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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

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ALICE TURNER, et al.

v.

DOCKET NO. 12-86-257-3

GRANT COUNTY BOARD OF EDUCATION

DECISION

Grievants are service personnel employed by the Grant County Board of Education. They allege that the board of education's allocation of funding for salary supplements for the 1986-1987 school term is in violation of W. Va. Code, 18A-4-8, 18A-4-5b and 18-29-2 (0), and request that the supplement which they received during the 1985-1986 school term be reinstated.

This grievance was denied by Superintendent David Adkins on August 18, 1986 and the Grant County Board of Education waived consideration to level four on August 20, 1986. Both parties agreed to submit this matter for decision based on the record, supplemented with oral arguments which were conducted on November 17, 1986.

By letter dated April 29, 1986, the State Department of Education approved the Grant County Board of Education's

request to reduce the entire county salary supplement for professional and service personnel effective July 1, 1986, as a result of the nonrenewal of the excess levy. In July, 1986, amendments to the budget resulted in the availability of additional funding of which \$146,657.42 was allocated for salary supplements. Taking into consideration that both professional and service personnel had been granted a \$600.00 across the board salary increase by the legislature, the board adopted the following formula for allocation of that funding designated for salary supplements:

1. No new employees received any portion of the \$146,657.42.

2. If an employee's salary (which included a \$600 increase of state minimum salaries effective July 1, 1986) was equal to or greater than his prior year's salary, then no county allocation was made to that employee.

3. If an employee's salary (which already included the \$600 raise) was not equal to or greater than his prior year's salary, then the employee received a proportionate share (based upon grade/degree and years of experience) of the \$146,657.42. The proportionate share was not allowed to exceed the employee's salary of the prior year.

4. When all employees salaries were equal or greater than their prior year's salary, then all employees would share proportionately (based upon grade/degree and years of experience) with the remaining balance of the \$146,657.42.

The grievants argue this plan results in a salary reduction without their written consent in violation of W. Va. Code, 18A-4-8. The grievants note that there is no comparable provision for professional employees and that legally the board

of education is required to cover 100 percent of the service employees' supplement prior to considering supplements for professional employees.

Second, the grievants argue that the amount of funding allocated to salary supplements is sufficient to compensate all service employees at 100 percent of their 1985-1986 supplement, therefore the expiration of the excess levy did not force the salary reduction which has been made in violation of W. Va. Code, 18A-4-5b.

Third, grievants argue that by awarding the lion's share of available funds to professional employees, it has engaged in favoritism as defined by W. Va. Code, 18-29-2 (0).

The board argues that it properly eliminated all salary supplements in April and established a new county supplement schedule in July. The new schedule was based on the board's priority of meeting the 1985-1986 salary levels. While service and professional personnel were not given an equal supplement, the board argues that the minimum salary schedules established by statute also do not treat all personnel equally and that professional personnel have always received a greater share of the funding allocated to employees' salary. Finally, the board asserts that supplements were awarded fairly in that all similarly situated personnel were treated uniformly.

In addition to the foregoing it is appropriate to make the following findings of fact and conclusions of law.

Findings of Fact

1. Grievants are employed by the Grant County Board of Education as service personnel.

2. In April, 1986, the W. Va. Department of Education approved the board of education's request to entirely reduce the county salary supplement due to the nonrenewal of the excess levy.

3. In July, 1986, the board of education allocated \$146,657.42 for employee salary supplements.

4. The board adopted a method of allocation designed to maintain all employees' salaries at the 1985-1986 level.

5. All similarly situated employees were treated uniformly.

Conclusions of Law

1. A board of education shall not reduce local funds allocated for supplementing state minimum salaries in effect on January 1, 1984 unless forced to do so by defeat of a special levy, loss in assessed values, or events over which it has no control and for which it has received approval from the state board prior to making the reduction. W. Va. Code, 18A-4-5b.

2. When a school board is forced to choose between eliminating a local pay supplement for employees or curtailing educational programs for children, it may cancel the employees' supplement. Newcome et al. v. the Board of Education of Tucker County, 164 W. Va. 1, 260 S.E. 2d 462 (1979).

3. The county salary supplement schedule adopted by the board of education in July, 1986, provides for compensation which is uniform throughout the county for all similarly situated personnel in compliance with W. Va. Code, 18A-4-5b.

4. The grievants have failed to show the board has acted with favoritism in establishing a salary supplement for the 1986-1987 school term.

Accordingly, it is ORDERED that this grievance is DENIED.

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

DATE December 31, 1986

Sue Keller

SUE KELLER

Hearing Examiner