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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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SIMS and GALLINA

v.

DOCKET NO: 39-86-082-2

PRESTON COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a level three decision following an evidentiary hearing. The grievants and the Preston County Board of Education waived, in writing, their right to an evidentiary hearing at level four and requested that a decision be rendered upon the accumulated record.

The grievants, Eleanor Sims and Sylvia Gallina, complain that they were hired by the Preston County Board of Education and were not given employment credit for previous employment while being employed by the State of West Virginia in various jobs. The grievants further allege that in July 1985, and thereafter, at least four individuals have been hired in a job classification similar to the grievants', who received employment credit for previous years of employment by West Virginia University Extension Service and the Board of Regents.

The record reflects that grievant Sims was employed by the Preston County Board of Education on July 1, 1982, in the job classification of Secretary III. She was previously employed by the West Virginia Department of Employment Security from April 1, 1980, to July 1, 1982 (2 years and 3 months), and by the West Virginia Department of Health at Hopemont Hospital from December 29, 1965, to August 20, 1979 (14 years, 7 months, 20 days). Grievant Sims was given no credit towards "years of employment" for pay purposes for any of her previous work experience.¹

Grievant Gallina was employed by the Preston County Board of Education on January 29, 1974. Her present job classification is within the multi-classification of Secretary II/Cafeteria Manager. Prior to her employment with the Preston County Board of Education, she had accumulated 4.067 years of work experience with the West Virginia Department of Motor Vehicles, West Virginia Department of

¹ WV Code §18A-4-8 provides, inter alia, that:

"Years of employment" means the number of years which an employee classified as service personnel has been employed by a board of education in any position prior to or subsequent to the effective date of this section (July 1, 1974) and including service in the armed forces of the United States if the employee were employed at the time of his induction. For the purpose of section eight-a [§18A-4-8] of this article, years of employment shall be limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article.

(Emphasis added)

NOTE: When a numerical value is assigned to the "years of employment," it subsequently is applied to the minimum monthly salaries scale contained in WV Code §18A-4-8a which in turn translates into a higher salary as the assigned number of years increases.

Welfare and Planning and Development. Grievant Gallina was given no credit towards "years of employment" for her work experience.²

During the period from July 1, 1985, to September 30, 1985, at least four individuals were hired in the job classification of Secretary, namely, Barbara Miller, Dorothy Reeves, Laura White, and Karen Davis. They were given "years of employment" credit for their work experience with West Virginia University, West Virginia Extension Service, and Glenville State College.³

By letter dated January 2, 1985, and signed by Elmer L. Pritt, Superintendent, the grievants were informed that the Preston County Board of Education denied their grievance at level three.⁴ The basis for the Preston County Board of Education's decision was set forth in the second paragraph of that letter which provided:

The Board of Education of Preston County does not feel that it is within its authority or ability to obligate the State of West Virginia for funds which would be required if your grievance was affirmed.⁵

²See footnote #1, supra.

³Barbara Miller received 12 years credit for her employment with West Virginia University; Dorothy Reeves received five years credit for her employment with West Virginia University; Laura White received one year of credit for her employment with the West Virginia Extension Service; and Karen Davis received three years credit for her employment at Glenville State College.

⁴It is noted that the letter signed by Superintendent Pritt was incorrectly dated January 2, 1985, and should have been dated January 2, 1986. (Emphasis added)

⁵The letter is addressed only to grievant Eleanor Sims and contains no findings of fact as required by WV Code §18-29-6. Even though no similar letter is contained in the record addressed to grievant Gallina, it is assumed that her grievance was denied for the same reason, inasmuch, as her grievance was based upon the same reasons and sought the same relief.

At the level two and three hearings, Superintendent Pritt explained that he had approved the years of employment credit given to the newly hired individuals and based his approval upon an opinion issued by the State Superintendent of Schools dated march 29, 1985.

In his opinion of March 29, 1985, the State Superintendent of Schools, while apparently approving "years of employment" credit for pay purposes for previous work as a Nutrition Aide with the West Virginia university Extension Service, was careful to point out that this approval was based upon WV Code §18-4-32, which permitted county boards of education to cooperate with the West Virginia University Extension Service.⁶

The Preston County Board of Education via its Superintendent has extended, to all the service personnel in Preston County, credit for years of employment with the Board of Regents.

The grievants argue that any distinction between their experience/years of employment for the State of West Virginia and those individuals given credit for years of employment for the Board of Regents is arbitrary and violates WV Code §18A-4-5b by not being uniform.

WV Code §18A-4-5b in pertinent part provides:

The county board of education may establish salary schedules which shall be in excess of the state minimums fixed by this article. . .

These county schedules shall be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation

⁶There was no indication by the State Superintendent of Schools that years of employment credit should be extended to all Board of Regents employees.

of equipment or other requirements. Further, uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county . . .

The record is not clear but it would appear from the response by the Preston County Board of Education, supra, that it has not established a salary schedule in excess of the state minimum but has only recommended approval of "years of experience" which in turn applies to the state minimum salary schedule as established by WV Code §18A-4-8a. Furthermore, WV Code §18A-4-8 in pertinent part provides:

The county boards of education shall review each service personnel employee job classification annually and shall reclassify all service employees as required by such job classifications. The state superintendent of schools is hereby authorized to withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by such county boards. Further, he shall order county boards to correct immediately an improper classification matter and with the assistance of the attorney general shall take any legal action necessary against any county board to enforce such order.

It is, therefore, clear that the State Superintendent of Schools has the authority to determine if credit is to be given for years of employment as defined by WV Code §18A-4-8 and which is to be applicable to the minimum salary scale established by WV Code §18A-4-8a. Similarly, it is clear that the Preston County Board of Education has exceeded its authority by giving years of employment credit to employees who were not employed by a "board of education."

Since the Preston County Board of Education exceeded its authority by recommending credit for years of employment to Barbara Miller, Dorothy Reeves, and Karen Davis it would be improper to

require the Preston County Board of Education to extend this impropriety to the grievants.⁷ Pursuant to WV Code §18A-4-8, supra, a copy of this decision will be sent to the State Superintendent of Schools for his action.

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

FINDINGS OF FACT

1. Grievant, Eleanor Sims, was employed by the Preston County Board of Education on July 1, 1982, in the job classification of Secretary III.

2. Grievant Sims had 16 years, 10 months, 20 days prior employment with the State of West Virginia.

3. Grievant Sims was given no credit towards "years of employment" for pay purposes for any of her previous work experience with the State of West Virginia.

4. Grievant, Sylvia Gallina, was employed by the Preston County Board of Education on January 29, 1974; her job classification was Secretary II/Cafeteria Manager.

5. Grievant Gallina had 4.067 years work experience with the State of West Virginia.

6. Grievant Gallina was given no credit towards "years of employment" for her work experience with the State of West Virginia.

⁷Laura White was given credit for one year of service with the West Virginia University Extension Service which credit was authorized by an opinion by the State Superintendent of Schools in March 1985, supra.

7. During the period from July 1, 1985, to September 30, 1985, four individuals were hired in the job classification of Secretary, namely, Barbara Miller, Dorothy Reeves, Karen Davis and Laura White.

8. Barbara Miller, Dorothy Reeves, Karen Davis and Laura White were all previously employed by the Board of Regents.

9. Laura White was the only recently hired secretary who has previous experience with the West Virginia University Extension Service.

10. The Preston County Board of Education has not approved a supplemental/salary schedule in excess of the state minimum in order to compensate persons given credit for years of employment for work experience not covered by the definition contained in WV Code §18A-4-8.

CONCLUSIONS OF LAW

1. Pursuant to WV Code §18A-4-8, county boards of education are without authority to grant credit for years of employment to service personnel not previously employed by a "board of education" without authorizing a salary supplement to compensate employees granted the additional credit.

2. Pursuant to WV Code §18A-4-8, the State Superintendent of Schools is responsible for seeing that county boards of education properly classify service personnel as the same relates to WV Code §18A-4-8a (service personnel minimum monthly salaries).

3. In light of WV Code §18A-4-8, the Preston County Board of Education exceeded its authority by extending credit for years of employment to three of its four recently hired secretaries, namely, Barbara Miller, Dorothy Reeves, and Karen Davis, without first authorizing a salary supplement to compensate employees given credit which

in excess of that allowed by WV Code §18A-4-8.

4. In this case where the Preston County Board of Education has exceeded its authority, it would not be fair and equitable to require it to further exceed its authority by extending to the grievants similar credit for years of employment.

For the foregoing reasons, the grievance is denied.

Either party may appeal this decision to the Circuit Court of Preston County or Kanawha County and such appeal must be filed within thrity (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. 1, 1986