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LINDA BOOTH

V.

DOCKET NO. 12-86-243-2

GRANT COUNTY BOARD OF EDUCATION

DECISION

Grievants, Linda Booth, et al., are employed as professional and service employees by the Grant County Board of Education. The grievants, represented by Ms. Booth as President of the Grant County American Federation of Teachers, allege that the board of education has unlawfully reduced the county salary supplement for the 1986-1987 school term. The grievance was filed at level four and a hearing conducted on September 30 and October 1, 1986 followed by a briefing period concluded by the grievants on November 7, 1986.¹

¹Grievants failed to comply with W. Va. Code, 18-29-3 (c) which states that the grievant may file the grievance at the level vested with authority to grant the requested relief, the board of education in this instance, if each lower administrative level agrees in writing thereto. Documentation submitted by the grievants included a level one grievance form completed by Linda M. Booth and Carl L. Booth. When the examiner requested additional documentation of the record at levels one through three Ms. Booth indicated the grievance had not been filed at any prior level. The board of education, represented by David Adkins, Superintendent, and Dennis DeBenedetto, Prosecuting Attorney, agreed to waive the procedural deficiency and to proceed with the level four hearing.

The facts in this case are uncontroverted. In July, 1985, the county supported excess levy, part of which funded an employee salary supplement, expired without having been renewed. Renewal of the levy had been defeated by the voters in August, 1984, and again in March, 1985. In December, 1985, the board voted not to run the levy election a third time due to the severe flooding which occurred in November, 1985.

By letter dated February 12, 1986, David F. Adkins, Superintendent of Grant County Schools, notified Dr. Tom McNeel, State Superintendent of Schools, that the Grant County Board of Education no longer had access to sufficient funding necessary to provide the county salary supplement for the 1986-1987 school term. Superintendent Adkins requested, and received, permission from the State Board of Education to reduce the entire salary supplement for professional and service personnel effective July 1, 1986, as a result of the excess levy not being renewed.

In July, 1986, \$283,325.42 additional funding became available and was allocated as follows: \$147,657.42-salary supplement; \$66,168.00-employee dental insurance; \$20,000.00 to the Grant County Health Department for services rendered to the board of education; \$40,000.00-school supplies; \$8,000.00-summer janitorial services and \$2,500.00 to the local 4-H organization.

In attempt to maintain all salaries at the 1985-1986

level the \$146,657.42 was allocated as follows:

1. No new employees received any portion of the \$146,657.42.

2. If an employee's salary (which included a \$600 increase of state minimum salaries effective July 1, 1986) was equal to or greater than his prior year's salary, then no county allocation was made to that employee.

3. If an employee's salary (which already included the \$600 raise) was not equal to or greater than his prior year's salary, then the employee received a proportionate share (based upon grade/degree and years of experience) of the \$146,657.42. The proportionate share was not allowed to exceed the employee's salary of the prior year.

4. When all employees salaries were equal or greater than their prior year's salary, then all employees would share proportionately (based upon grade/degree and years of experience) with the remaining balance of the \$146,657.42.

Grievants' first allegation is that the board's action resulted in a unilateral amendment of employee contracts in violation of W. Va. Code, 18A-2-2 and W. Va. Code, 18A-2-6. Grievants' interpret these statutes to require that the board notify employees prior to any contractual changes and that any changes be made in April.

Before entering their duties all employees must execute a contract with the board of education, which contract shall state the salary to be paid. Individuals employed beyond three years are awarded a continuing contract which shall remain in full force and effect except as modified by mutual consent of the board and the employee unless and until terminated. W. Va. Code, 18A-2-2 and 18A-2-6.

Beginning with the fourth year of employment, a school

employee's salary is determined by years of experience and training classification for professional personnel and years of employment and class title for service personnel. All employees' salaries may be affected by legislative action. As salary changes for 1986-1987 would be reflected on nontenured employee contracts and function as a variable term of employment for tenured employees, there was no amendment of employee contracts.²

Grievants' also allege a violation of W. Va. Code, 18A-4-5a and W. Va. Code, 18A-4-5b, which prohibit the reduction of a county salary supplement, with limited exceptions.

No county may reduce local funds allocated for salaries in effect January 1, 1984, and used to supplement the state minimum salary, unless forced to do so by defeat of a special levy, a loss in assessed values or events over which it has no control. W. Va. Code, 18A-4-5a and W. Va. Code, 18A-4-5b.

Grievants assert there was no loss in assessed values which would affect the 1986-1987 budget, that the board cannot claim the defeat of the levy caused a salary reduction over one year later when the board chose not to hold a third levy election, and that the board could have exerted control over events and maintained the supplements in 1986-1987.

²In August, 1986 the board of education sent a notification of reemployment with a statement of salary to be paid to all employees. (Exhibit No. 3) Grievants' characterization of this document as a contract of employment is without merit.

In support of their case grievants offered the expert testimony of F. Howard Nelson, Assistant Director of the Department of Research of the American Federation of Teachers. Mr. Nelson's testimony regarded an analysis of board of education budgetary practices. Mr. Nelson observed that the board has a history of overestimating expenditures and that substantial savings could be achieved by postponing building, repair and maintenance activities, drawing on inventories, and energy savings. On cross-examination Mr. Nelson conceded that his observations and recommendations were not influenced by state law or practices of the W. Va. State Board of Education and that he was not familiar with the board of education's inventory of supplies. Furthermore, it is unclear which annual budgets were used for this analysis, the total information made available to Mr. Nelson, and the sources of the information.

Extensive testimony was taken from board members, past and present, regarding the development of the 1986-1987 budget and from the board's business manager regarding budgeting practices and actual expenditures.

Despite grievants' allegation that none of the conditions necessary for a reduction of county salary supplement exist, the facts indicate otherwise. Evidence shows the reduction of the salary supplement was a direct result of the failure to renew the excess levy. The board's ability to maintain

the salary supplement for a year after the expiration of the levy does not alter this fact.

The grievants' argument that the board could have controlled events in order to guarantee a continuation of the salary supplement is speculative and slanted to support one of many objectives which must be considered in the development of a budget for a county school system. This observation is supported by the testimony of Ms. Booth that her expectations regarding the budget were not met, that her salary should have increased \$600.00 in 1986-1987 but that she will receive only \$5.00 above her 1985-1986 salary, that it was her impression that any and all extra money would be applied towards the salary supplement and that sufficient monies were available to fully fund the supplement had they not been spent elsewhere.³

³Grievants assert that money allocated to the Health Department was apparently not mandated by law and that supplies, summertime custodial help, and the local 4-H Club expenditures were luxuries. Ms. Booth stated at the level four hearing that her survey indicated employees preferred to receive a salary supplement rather than benefits such as the dental insurance. When questioned on cross-examination as to the number of employees represented by her organization and the survey Ms. Booth refused to provide a direct answer but conceded it to be less than fifty employees. David Jones, President of the Grant County Education Association, testified that the county association had supported the dental insurance in lieu of an increased salary supplement.

When a board of education is forced to choose between eliminating a local pay supplement for teachers or curtailing educational programs for children it may cancel the teacher supplement. Newcome, et al. v. The Board of Education of Tucker County, 164 W. Va. 1, 260 S.E. 2d 462 (1979). See also Op. Att'y Gen., March 27, 1985.

In addition to the foregoing it is appropriate to make the following findings of fact.

Findings of Fact

1. Grievants are employed by the Grant County Board of Education as professional and service personnel.

2. The Grant County Board of Education supplements employee salaries over and above the state minimum salary schedules.

3. Until July, 1985, the salary supplement was funded by a county-wide, excess levy approved by the voters of Grant County.

4. The most recent excess levy expired in July, 1985.

5. Renewal of the levy was rejected by the voters in August, 1984 and March, 1985.

6. The board decided against running the levy election a third time following the occurrence of devastating flooding in November, 1985.

7. The employees' salary supplement was maintained during the 1985-1986 school term through the use of surplus carry-over funds from the 1984-1985 budget.

8. By letter dated February 12, 1986, David F. Adkins, Superintendent of Grant County Schools, informed State Superintendent of Schools Tom McNeel that sufficient funding was not available to continue the personnel salary supplements and requested permission to reduce the entire supplement effective July 1, 1986.

9. In April, 1986, the State Board of Education approved the proposed reduction of the salary supplement as a result of the excess levy not being renewed.

10. In July, 1986, the board of education amended its budget, allocating funding for salary supplements, payment of employees' dental insurance, services rendered by the Health Department, school supplies, summer custodial services, and the local 4-H Club.

11. The board adopted a formula for allocation of the additional funding which was designed to maintain employees' salaries at the 1985-1986 level.

12. In August, 1986 the board sent each employee a notification of re-employment which included that employee's salary for the 1986-1987 school term.

Conclusions of Law

1. A board of education shall not reduce local funds allocated for supplementing state minimum salaries in effect on January 1, 1984, unless forced to do so by defeat of a special levy, loss in assessed values, or events over which it has no control and for which it has received approval from the state board prior to making the reduction. W. Va. Code, 18A-4-5a, 18A-4-5b.

2. When a school board is forced to choose between eliminating a local pay supplement for employees or curtailing educational programs for children, it may cancel the employees' supplement. Newcome et al. v. the Board of Education of Tucker County, 164 W. Va. 1, 260 S.E. 2d 462 (1979).

3. It is incumbent upon a grievant seeking relief pursuant to W. Va. Code, 18-29-1, et seq., to prove the allegations constituting the grievance by a preponderance of the evidence.

4. Grievants have failed to prove the allegations constituting the grievance by a preponderance of the evidence as a matter of law.

Accordingly, the grievance is DENIED.⁴

⁴Grievants' have not only failed to substantiate their allegations but have failed to cooperate with the board in the presentation of this hearing, would not, or could not, articulate a statement of the issues at the request of the respondent and later by the examiner, and stated two "grounds" for the grievance for which they presented no supportive evidence and withdrew following the hearing. These actions, along with the failure to prove any of the allegations made, causes the examiner to speculate whether a cognizable grievance exists.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Grant County and such appeal must be filed within thirty (30) days of receipt of this decision. (W. Va. Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

DATE December 22, 1986

Sue Keller

SUE KELLER
Hearing Examiner