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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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DORIS CAMERON, et al.

Docket No. 15-86-149-2

Ruth Cooper	(15-86-142-2)
Louise Enrietti	(15-86-153-2)
Doris Ficca	(15-86-147-2)
Deborah Manypenny	(15-86-140-2)
Maxine Mountjoy	(15-86-141-2)
Marie Rumora	(15-86-154-2)
Lois Will	(15-86-148-2)

v.

HANCOCK COUNTY BOARD OF EDUCATION

DECISION

Grievants Doris Cameron, Ruth Cooper, Louise Enrietti, Doris Ficca, Deborah Manypenny, Maxine Mountjoy, Marie Rumora and Lois Will are employed by the Hancock County Board of Education as secretaries assigned to various county schools. In 1979 the grievants were all classified as "senior secretary" (Secretary II).

In September, 1979, the board of education reclassified four senior secretaries and granted each a \$50.00 per month salary increase. That action was ultimately protested by over twenty other school secretaries. Several secretaries in the county filed a grievance at that time thereby giving

the board of education notice that the salary supplement may not have been applied uniformly to similarly situated personnel and that a review was warranted. Those employees pursued their grievance in the county through level four of the then existing State Board of Education grievance policy, said grievance denied at all four levels; however, they did not appeal at that time to the State Superintendent nor to the Hancock County Circuit Court. Those secretaries refiled grievances in 1985 in accordance with the provisions of W.Va. Code, 18-29-1 et seq. and prevailed in their request for back wages when this Board ruled, "All secretaries performing like duties and responsibilities in 1979 were entitled to the salary increase at that time." Evelyn Dello, et al. v. Hancock County Board of Education, Docket No. 15-86-100-2, decided May 22, 1986.

In 1979, or thereabout, the grievants herein along with other secretaries were a party to a mandamus action filed with the Hancock County Circuit Court, said request denied and suit dismissed by that Court because the petitioners had failed to exhaust other existing administrative remedies. Later these grievants filed a grievance directly to the State Superintendent of Schools. Seven other secretaries had simultaneously appealed to the State Superintendent after completing grievance procedures at the local levels. All of the

petitioners alleged violation of classification and uniformity laws and requested that they be compensated the same as the four secretaries who had been given the pay raise. In February, 1981 the State Superintendent ruled against all of the named secretaries, including the grievants herein, especially noting that these grievants' appeals were "premature" because they were not processed via the county's grievance procedure.

The State Superintendent's opinion stated:

This office will not involve itself with a discretionary act of a county board of education unless such act clearly appears to be beyond the board's authority.

...[T]he State Superintendent finds and determines that respondents have acted within their statutory (and constitutional authority) in compensating the petitioners. Therefore, this appeal must be dismissed.

Some of the petitioners/secretaries appealed that decision to the Hancock County Circuit Court. The grievants herein believed they were a party to that suit but the record is not clear as to whether they were or not. The Memorandum of Opinion issued in Betty French, et al. v. Hancock County Board of Education, Civil Action No. 81-P-58, and dated July 10, 1985, states "the Board of Education violated the uniformity requirements of the law; and the Petitioners were entitled to receive the same salary as the four listed in said minutes. Consequently, the salaries of the Petitioners should be adjusted accordingly effective the 1979-80 school year." Thus, the

State Superintendent's earlier decision was overturned and the entitlement of all county secretaries and the grievants herein was clearly established.

On January 1, 1986 the Hancock County Board of Education granted all secretaries the controversial \$50.00 per month salary increase. When grievants herein were not awarded the back pay to which they were entitled and which they believed they would receive, they filed this grievance, said grievance denied at levels one and two and waived for consideration by the respondent board.¹

The basic issue of this and of all the "secretary" cases is identical and these grievants claim entitlement to the \$50.00 salary increase in accordance with the uniformity requirements of W.Va. Code, 18A-4-5b. Several of the grievants also claim the county has not provided proper amounts of equity pay since 1984. For relief they seek appropriate compensation retroactive to the 1979-80 school term through January, 1986 when Hancock County granted all secretaries

¹ When the grievants' individual cases were consolidated in September, 1986 for the purpose of rendering a level four decision based upon the record in accordance with the mutual consent of the parties, counsel for the board indicated he wished to submit a brief but no such materials have been filed to date.

the \$50.00 per month increase.

The grievants herein have proved that they were entitled to the supplement as a matter of law. All that remains to be considered is the timeliness issue raised by the respondent during the various level two hearings of each of these grievants. It is true that none of these grievants began actions to perfect their grievances until December, 1985.

That factor must be weighed against the greater responsibility of the board to conduct its affairs in a manner consistent with the school personnel laws of this State. Grievants in the Dello case, and other secretaries had timely filed grievances in 1979 thereby giving the board due notice that the salary supplement issue was in question, therefore subsequent action by affected parties after resolution of the lengthy civil litigation was not an undue surprise.

Moreover, it is clear from scrutiny of the voluminous transcript materials in these cases that grievants were uncertain as to their status in the French case. Even so, grievants believed the court case to be a class action and that all secretaries would receive the backpay to which they were entitled.

While these grievants failed to follow the proper grievance procedures in 1979, to have done so would have been pointless and "[t]he doctrine of exhaustion of administrative remedies

is inapplicable where resort to available procedures would be an exercise in futility."Syl. pt. 1, State ex rel. Bd. of Education v. Casey, 349 S.E. 2d 436 (W.Va. 1986).

The Order in the French action was entered Sept. 28, 1985 and specifically named and granted back pay to the named petitioners who had previously completed grievance procedures and exhausted their administrative remedies. Nothing in the language of that decision or the earlier decision of the State Superintendent precluded grievants herein from perfecting their grievance claim and properly filing grievances pursuant to W.Va. Code, 18-29-1 et seq. Section four-a, one, provides that a grievance may be filed "...within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance...".

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

FINDINGS OF FACT

1. Grievants are all school secretaries who have been employed by the Hancock County Board of Education since 1979 or before.
2. In September, 1979 the board granted \$50.00 per month salary increases to four school secretaries in the county.

3. In protest of the board's action in 1979, several secretaries timely but unsuccessfully filed and pursued grievances through level four of the then existing grievance policy but did not appeal those adverse decisions to the State Superintendent or to the circuit court.

4. The grievants herein appealed the board's action directly to the State Superintendent and were joined in that appeal with yet some other secretaries who had properly exhausted their administrative remedies. In 1981 the State Superintendent ruled adversely on the merits of this dispute as it affected all of the petitioners. Nothing in the language of his decision precluded grievants herein from perfecting their grievance claims but to do so would have been pointless and futile.

5. The grievants herein joined a civil action styled Betty French, et al. v. Hancock County Board of Education, Civil Action No. 81-P-58. They believed they remained a party to that action throughout the litigation which ended in October 1985 but were uncertain about this matter due to the passage of time, communication difficulties and other problems including what appeared to be a change in the Petitioner's counsel. No documents were produced showing that these grievants were at all times a part to the French action.

6. The Memorandum of Opinion issued in Betty French, et al. v. Hancock County Board of Education, supra, stated that the board violated uniformity requirements of law and all secretaries were entitled to the salary increase. The Order in that action was entered September 28, 1985 and specifically named and granted back pay to the named petitioners who had previously completed grievance procedures and exhausted their administrative remedies. Nothing in the language of that decision precluded grievants herein from perfecting their grievance claim.

7. Grievants herein were isolated from one another and the petitioners named in the French case and it was difficult to maintain any level of information regarding the pending litigation. These grievants in any event believed the French case to be a class action from which all county secretaries could eventually benefit.

8. After the media announced the French decision, these grievant's attempts to secure information from the board of education regarding the payment of back wages were futile.

9. In December, 1985 the board of education revised the secretarial salary schedule to reflect the \$50.00 salary increase for all secretaries, effective January 1, 1986.

10. These grievants attempted to file a grievance pursuant to W.Va. Code, 18-29-1, et seq. in December, 1985, for back wages but could not complete that process as the new laws pertaining to the filing of grievances were not thoroughly understood by either the grievants or school officials.

11. These grievants were entitled to the salary increase in 1979 and pursued some action to assert their rights but did not perfect their grievance claims until 1986 for just cause shown and excusable neglect.

CONCLUSIONS OF LAW

1. A county board of education may establish salary schedules in excess of the state minimum to be uniform throughout the county with regard to responsibilities, duties, experience, etc. W.Va. Code, 18A-4-5b; Betty French, et al. v. Hancock County Board of Education, Civil Action No. 81-P-58.

2. All secretaries performing like duties and responsibilities in 1979 were entitled to the salary increase at that time. Betty French, et al. v. Hancock County Board of Education; supra.; Evelyn Dello, et al. v. Hancock County Board of Education, Docket No. 15-86-100-2.

3. The board of education is estopped to assert the untimeliness of a claim for benefits arbitrarily denied to certain employees and awarded to others. Robert L. Turner v. McDowell County Board of Education, Docket No. 33-86-049.

4. School laws are to be liberally construed in favor of school personnel.

For all of the foregoing reasons the grievance is GRANTED. The grievants are entitled to the supplement granted in 1979 and retroactive pay as a matter of law. Matters relating to the equity pay claim of grievants Enrietti, Manypenny and Rumora are hereby rendered moot since they shall receive the full amount of \$50.00 per month on the grievance claim relating to the salary supplement issue.

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



NEDRA KOVAL
Hearing Examiner

Dated: 2/10/87