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DAVID LANCASTER, ET AL.

V.

Docket No. 20-86-013

WV DEPARTMENT OF EDUCATION

DECISION

The grievants, David Lancaster, Betty Craven, Cindy Jeffers, Anthony MacFarland, Carol McCutcheon, Elizabeth Wolfe, Betty Stuart, Tamara Sanford and Scott Brown are employed by the West Virginia Department of Education as teacher's aides assigned to the Special Education Unit of the Colin Anderson Center. All of the grievants were hired into their present positions between March and September, 1984 as a result of the Department of Education assuming the educational responsibilities for Medley class members in Department of Health facilities. All of the grievants were previously employed at the center by the Department of Health as therapy aides, psychiatric aides or houseparents.

At the time these grievants were hired, Donald W. Rice, principal of the special education unit was instructed that service personnel would be granted experience credit only for years worked in the education program of the Department of Health. The salaries of these individuals were calculated in compliance with these instructions.

Subsequent to the hiring of these grievants, five former Department of Health employees were additionally hired as teacher's aides. These individuals were credited for experience earned at the center but not in the education program.

Principal Rice testified at the level two hearing that his decision to grant experience credit to the five later hired aides was not consistent with his instructions but that he felt it was the appropriate action to take as, in his opinion, the duties presently performed by the aides are similar to those which they performed prior to March, 1984. (T.p.110-112).¹

The grievants submitted testimony and job descriptions in support of their argument that their present positions of teacher's aides consists of duties similar or identical to those performed under different job titles prior to March, 1984.

In the decision rendered at level two the grievance evaluator found: 1) the principal had violated his instructions in granting experience credit to the aides who were hired subsequent to the original group; 2) although erroneously granted, the experience increment has been approved and paid by the State Superintendent and the State Board of Education and could not be recovered; 3) the experience increment would be

¹ Job descriptions of therapy aides, health service workers and house parents (joint exhibit #1) indicate these employees are responsible for some phase of instruction to the children as well as providing overall care. The employees work under direct supervision and in addition to working directly with the children were required to complete administrative tasks such as maintaining records and filing reports.

reduced prospectively to bring these salaries into compliance with the policy under which the grievants were hired and 4) the years worked by the grievants at the center could not be credited as years of experience as it was not a school or a county board of education.

Although the Department of Education initially determined not to credit the grievants for years of employment earned at the Center under Department of Health programs, they clearly had the option to do so.

W.Va. Code, 18A-4-8 defines "years of employment" as the number of years which an employee classified as service personnel has been employed by a board of education in any position. The grievants prior experience in the center under another department's program would appear to be a situation on the state level analogous to the county board of education structure.

W.Va. Code, 18A-4-5 permits a county board of education to establish salary schedules in excess of the minimum salary schedule, said salaries to be uniform with regard to training classification, experience, years of employment, etc.. Further, uniformity must apply to all salaries, increments or compensation for all persons performing like assignments and duties. Again, while addressed specifically to counties, the Department of Education is essentially functioning in the role of a board of education in relation to these employees and therefore the same criteria must be met.

An interpretation of the State Superintendent of Schools dated January 21, 1985 and included in Grievant's Exhibit 9

specifically states: 1) W.Va. Code, 18A-4-5b authorizes incremental pay credit based on other work experience and 2) a board of education may transfer prior service credit (for pay purposes) from an in-state agency or institution.

While the principal admittedly acted in violation of his instructions regarding experience credit for employees, the State Superintendent approved and paid the salaries, thereby tacitly reversing the policy under which the grievants were hired.

The grievance evaluator at level two states that experience pay granted to the five aides "must be reduced prospectively, consistent with the principales (sic) explained in the Opinion of the Attorney General dated November 13, 1980...".

The Department's reliance on this particular Opinion of the Attorney General eludes this examiner as the opinion addresses whether a teacher could include years of experience earned as a teacher's aide in calculating salary or tenure. The present case does not concern a change in status from service to professional personnel therefore this principle would be misapplied to these grievants.

A more relevant authority is W.Va. Code 18A-4-8 which states: "No service employee, without his written consent, may be...relegated to any condition of employment which would result in a reduction of his salary, rate of pay, compensation or benefits earned during the current fiscal year or...for which he would qualify by continuing in the same job position and classification held during said fiscal year and subsequent years."

Therefore, as the policy regarding prior experience credit was reversed when the State Superintendent approved the salaries of those aides who were later hired, these grievants are also entitled to receive the same credit, effective at the time of the policy change.

FINDINGS OF FACT

1. The grievants are presently employed as teacher's aides at Colin Anderson Center.

2. The grievants were all previously employed at the Colin Anderson Center as psychiatric aides, therapy aides and houseparents by the Department of Health.

3. When hired by the Department of Education the grievants were allowed prior experience credit for pay purposes only for years worked in the educational program of the Department of Health.

4. When five additional aides were hired, the principal acting in violation of his instructions, granted those individuals prior experience credit for years worked at the Colin Anderson Center in non-educational programs.

5. The State Superintendent of Schools approved the salaries which included experience credit and the State Board of Education has paid these salaries.

6. The recommendation of the level two grievance evaluator is to reduce the salary of the later hired aides to be consistent with the policy in effect at the time

the grievants were hired.

CONCLUSIONS OF LAW

1. By his approval of salaries which included credit for prior experience in noneducational programs at the Colin Anderson Center the State Superintendent of Schools reversed the earlier policy which denied such credit for the purpose of calculating service personnel salaries.

2. The present salary structure which grants prior experience credit to some employees but not to others is discriminatory and in violation of W.Va. Code, 18A-4-5b which requires that supplemental salary be awarded uniformly to employees with regard to training classification, experience, years of employment, responsibility, etc.

3. No service employee may suffer a reduction of salary, rate of pay compensation or benefits for the current fiscal year or subsequent years without his written consent. W.Va. Code, 18A-4-8.

4. The grievants are entitled to salary adjustment granting credit for years of employment earned at the Center, effective as of the policy change.

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

Sue Keller

SUE KELLER
Hearing Examiner

DATED: 6/13/86