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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
ARCH A. MOORE, JR.
Governor

**NETTIE BRIGHT and
LELA SPONAUGLE**

v.

DOCKET NO. 47-86-097

TUCKER COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants, Nettie Bright and Lela Sponaugle, are employed by the Tucker County Board of Education as elementary teachers, positions that they have held since 1978. They initiated grievance proceedings in January, 1985, however, consideration by the State Superintendent of Schools was denied based upon the implementation of a new grievance procedure set forth in W.Va. Code, Chapter 18, Article 29. The matter was appealed to the Circuit Court of Kanawha County whereupon by Order entered on January 29, 1986 the Honorable Patrick Casey remanded the matter to the Education Employees Grievance Board; a level four hearing was conducted on June 30, 1987.¹

¹This matter was scheduled for hearing numerous times but was continued by the parties who were attempting to negotiate a settlement.

The grievants argue that they are entitled to experience credit for a nine year period during which they were employed as teachers for the Head Start program. Although not certified teachers at the time, the grievants were required to enter into a higher education program sponsored by Head Start through Marshall University and received baccalureate degrees in 1978. While employed as teachers by Head Start they performed all of the duties and fulfilled all requirements of classroom teachers.²

In support of their argument the grievants cite W.Va. Code, 18A-4-1 which provides that teachers' salaries are to be based on educational background and years of experience which is defined as the number of years employed in the profession, including active work in educational positions other than the public schools. While the Head Start program was not a part of the Tucker County school system they were employed for instructional purposes in a public school thereby meeting the statutory definition of "teacher" (W.Va. Code, 18-1-1 (g)) and earning years of experience under Code, 18A-4-1.

²The grievants have submitted documentation showing daily schedules, lesson plans, etc. in support of their contention that they functioned as classroom teachers.

Grievants also cite interpretations of the State Superintendent of Schools dated August 30, 1974, September 19, 1978, August 1, 1979 and February 6, 1981 which indicate that employment through the Head Start programs is to be considered as years of experience for public school pay increment purposes. Also cited was Cobb v. Webster County Board of Education, Docket No. 51-86-211-2 which determined that an individual was entitled to credit for the time he engaged in teaching while in the U.S. Navy, even though he did not possess a Bachelor's degree at the time.³

The grievants provided evidence that other teachers who also worked under the Head Start program and who are now employed as teachers by other county boards of education have been given credit for those years of experience. They argue that the Tucker County board's failure to credit them for the experience results in inequity, a lack of uniformity and is in violation of the equal protection clause of the W.Va. Constitution.

³In the case of Cobb, consideration was given to factors that the grievant was presently employed as a vocational teacher of carpentry and woodworking, the same classes he taught while in the Navy, that the classes had been taught in a classroom setting and that lesson plans were required as they are for public school teachers.

The grievants request that they be granted the nine years of experience earned while employed through the Head Start program, that they be compensated for the back wages lost due to a denial of the credit since they began employment with the Tucker County Board of Education plus ten percent interest in accordance with W.Va. Code, 56-6-31 and credit for unused sick leave earned while employed at the Head Start program.

The board of education advances three arguments in support of its position: (1) The grievants do not meet the definition of teacher set forth in W.Va. Code, 18-1-1 as they were not employed by the Tucker County Board of Education, did not possess baccalaureate degrees and were not employed for instructional purposes in a public school.⁴ (2) W.Va. Code, 18A-3-1 requires that any professional educator employed within the public school system shall hold a valid teaching certificate licensing them to teach in the public schools. (3) W.Va. Code, 18A-4-1 defines years of experience as the number of years the teacher has been employed in the teaching profession.

⁴Head Start was a federally-funded educational program which would be considered public school.

The board further notes that if a person who taught at church camp during the summer later obtained a teaching certificate and included the camp experience as additional years of experience, it would have to hire a private investigator to determine whether or not the additional years of experience could be claimed by the job applicant prior to his being hired.

In addition to the foregoing the following specific findings of fact and conclusions of law are appropriate.

Findings of Fact

1. The grievants who were initially hired by the Head Start program as aides were reassigned as teachers in that program in 1969 and held that position until 1978.

2. Neither grievant was a certified teacher in 1969 but earned a degree and certification in 1978 through a cooperative program established by Head Start and Marshall University.

3. Jon Crowell, Head Start Director from 1967 through 1972 testified that while employed as teachers in the Head Start program the grievants were assigned the full range of responsibilities of a degreed teacher.

4. Similarly employed teachers have been given credit for the Head Start experience in other counties throughout the state.

Conclusions of Law

1. The State Superintendent of Schools has determined that employment as a teacher in the Head Start program is to be credited as years of experience for pay increment purposes. Interpretations of school law made by the State Superintendent are considered as persuasive authority and will be applied unless clearly erroneous. Smith v. Logan County Board of Education, 342 S.E. 2d 685 (W.Va. 1985); Raymond Dunleavy v. Kanawha County Board of Education, Docket No. 20-87-040-1; Lawrence Martin v. Mason County Board of Education, Docket No. 26-87-156-3.

2. The board has failed to show that the interpretation of the state superintendent is erroneous or to otherwise establish a legal basis for the denial of credit for prior employment with the Head Start program.

Accordingly, the grievance is **GRANTED** and the board of education is Ordered to credit the grievants for the years of experience earned with the Head Start program and to compensate them wages and benefits lost due to the denial of the credit. The grievance is **DENIED** as to interest as neither W.Va. Code, 56-6-31 nor Code, 18-29-1 et seq. specifically provide for an award of interest in grievance proceedings.

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

DATED September 18, 1987

Sue Keller

SUE KELLER
Hearing Examiner