following facts have been derived from a preponderance of the credible evidence made part of the level two record.

Findings of Fact

___1. Grievant Pamela Goots has been employed by WCBE as an Assistant Principal at Parkersburg High School, and Grievant Joyce Allenbaugh has been employed as an Assistant Principal at Parkersburg South High School, at all times pertinent to this grievance.

2. WCBE compensates Principals and Assistant Principals with less than 261- day contracts pursuant to the Daily Rate Scale which is calculated by adding a flat rate ($22 for Senior High School Assistant Principals), plus an amount for the number of teachers supervised (this would be $9.37 for Grievants) to the individuals' base teacher salary.

3. Assistant Principals who are employed under 261-day contracts, including Grievants, are compensated on a 1.355 Index Scale. This scale has been in effect prior to 2002. 4. If compensated pursuant to the Daily Rate Scale, Grievant Goots' compensation would increase from $67,874.05 to $71,259.53. Grievant Allenbaugh's compensation would increase from $71,863.58 to $75,044.03.

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 (2004); *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 Res., Docket No. 92-HHR-486 (May 17, 1993).

Grievants argue that WCBE's use of an index to determine their compensation is contrary to *W. Va. Code* § 18A-4-3, and is arbitrary and capricious. WCBE asserts that the use of the index does not constitute discrimination, and does not violate the uniformity clause of *W. Va. Code* § 18A-4-5b. (See footnote 1)

W. Va. Code § 18A-4-3 sets forth the state minimum salary increment rates for principals, effective July 1, 2002, stating:

In addition to any salary increments for principals and assistant principals, in effect on the first day of January, two thousand two, and paid from local funds, and in addition to the county schedule in effect for teachers,the county board shall pay each principal, a principal's salary increment and each assistant principal an assistant principal's salary increment as prescribed by this section from state funds appropriated for the salary increments.

State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with article nine-a, chapter eighteen of this code.

The salary increment in this section for each principal shall be determined by multiplying the basic salary for teachers in accordance with the classification of certification and of training of the principal as prescribed in this article, by the appropriate percentage rate prescribed in this section according to the number of teachers supervised.

* * *

STATE MINIMUM SALARY INCREMENT RATES FOR PRINCIPALS EFFECTIVE ON AND AFTER JULY 1, 2002

No. of Teachers Supervised	Rates
1-7	10.0%
8-14	10.5%
15-24	11.0%
25-38	11.5%
39-57	12.0%
58 and up	12.5%

The salary increment in this section for each assistant principal shall be determined in the same manner as that for principals, utilizing the number of teachers supervised by the principal under whose direction the assistant principal works, except that the percentage rate shall be fifty percent of the rate prescribed for the principal.

Salaries for employment beyond the minimum employment term shall be at the same daily rate as the salaries for the minimum employment terms.

For the purpose of determining the number of teachers supervised by a principal, the county board shall use data for the second school month of the prior school term and the number of teachers shall be interpreted to mean the total number of professional educators assigned to each school on a full-time equivalency basis: Provided, That if there is a change incircumstances because of consolidation or catastrophe, the county board shall determine what is a reasonable number of supervised teachers in order to establish the appropriate increment percentage rate.

No county may reduce local funds allocated for salary increments for principals and assistant principals in effect on the first day of January, two thousand two, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making the reduction.

Nothing in this section prevents a county board from providing, in a uniform manner, salary increments greater than those required by this section.

Little discussion is required because, by its own admission, WCBE does not compensate 261-day assistant principals in compliance with this statutory provision. While WCBE emphasizes that these individuals receive a paid vacation, while employees with shorter employment terms do not, this is not a controlling factor. Due to a stated concern that a change in compensation for the 261-day assistant principals will create an inequity in the administrative salary plan, WCBE may wish to reevaluate the employment terms of school administrators. However, at present, Grievants have established that WCBE is in violation of *W. Va. Code* § 18A-4-3.

In addition to the foregoing findings of fact and discussion, it is appropriate to make the following formal 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 Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); *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.

2. The compensation of assistant principals shall be determined by multiplying the basic salary for teachers in accordance with the classification of certification and of training of the assistant principal, by fifty percent of the appropriate minimum increment percentage rate applied to principals, according to the number of teachers supervised. *W. Va. Code* § 18A-4-3.

3. Grievants have met their burden of proof and established that they are not compensated in compliance with *W. Va. Code* § 18A-4-3.

Accordingly, this grievance is **GRANTED**, and WCBE ORDERED to adjust the salaries of the assistant principals, consistent with the provisions set forth in *W. Va. Code* § 18A-4-3.

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 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 Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

DATE: JUNE 11, 2007

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

.Because Grievants did not allege discrimination or violation of the uniformity clause, these issues will not be addressed.