



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

CLAYBURN T. WALKER

v.

Docket No. 20-86-157-1

KANAWHA COUNTY BOARD OF EDUCATION
and/or
WEST VIRGINIA DEPARTMENT OF EDUCATION

DECISION

Grievant, Clayburn T. Walker, commenced teaching at the West Virginia Rehabilitation Center at Institute in October, 1978 on a temporary permit.¹ He received a Board of Regents degree from West Virginia State College in May, 1980 and was employed by the Kanawha County Board of Education in July, 1984. At that time he had a Regents Bachelor of Arts degree and a vocational certificate and was required to complete six hours of additional courses within a five year period to renew the certificate. He presently teaches electronics at the Ben Franklin Career and Technical Center in Dunbar.

In 1985 the Legislature amended Code, 18A-4-4 enabling certain vocational and other non-professional teachers

1

This permit is issued on the basis of a high school diploma and four years of verified experience in the field in which the holder thereof is to teach. Grievant was required to complete twenty hours of prescribed courses to obtain the vocational certificate.

who were teaching on a vocational certificate to qualify for advanced salary classification. In August, 1985 grievant applied for advancement to the MA+30 salary classification and was orally denied by the West Virginia Department of Education and the Kanawha County Board of Education.

On January 23, 1986 grievant wrote John Hill, coordinator of vocational, technical and adult education, who responded on February 4, 1986 that grievant was not in compliance with State Board of Education Policy 5201.1; that;

"In order for you to be eligible for the advanced salary classification, Master's Plus 30 based on completion of a Bachelor's Degree, you would have to complete the (15) semester hours of approved credit above the requirement of the (2) semester hours required for the issuance of the Vocational Certificate for a total minimum of (35) semester hours of approved credit for the Bachelor's Plus 15 salary level (level 6 on the State Minimum Salary Schedule). My records reflect a total of (26) semester hours of approved credit completed by you.

The State Code 18A-4-4, as amended by the 1985 Legislature, allows persons who hold vocational certificates to advance to salary classifications above the Bachelor's Plus 15 level. Any person who has earned or earns a Bachelor's Degree and is eligible for or receiving a salary at the Bachelor's Plus 15 level could file application for the Master's Plus 30 salary level as of July 1, 1985."

He filed a grievance with the principal of the Ben Franklin Center and was advised that Kanawha County Schools had no authority to grant the relief sought; that the grievance

should be addressed to the West Virginia Department of Education.

Grievant appealed to level four and the Department of Education was added as a party to the grievance. The Department of Education filed a motion to dismiss it as a party to the grievance on the grounds that review of decisions for issuance or non-issuance of vocational certificates and advanced salary classification was beyond the authority of the Education Employees Grievance Board to adjudicate; that a grievance against the Department of Education may not be prosecuted by an employee of a county board of education on the matter of pay classification or issuance of a professional certificate; that the process involved in grievant's case is the exercise of administrative judgement as to whether grievant has met the requirements of state law and state board of education policy.²

On June 19, 1985, prior to the effective date of the amendment to Code, 18A-4-4, Clarence E. Burdette, assistant state superintendent, bureau of vocational, technical and adult education, issued a memorandum to county superintendents and others concerning Policy 5210.1, the policy of the

1

To this latter extent the Kanawha County Board of Education is a nominal party to this grievance in that the Department of Education has authority to issue certification upon which salary adjustments are made; the county board merely pays on that basis. Counsel for the county school board does, however, agree with the interpretation of Code, 18A-4-4 made by the Department of Education.

West Virginia Department of Education regarding advanced salary classification for vocational certificate holders.³

Policy 5201.1, developed by the Department of Education, outlined a program to identify the approved semester hours that could be utilized toward advanced salary classification and application procedures. The position of the Department of Education is that the class of teachers to be reached by the amendment is the AB+15 class and that grievant is not in that group; that he does not qualify for an AB+15 and therefore does not qualify for a classification beyond

3

The 1985 amendment added the following pertinent language: "On and after the first day of July... vocational...teachers who do not hold professional certificates, but who are paid a salary equivalent to the amount prescribed for 'A.B.+15' training classification in the state minimum salary schedule for teachers under...18A-4-2...shall, upon application therefore, receive advanced salary classification and be entitled to increased compensation on and after such date in respect to and based upon additional semester hours, approved by the state board of education and completed either prior to or subsequent to such date...

The advanced salary classification shall be as follows:

(3) Those who have earned forty-five such additional semester hours shall receive an amount equal to that prescribed for the 'M.A.+30" training classification under section two of the article. Any such teacher who has earned or earns a bachelor's degree prior or subsequent to the effective date aforesaid shall be entitled to receive the amount prescribed for the 'M.A.+30" training classification on and after... (July 1, 1985)."

A.B.+15.⁴ Grievant contends that Code, 18A-4-4 is divided into two distinct parts: the first part applies to vocational teachers who are paid a salary prescribed for A.B.+15 training classification and the second part applies to vocational teachers with a bachelor degree.⁵ He alleges that he had 160 or more college hours for his bachelor degree, the requirement for which was 128 hours; that under the amendment all he was required to do was submit his bachelor degree and with the excess hours he had he was automatically entitled to the M.A.+30 classification.⁶

4

On cross-examination grievant admitted that he did not have the A.B.+15 classification and did not complete more than six course hours of the required fifteen required hours contained in the Policy; that since obtaining his bachelor degree he did not get an additional thirty credit hours.

5

The Department of Education contends that "any such teacher" in the fourth paragraph of the amendment refers to the A.B.+15 teachers in the second paragraph and hence does not create a second classification of vocational teachers with a bachelor degree.

6

At the level four hearing, grievant was permitted, over objection, to testify that another employee at Ben Franklin, John Williams, has an A.B. classification and no degree but was paid on an A.B.+15 classification and states that the interpretation by the Department of Education discriminates against vocational teachers who are not in the class of A.B.+15 teachers. However, a law which operates uniformly upon all persons in the class is generally not considered discriminatory (footnote cont.)

Turning to the motion to dismiss it is acknowledged that the Department of Education has sole authority to issue vocational certificates and make decisions for advanced salary classification and that this process involves the exercise of administrative judgement as to whether an applicant has met the requirements of state law and state board of education policy. However, the general rule that the interpretation and exercise of judgment of the Department of Education is entitled to great weight unless clearly erroneous is applicable herein because grievant specifically alleges an erroneous interpretation and application of Code, 18A-4-4. Smith v. Bd. of Educ. of Logan Co., 341 S.E.2d 685 (W.Va. 1985). For this and other reasons apparent from the evidence in this case the motion to dismiss for lack of jurisdiction of the Education Employees Grievance Board is denied.⁷

(footnote cont.)

as special legislation. State ex rel. Appalachian Power Co. v. Gainer, 149 W.Va. 740, 143 S.E. 2d 351 (1965). Cf. Bailey v. Truby, 321 S.E. 2d 302 (W.Va. 1984).

7

It is further acknowledged that grievant is not an employee of the Department of Education but the evidence is that the Kanawha County Board of Education relied upon the determination made by the Department that grievant did not qualify under Code, 18A-4-4 in refusing the advanced salary classification. Accordingly, to deny grievant the right to challenge the underlying ruling in this case would be to put grievant in a "Catch 22" situation and frustrate the intent of Code, 18-29-1, et seq.

In addition to the foregoing factual recitation the following specific findings of fact are appropriate.

1. Grievant is employed by the Kanawha County Board of Education as a nonprofessional certificated teacher at Ben Franklin Career and Technical Center.

2. In May, 1980 grievant received a Board of Regents degree from West Virginia State College and had accumulated approximately 160 college credit hours.

3. In August, 1985 grievant applied for advancement to the M.A.+30 salary classification on the basis of a 1985 amendment to Code, 18A-4-4.

4. The application was denied on the basis that the amendment applied to vocational teachers who were paid a salary equivalent to the amount prescribed for A.B.+15 training classification and that grievant was not so classified.

CONCLUSIONS OF LAW

1. 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.

2. Generally, interpretations of statutes such as Code, 18A-4-4 by the State Department of Education are entitled to great weight unless clearly erroneous.

3. Grievant has failed to demonstrate that the interpretation of Code, 18A-4-4 by the State Department of Education is erroneous as a matter of law.

4. Grievant has failed to demonstrate that the application of Code, 18A-4-4 is discriminatory or that he is among the class of teachers contemplated by the amendment to Code, 18A-4-4.

For the foregoing reasons the grievance is denied.

Either party may appeal this decision to the Circuit Court of Kanawha 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.



LEO CATSONIS
Hearing Examiner

Dated: July 7, 1986