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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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JUNIOR L. COBB

v:

DOCKET NO: 51-86-211-2

WEBSTER COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a level three decision affirming the decision of the County Superintendent of Schools at level two. A level four evidentiary hearing was held on November 7, 1986, before John M. Richardson, Hearing Examiner. Pursuant to the direction of the Hearing Examiner, the parties filed by November 30, 1986, proposed findings of fact and conclusions of law which were considered in arriving at this decision.

The grievant, Junior L. Cobb, a vocational teacher, complains that his prior experience in the U.S. Navy as an instructor was not allowed as credit for years of teaching experience. The grievant further claims this is unfair and fails to meet the uniformity requirements, in that a similarly situated employee was previously given such credit.

The respondent, the Webster County Board of Education, on the other hand, maintains that between the time another employee

was given credit and the time the grievant complained and proceeded to obtain necessary documentation, the interpretation of WV Code §18A-4-1 by the State Superintendent of Schools changed. The respondent further alleges that the changes in interpretation now places the burden on county school administrators to make a factual analysis on a case by case basis.

A review of grievant's credentials by the County Superintendent of Schools did not reveal that the grievant was entitled to any credit for prior experience.

WV Code §18A-4-1, in pertinent part, provides:

(1) "Years of experience" means the number of years the teacher has been employed in the teaching profession, including active work in educational positions other than the public schools, and service in the armed forces of the United States if the teacher were under contract to teach at the time of his induction.

. . .the experience of a teacher or a nurse shall be limited to that allowed under his training classification as found in the minimum salary schedule. (Emphasis added)

Neither the grievant nor the similarly situated employee had a teaching certificate prior to their employment with the respondent board, nor did they possess an A.B. degree. However, both employees taught in classroom settings, each teaching subject matter related to their present vocational teaching fields.

The State Superintendent of Schools in his April 15, 1986 opinion, in pertinent part, stated:

The United States Army is not recognized as an established educational institution. A person

cannot gain credit for years of employment in the teaching profession unless he/she held a teaching certificate or at least had an AB degree (depending upon the program in which they are now employed). The years assigned as an Army instructor in training programs or classes which do not require more than a high school diploma do not count for years of employment in the teaching profession for pay increment purposes in 18A-4-1. Thus, although teaching in some programs and service schools may qualify as employment in the teaching profession, mere employment as a drill instructor will not. School administrators must make a factual analysis of the employment in each case.

It would appear that the grievant could qualify for credit if the programs he taught or the service schools where he taught met the test of a factual analysis by a school administrator.

The record reveals that the grievant rose to the rank of Chief Warrant Officer in the Navy and was a classroom instructor and supervisor of instruction relating to damage control, shipbuilding, firefighting, NBC Defense and Hull, among other things. The grievant's testimony revealed that his service teaching for at least 6 years related to carpentry and constructive woodworking, which is the field he is teaching as a vocational teacher.

The similarly situated employee attained the rank of Staff Sgt.(E-6) and taught communication/electronics related courses in the Marine Corps. This also is the related field in which this employee now teaches as a vocational teacher, i.e., electronics.

As aforesaid, the grievant was denied years of experience credit while the similarly situated employee was granted five years credit. No sufficient reason was established by the respondent for this disparity even though the argument of the length of courses,

which the grievant taught during a calendar year was presented.¹

Therefore, it would appear that the result reached by the County Superintendent in her analysis has the effect of being unfair even though she was not responsible for the previous opinion of the State Superintendent of Schools²

Inasmuch as the resolution of the grievance can be obtained without exploring the uniformity of WV Code §18A-4-5a, that allegation need not be and is not treated herein.

In addition to the foregoing, the following findings of fact and conclusions of law are incorporated and made a part hereof.

¹The respondent argued that some of the more closely related courses taught by the grievant were less than the 133 day minimum necessary for one year's credit. However, the facts showed that these courses were taught in phases for and all practical purposes, were taught year round.

²The previous opinion of the State Superintendnet dated March 31, 1986, did not require, by any expression therein, a factual analysis by a county school administrator, on a case by case basis, the nature of programs taught or the service schools where previous experience was gained.

FINDINGS OF FACT

1. The grievant, Junior L. Cobb, is a vocational teacher employed by the Webster County Board of Education.

2. The grievant applied for years of experience credit during the 1985-86 school year. This application was denied and would have been effective for the 1986-87 school year.

3. The grievant attained the rank of CW03 and taught for 6 years and 2 months at the Naval Damage Control Training Center to qualify him for 6 years of experience as a teacher. The classes taught by the grievant were related to the same subject matter he now teaches and were at a Navy training center, having a classroom setting, requiring lesson plans and other criteria similar to those criteria met by vocational teachers.

4. Another vocational teacher employed by the Webster County Board of Education, having had similar experience in the armed services, received 5 years credit for salary purposes.

CONCLUSIONS OF LAW

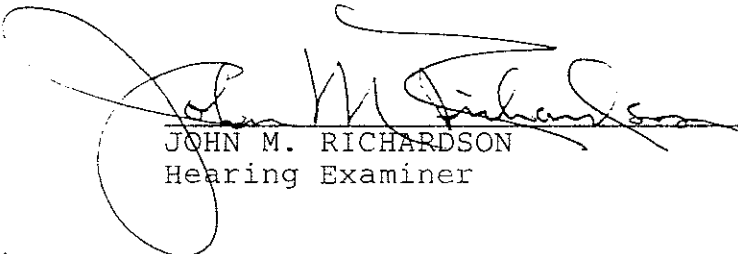
1. In considering a teacher for years of experience credit, pursuant to WV Code §18A-4-1, which includes "active work other than the public schools," the similarity of subject matter and teaching environment (classroom settings, etc.) are proper and intergal subjects for making such decisions.

2. Pursuant to WV Code §18-29-2(a) and (c) to grant years of experience credit to a teacher while denying a similarly situated teacher the same benefit is a grievable incident.

3. Pursuant to WV Code §18A-4-1 and upon a factual analysis, the grievant is entitled to credit for 6 years of experience to be applied to his basic salary.

For all of the foregoing reasons, the grievance is granted. The Webster County Board of Education is ORDERED to apply 6 additional years of experience to the grievant's basic salary beginning with the 1986-87 school year and to pay the difference of such salary to the grievant less any applicable deductions.

Either party may appeal this decision to the Circuit Court of Webster County or Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (WV 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.


JOHN M. RICHARDSON
Hearing Examiner

DATED:

Dec. 17, 1986