



Members
James Paul Geary
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone 348-3361

LINDA LIEBOLD

Docket No. 48-86-171-3

and

Docket No. 48-86-172-3

MARY MCCARTNEY

v.

TYLER COUNTY BOARD OF EDUCATION

and/or

WEST VIRGINIA DEPARTMENT OF EDUCATION

DECISION

Grievants, Linda Liebold and Mary McCartney, are speech pathologists employed by the Tyler County Board of Education. Both allege that the respondent county board violates uniformity pay provisions of W.Va. Code, 18A-5-5 in that they have not been granted advanced salaries for the attainment of fifteen additional credit hours of education.

The parties agreed to waive the matter to level four upon decisions adverse to grievants at level one and two. The parties further waived an evidentiary hearing before this board and grievants' representative filed a supporting statement in

mid-April, 1986.¹ In October, 1986 the West Virginia Department of Education was added as a party to the grievance.²

The facts in this case are not in dispute. Both grievants were hired by the Tyler County Board of Education as speech pathologists. Although each held a B.A. degree in Speech Correction their employment was based upon the issuance of a first class teaching permit by the West Virginia Department of Education as regulations require that an individual possess a masters degree in speech pathology before a professional certificate will be issued.

Both grievants are working to obtain the requisite masters degree and both applied for the advance salary classifications of "AB+15" sometime in early September, 1985 after having attained the additional credit hours. The record indicates that the request was made to the county school board and the board refused to grant the increased salary since grievants were employed on first class teaching permits and did not possess a professional certificate.

¹ The case was subsequently transferred to the undersigned hearing examiner in July, 1986. Some question remained about whether grievants' regional representative had reconsidered the matter of submission on the record but was not resolved prior to his leaving the West Virginia Education Association UniServ Consultancy for another position.

² After a review of the record, the undersigned examiner concurred that grievants and their county representative may have been correct when they waived the matter to level four and stated that the grievance was a "State problem", by correspondence of record of February 20 and 26, 1986.

Grievants contend that a first class permit is equivalent to a teaching certificate as it serves as a license to teach.

In late October, 1986 the Department of Education filed a motion to dismiss it as a party to the grievance on grounds that the issues involved were beyond the scope and authority of the West Virginia Education Employees Grievance Board to adjudicate. This board has previously ruled that, "Under Code, 18-29-1, et seq., the Education Employees Grievance Board has jurisdiction of a grievance involving the State Department of Education and a county employee when the basis of the grievance is an interpretation of law or policy affecting grievant, upon which interpretation the county board of education relied."

Clayburn T. Walker v. Kanawha County Board of Education, Docket No. 20-86-157-1 decided July 7, 1986. As that being the case in this grievance, the motion to dismiss is denied.

Events which seemed to precipitate this dispute are as follows. By letter dated September 26, 1985 the State Superintendent responded to a query of whether a speech pathologist holding an AB degree and working on permit qualifies for a pay increase upon attainment of a BA+15. He responded:

The answer to your...question appears to be yes. Certification and licensure are treated separately from compensation. Please refer to W.Va. Code, 18A-4-1.

By letter dated October 29, 1985, the Superintendent again wrote: "This letter replaces my letter written to you on September 26, 1985, on the subject of compensation payable to speech

pathologists," reversing the earlier decision.

To the same question regarding advanced salary classification for speech pathologists working on permits the superintendent now answered:

The answer...appears to be no. In the definitions provided in West Virginia Code, 18A-4-1, advanced salary classifications are awarded to "a person who qualified for or holds a professional certificate, or its equivalent." The teacher education standards for a professional certificate in speech pathology require a master's degree; thus, a person serving (sic) as a speech pathologist on permit, who does not have a master's degree, is not qualified for a professional certificate and thus may not be awarded the AB+15 advanced salary classification.

On or about November 22, 1985 grievants were issued renewals for their permits which indicated highest degree as Bachelor. By letter dated November 29, 1985 Barbara Brazeau, Certification Coordinator with the Department of Education, denied grievant McCartney's request of the bachelors plus 15 salary classification and reiterated that the applicant must hold a professional certificate. Also, "Please be advised that this issue is under discussion at the department level. You will probably be receiving information regarding this sometime in January." The record is silent as to whether Ms. Brazeau contacted grievants again in January, but grievances were filed at level one on January 24, 1986 and waived to level two shortly thereafter.

Stephen Baldwin, Superintendent of Tyler County Schools, rendered a level two decision February 18, 1986.³ He stated

³ It is noted that there is no transcript of these proceedings due to failure of mechanical recording equipment.

that the county board of education paid salaries, including advanced salaries, according to the type of certificate issued by the State Superintendent. He noted that the county had no authority to issue certificates for advance salary purposes and if the board paid advanced salaries to persons not properly certified, the State would not reimburse the school system. He further stated:

It is my belief that the Tyler County Board of Education should only pay advanced salary to those who have satisfied the State...procedure, as we have done with all previous employees in the past.

Grievants' allegation that the county board of education violates uniformity of pay provisions of W.Va. Code, 18A-4-5 is without merit since the board's authority cannot supersede that of the State Department of Education. It is acknowledged that the Department of Education has sole authority to issue certificates and permits and make decisions for advanced salary classifications. Clayburn Walker, supra. State Policy 5113 (1985-86) regulates the issuance of permits licencing school personnel who cannot meet the standards for a Professional Certificate:

County superintendents are obligated to utilize fully qualified teachers when they are available and to provide permit teachers special assistance by the county staff. Persons employed on permits are expected to attain professional certification by enrolling at an institution of higher education in an approved teacher education program. Holders of permits are employed on a temporary basis only and are licensed depending on (1) the availability of professionally licensed personnel and (2) the teacher's growth as a professional.

Applicants for the speech language pathologist permit must hold a baccalaureate degree in speech pathology or speech and hearing therapy from a regionally accredited institution and have filed a Professional Commitment for Permit Teachers indicating enrollment in a state approved master's degree program in Speech Language Pathology.

Nothing in the language of this regulation indicates that a permit is an equivalent of a professional certificate, and indeed, overwhelmingly indicates otherwise. Policy 5113 also states, "Permits and authorizations are issued only for specializations approved annually by the State Board on the basis of established staffing needs."

While it is recognized that grievants perform a needed service for the school system, nothing in the existing applicable law, W.Va. Code, 18A-4-1, et seq., makes provision for salary adjustments for their special class of professional school personnel, i.e., speech pathologists working on permit who have attained fifteen additional hours in fulfillment of professional certification requirements. To support their position in this dispute grievants appear to rely on what the Department of Education identifies as the State Superintendent's "erroneously released" letter of September 26, 1985 but have ignored the subsequent interpretation of October 29, 1985 which, by its own terms, withdraws and reverses the opinion stated in the previous letter. The Department of Education maintains that the administrative decision of October 29, 1985 should stand until revised by the Department or superseded by a change in State law.

W.Va. Code, 18A-3-2(3) provides in pertinent portion:

(3) Other certificates; permits. - Other certificates and permits may be issued, subject to the approval of the state board, to persons who do not qualify for the professional certificate. Such certificates or permits shall not be given permanent status and persons holding such shall meet renewal requirements provided by law and by regulation, unless the state board declares certain of these certificates to be the equivalent of the professional certificate.

(emphasis added)

The state board of education has not declared grievants' permit to be an equivalent of the professional certificate and the exercise of judgment of administrative bodies is entitled to great weight unless clearly erroneous. Smith v. Board of Education of Logan County, 341 S.E.2d 685 (W.Va. 1985).

FINDINGS OF FACT

1. Grievants Liebold and McCartney are employed by the Tyler County Board of Education as speech pathologists.

2. Grievants each hold a bachelors degree but neither have met State requirements that speech pathologists hold a masters degree in order to qualify for a professional certificate and are thus employed on the basis of a permit issued by the Department of Education.

3. Both grievants completed fifteen hours to meet educational requirements and applied for advanced salary classification from county and state officials.

4. Grievants' first request for increased salary to the school board was denied since their employment was based on teaching permit and they did not yet hold a professional certificate.

5. Two contradictory interpretations were issued by the State Superintendent of Schools regarding the issue of whether

speech pathologists working on permit were eligible for advanced salary classifications. The latter decision reversed the decision erroneously contained in the former.

6. Permit renewals were issued to grievants in November, 1985 and the Department of Education denied grievants' application for advanced salary classification.

7. There was no showing of proof that a permit was equivalent to a professional certificate nor citation of statutory provision for speech pathologists working on permit and attaining fifteen hours to be granted additional salary of BA+15.

CONCLUSIONS OF LAW

1. The Education Employees Grievance Board has jurisdiction of a grievance involving the State Department of Education and a county employee when the basis of the grievance is an interpretation of law or policy affecting grievant, upon which interpretation the county board of education relied. Clayburn T. Walker v. Kanawha County Board of Education, Docket No. 20-86-157-1, decided July 7, 1986.

2. Generally, interpretations of statutes, policy and regulations by the State Department of Education are entitled to great weight unless clearly erroneous. Clayburn T. Walker, supra.

3. An administrative body may reverse decisions or advisories upon determination and timely disclosure that the decision was written and released in error.

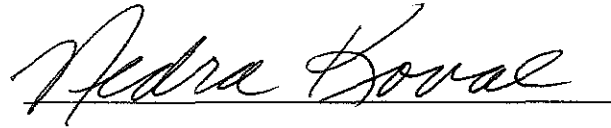
4. Grievants have failed to prove misinterpretation of applicable statutes, W.Va. Code, 18A-4-1, et seq., or misapplication of Policy 5113 by the State Department of Education.

5. A county board of education may not act in contradiction of State Board of Education policy. Karen Davis v. Doddridge County Board of Education, Docket No. 09-86-004-2 decided November 5, 1986.

For all of the foregoing reasons and according to the record in its entirety, it is determined that grievants have failed to establish misinterpretation of law or misapplication of policy by the State Department of Education and as the Tyler County Board of Education has no authority to amend or reverse the regulations of the State Board of Education this grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or Tyler 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", written over a horizontal line.

NEDRA KOVAL
Hearing Examiner

Dated: 12-29-86