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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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JANE WEIMER-GODWIN

vs.

DOCKET NO. 49-86-058

UPSHUR COUNTY BOARD OF EDUCATION

DECISION

Grievant, Jane Weimer-Godwin, has been employed by the Upshur County Board of Education since 1978 and filled the position of itinerate elementary general music teacher since 1979.

The grievant alleges a violation of W.Va. Code, 18A-4-5a in that she is required to perform duties in addition to regular classroom instruction which are similar to those performed by instrumental music teachers, who receive an additional salary supplement. The grievant states that she is entitled to similar compensation for similar duties as set forth in W.Va. Code, 18A-4-5a.

A hearing was held in this matter at level two before Assistant Superintendent of Upshur County Schools, Richard G. Hoover.¹ The decision at this level found that while all music teachers engage in a number of similar activities

¹ The grievant alleges a violation of her substantive due process in that an impartial grievance evaluator had not been appointed to hear this matter. W.Va. Code, 18-29-6 specifically states the administrator or his or her designee shall conduct a hearing at level two in an impartial manner, ensuring that procedural and substantive due process is accorded both parties.

(Footnote continued)

the duties of instrumental music teachers are dissimilar to the general music teacher and merit additional pay. The evaluator further concluded the general music teachers participation in sanctioned performances after the regular school day were extra-curricular activities and that these teachers should be paid \$75.00 per performance.

The grievant has appealed this decision to level four where a decision is being rendered on the record supplemented with written and oral arguments.

FINDINGS OF FACT

1. Jane Weimer-Godwin is employed by the Upshur County Board of Education as an itinerant elementary general music teacher, a ten month per year position.

2. The grievant is assigned to two schools where she teaches general music to grades one through five and choral music to grades four and five.

3. In addition to these duties, the grievant has voluntarily initiated a third grade pre-chorus at the primary school.

4. The fourth and fifth grade choral groups engage in several scheduled day and evening performances throughout the school year while the third grade group performs occasionally on no set schedule.

(footnote continued)

Superintendent Westfall's decision to appoint the Assistant Superintendent of Schools as grievance evaluator was proper as this procedure does not require that an evaluator be unaffiliated with the school system. On the contrary, levels one through three of this grievance procedure are processed by individuals associated with the institution. Therefore, grievants claim of a denial of substantive due process must be denied.

5. Testimony of both Superintendent Westfall (T.pp 194,210) and the grievant (T.pp. 124,136) indicates that choral training is a part of the general music program and that its instruction is not discretionary with the teacher.

6. Instrumental music teachers are twelve month employees, teach a specialized area of music, prepare and direct students in day and evening performances throughout the year, transport and store materials and equipment and are responsible for the maintenance and repair of instruments.

7. The grievant believes that she is entitled to the same salary supplement received by the instrumental music teachers based on her duties outside regular classroom instruction relating to her function of choral director and the transportation and storage of materials and equipment.

8. The grievant does not allege that her duties or her salary differ from any other general music teacher in Upshur County.

While all counties are required to pay teachers the minimum salaries set forth in W.Va. Code, 18A-4-2 they are permitted to establish salaries in excess of the minimum so long as the supplement is applied uniformly throughout the county. Higher salaries may be paid teachers who met certain criteria, including teachers assigned duties in addition to regular instructional duties and which noninstructional duties must be performed outside the regular school day. The general guidelines are that compensation must be uniform for all persons performing like assignments and duties. W.Va. Code, 18A-4-5a.

The grievant asserts that she is performing like assignments and duties of the instrumental teachers and asks that she receive the same supplement given to those teachers (\$100 per month) for the current school year, retroactive pay of \$75.00

per month for the 1979-80 through 1984-1985 school years accruing interest at the legal rate, and attorney's fees incurred at level four.²

CONCLUSIONS OF LAW

1. County boards of education may fix higher salaries or provide additional income to teachers who perform duties in addition to their regular instructional duties. Uniformity of compensation must apply to all persons performing like assignments or duties. W.Va. Code, 18A-4-5a.

2. While the grievant engages in some activities required of instrumental teachers, their teaching assignments differ regarding subject matter taught, employment period and noninstructional responsibilities.

3. The grievant does not allege any salary discrepancies with other general music teachers who do perform like assignments and duties.

Therefore, the grievant has failed to show a lack of uniformity in compensation of individuals performing like assignments and duties and her claim that she is entitled to a salary supplement equal to that of instrumental teachers must be denied.

² The grievant waives actual collection of these fees but submits this request for precedential value which the grievant believes will cause the administrators to act in a more conscientious manner in the future regarding the due process rights of employees and will also encourage the resolution of such disputes at a lower level.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Upshur 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 Keen

HEARING EXAMINER

Dated: April 14, 1986