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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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GEORGE DAYOUB, et al.

v.

Docket No. 15-86-212-3

HANCOCK COUNTY BOARD OF EDUCATION

DECISION

Grievants, George Dayoub, Betty Buben, William Allison, David Stevens, Larry Liberto, Charles Sargent, Manual Alatis, Hugh Manley, Allen Allison and John Grossi, are all employed by the Hancock County Board of Education as non-teaching principals assigned to various county schools. All have acquired twenty years or more experience in the teaching - education field.

The grievance was denied at levels one and two and was waived for consideration by the respondent board of education. The parties waived an evidentiary hearing at level four and the matter was submitted for decision upon the record.¹

¹ Grievants at first requested a level four hearing but withdrew the request by letter dated October 1, 1986 from grievant Buben. The undersigned examiner had requested information from the parties by letter dated August 28, 1986, regarding the level two decision and received level two findings of fact and conclusions of law from respondent board's counsel, James Davis, by letter dated October 2, 1986.

The facts in this dispute are simple and uncontroverted. As principals these grievants are required to hold valid teaching certificates but none of them are assigned to any classroom teaching. Recently amended W.Va. Code, 18A-4-2 provided a \$600 salary increase for "each classroom teacher who has at least twenty years of teaching experience." The increase was not granted to the grievants by the respondent board of education.

Grievant principals, who claim entitlement to the additional payments point out their status as "teachers" and rely on W.Va. Code, 18A-1-1(g) and W.Va. Code, 18A-1-1(b),(c):

Code, 18A-1-1(g): "Teacher" shall mean teacher, supervisor, principal, superintendent, public school librarian; registered professional nurse... or any other person regularly employed for instructional purposes in a public school in this state [.]

Code, 18A-1-1(b): "Professional personnel" shall mean persons who meet the certification and/or licensing requirements of the State, and shall include the professional educator and other professional employees.

Code, 18A-1-1(c): "Professional educator" shall be synonymous and shall have the same meaning as "teacher" as defined in...18-1-1.

Also cited was W.Va. Code, 18A-2-9 in further support of their position. The statute sets forth the duties and responsibilities of principals and assistant principals and concludes thusly:

Nothing contained in this section shall be construed to reduce or limit the rights and privileges of principals and assistant principals as teachers under the provisions of...[§18-1-1]...[18A-1-1] and other provisions of this code.

Grievants argue their "rights" and "privileges" as teachers have been violated by not being granted the additional salary.

Grievants also suggest that the twenty year experience - supplemental salary provision of W.Va. Code, 18A-4-2 somehow attaches to the "state minimum salary schedule" itself, and thus, they are among the class of educators to receive benefit therefrom since their base salary derives from a teacher salary schedule.

The respondent board agrees that principals are professional personnel and teachers by training holding valid teaching certificates, and as such, are professional educators as contemplated by W. Va. Code, 18-1-1(g) and Code, 18A-1-1(b)(c). However, the board contends that there is a clear legal distinction between the terms "teacher", "classroom teacher" and "principal" as set forth in Code, 18A-4-2 and Code, 18A-4-3. It argues that the \$600 supplement for classroom teachers referred to in Code, 18A-4-2 is limited to classroom teachers and does not affect the basic salary scale as it relates to calculation of principals' increments under Code, 18A-4-3. Respondents argue that, in fact, the clear meaning of the statute specifically excludes application of the \$600 supplement to educators who are administrators such as grievants since it specifically denotes "classroom teachers" to receive the additional sum. Code, 18A-4-2 in its entirety is as follows:

STATE MINIMUM SALARY SCHEDULE

(1) years exp.	(2) 4th class	(9) M.A. +30	(10) Doc- torate
0	11,253	16,055	16,755
(text omitted)			
19		23,519	24,219

On or after the first day of July, one thousand nine hundred eighty-six, each teacher shall receive the amount prescribed in the "state minimum salary schedule" as set forth in this section, specific additional amounts prescribed in this section or article, and any county supplement in effect in a county pursuant to section five-a [§18A-4-5a] of this article during the contract year.

On or after the first day of July, one thousand nine hundred eighty-six, six hundred dollars shall be paid annually to each classroom teacher who has at least twenty years teaching experience. Such payments shall be in addition to any amounts prescribed in the "state minimum salary schedule", shall be paid in equal monthly installments and shall be deemed a part of the state minimum salaries for teachers. (emphasis added).

First, in regard to grievant's suggestion that the 20-year supplement provision attaches to the salary schedule, the language appears to be making a distinction between the "state minimum salary schedule" --presented matrix fashion above the text in the body of the statute-- and other amounts provided to certain educational personnel by law. If the legislative intent was for the supplement in question to be affixed to the schedule, and thus applicable for all educators whose base salary derives from the schedule, it would have been a simple matter to add a "20" to the "years experience" column with a +600 in the

appropriate positions across the various classifications. It is readily seen that the \$600 salary supplement is not a part of the salary schedule and is only provided to a certain class of educators.

Accordingly, the compelling question in the resolution of this dispute is to what class of teachers - educators the legislators intended salary additions for twenty years or more service.

W.Va. Code, 18A-4-2 must be read in pari materia with Code, 18A-4-3 which establishes salary increments for teachers who serve as principals. Pertinent parts of Code, 18A-4-3 are set forth below:

In addition to any salary increments for principals...in effect [January 1, 1986] 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...as prescribed by this section, commencing [July 1, 1986], from state funds appropriated therefor.

State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with [Code, 18-9A-1 et seq.].

The salary increments...shall be determined by multiplying the basic salary for teachers in accordance with the classification of certification and of training of said principal as prescribed in this article...(emphasis added)

Clearly absent from the language in this article is any reference to the salary schedule or basic salary of a "classroom" teacher.

Moreover, the above section establishes that principals' salary increments are appropriated by the school board from state funds in accordance with W.Va. Code, 18-9A-1, et seq.

For the purpose of that article, 18-9A-1, section two of article nine-a specifically distinguishes a classroom teacher from a principal:

"Professional instructional personnel" means a professional educator whose regular duty is that of a classroom teacher, librarian or counselor. A professional educator having both instructional and administrative or other duties shall be included as professional instructional personnel for that ratio of the school day for which he is assigned and serves on a regular full-time basis in appropriate instruction library or counseling duties." (emphasis added).

Additional guidance is offered by turning again to Code, 18A-1-1(c), which defines professional educators "synonymous" with "teachers" but which provides that professional educators shall be further classified as follows:

- | | |
|----------------|--|
| 18A-1-1(c) (1) | "Classroom teacher": The professional educator who has direct instructional or counseling relationship with pupils, spending the majority of his time in this capacity; |
| 18A-1-1(c) (2) | "Principal": The professional educator who as agent of the board has responsibility for the supervision, management and control of a school...The major responsibility shall be the general supervision of all the school and all school activities involving pupils, teachers and other school personnel. |

The various sections and articles of Chapters 18 and 18A serve to demonstrate legislative need and intent for distinctions to be made regarding teachers - educators who serve as "classroom teachers" and those who serve as principals and other administrators.

"Teacher" thus, is a general term for educators, but a "classroom teacher" who performs instructional duties is a separate and distinct class of teacher than a "principal" who no longer instructs in the school and, instead, runs the affairs of the school.

The question then of what group of educators the legislators intended to benefit with a specific \$600 addition to their salary upon twenty years or more service is clearly stated in the statute's text as "classroom teachers," Code, 18A-4-2, supra, and "classroom teachers" constitutes a class of educators separate and distinct from principal, supervisor, coordinator, etc. Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation. State v. Elder, 165 S.E.2d 108 (W.Va. 1968).

In reviewing the record in its entirety, it is noted that at the level two evidentiary hearing grievants submitted the results of a survey which indicated that fifteen counties were paying principals the supplement, two were paying teaching principals and one was to pay principals the next year. Using the Hancock county salary scale, grievants demonstrated that an educator currently serving as a classroom teacher with twenty years experience, either classroom teaching or classroom teaching and administration, may have a higher salary than that of a twenty-year experienced principal before the salary increment for principals is added to his base. In considering this evidence, little or no weight can be given as those factors do not establish

grievants' legal entitlement to the \$600 payment they seek.

Also noted is that at one point in the hearing, grievants seemed to switch direction and cease argument that the county violated or misinterpreted state statutes but rather that the county had a "moral duty" to pay grievants the \$600 and, "It's in the infinite wisdom of the (county) board to pass on such increments." (T. 42).

W.Va. Code, 18A-4-8, in pertinent part, provides:

The county board of education may establish salary schedules which shall be in excess of the state minimum fixed by this article, these county schedules to be uniform throughout the county with regard to any training classification, experience, years of employment responsibility, duties, pupil participation, pupil enrollment, size of building, operation of equipment or other requirements. Further, uniformity shall apply to all salaries, rates of pay, benefits, increments of compensation for all persons regularly employed and performing like assignments and duties within the county.

Thus a board of education may uniformly provide benefits to its employees in excess of state minimums, but is not otherwise compelled to do so.

Any supplements or increments Hancock County chooses to pay its principals is at the discretion of the school board and not within the province of this hearing examiner to rule upon despite an allegation that the \$600 allocation for educators having twenty years experience was received by the county and included an amount for principals having the requisite experience. The charge was made without any supporting evidence or documentation, and as such, must be excluded from any consideration and deemed to be entirely without merit. (T. 48).

In addition to the foregoing, the following findings of fact and conclusions of law are appropriate and are incorporated herein.

FINDINGS OF FACT

1. Grievants are non-teaching principals employed by the Hancock County Board of Education.

2. Each of the grievants have acquired twenty or more total years of educational experience in the classroom or in administration as principals or a combination thereof.

3. These principal-grievants were not granted a salary addition designated for all classroom teachers having twenty years or more experience.

4. Grievants failed to demonstrate legal entitlement to the additional salary designated for classroom teachers having twenty years or more experience.

CONCLUSIONS OF LAW

1. Classroom teachers having at least twenty years educational experience shall be granted an annual \$600 salary addition. W.Va. Code, 18A-4-2.

2. Non-teaching principals cannot be construed or classified as "classroom teachers" since their regular duties within the school are not instructional, but rather administrative. W.Va. Code, 18-9A-2; W.Va. Code, 18A-1-1(c)(2).

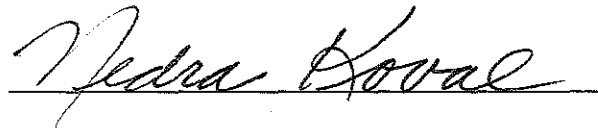
3. Where the language of a statute is clear and without ambiguity, the plain meaning is to be accepted without resorting to the rules of interpretation. State v. Elder, 165 S.E.2d 108 (W.Va. 1968).

4. A county board of education may establish salary schedules in excess of state minimums providing that it adheres to uniformity requirements; this provision is discretionary. W.Va. Code, 18A-4-8.

5. A grievant must prove all of the elements of the grievance by a preponderance of the evidence; grievants failed to prove that the action of the board was contrary to law or an abuse of discretion as a matter of law.

Based on the foregoing and the record in its entirety, it is ORDERED that the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or Hancock County and such appeal must be filed within thirty 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.

A handwritten signature in cursive script, reading "Nedra Koval", is written over a horizontal line.

NEDRA KOVAL
Hearing Examiner

Dated: 12-31-86