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MARY FREELAND, et al.

Docket No. 15-86-146-2

Gloria Davis (15-86-155-2)
Laurie Gaston (15-86-143-2)
Mary Jones (15-86-122-2)
Mary Murray (15-86-156-2)
Mary Taflan (15-86-199-2)

v.

HANCOCK COUNTY BOARD OF EDUCATION

DECISION

Grievants are employed by the Hancock County Board of Education as secretaries assigned to various county schools. In 1979 grievants Mary Freeland, Mary Jones and Mary Murphy were all classified as "Senior Secretary" (Secretary II). Grievants Gloria Davis,, Laurie Gaston and Mary Taflan began employment with the board in 1980 and were then also classified "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. Initially, in 1979, approximately seventeen secretaries initiated grievances of some nature, but the grievants herein were part of no

prior actions. At various times in early 1986, fifteen separate level four appeals related to the matter were filed with this Board pursuant to W.Va. Code, 18-29-1 et seq.

The grievances herein were denied at levels one and two and waived for consideration by the school board at level three; the parties further waived an evidentiary hearing at level four. On September 19, 1986 these grievances were consolidated for the purpose of rendering a decision upon the record as agreed by the parties.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

¹ These cases were assigned to the undersigned hearing examiner in July, 1986. In August, 1986, this examiner requested that the parties submit proposed findings. Both counsel for grievants, in March, 1986 and counsel for the board, by letter of September 2, 1986, indicated a desire and intention to submit proposed findings and/or a brief, but neither have forwarded those materials to date.

compensation retroactive to the 1979-80 (or 1980-81 in the case of three grievants) school term through January, 1986, when Hancock County granted all secretaries the \$50.00 per month increase. One grievant also requested interest on the back wages.

There is no question that grievant's entitlement to the \$50.00 salary increase vested in September, 1979. The Memorandum of Opinion issued in Betty French et al. v. Hancock County Board of Education, Civil Action No. 81-P-58, clearly 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." This Opinion, issued July 10, 1985 overturned the decision of the State Superintendent of Schools issued February 24, 1981 on the same matter. Moreover, this Board has previously 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.

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 filed a grievance 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, supra, and other secretaries had timely filed grievances in 1979 thereby giving the board notice that the salary supplement issue was in question, therefore subsequent action by affected employees after resolution of the civil litigation was not an undue surprise. See. Turner v. McDowell County Board of Education, Docket No. 33-86-049.

Moreover, it is clear from scrutiny of the voluminous transcript materials in these cases that the grievants herein were not aware of the initial salary supplements granted in 1979. Some did not learn of it until the civil litigation ended in 1985 and the story was covered in the media. Even then, grievants believed the court case to be a class action and that all secretaries would receive the backpay to which they were entitled.

Additionally, decisions rendered by both the State Superintendent and the Hancock County Circuit Court in 1981 and 1985 contain no language which precludes grievants from 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..."

Finally, of great interest is the level two decision of grievant Jones filed January 30, 1986. The findings of fact, number five, states:

A court ruling which stated that those individuals that had not received an increase in pay were equally entitled as those that did receive the pay increase in 1979 with back wages to that particular date.

In denying grievant Jones the back pay the hearing examiner states:

The allegations that the board of education did not follow the uniformity in payments with all employees and all allegations associated with the pay raise would specifically relate to the authority of the board of education to establish those raises at their discretion.

The conclusion clearly contradicts the finding: the uniformity requirement is non-discretionary. 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 employed by the Hancock County Board of Education. Grievants Freeland, Jones and Murphy had been employed prior to 1979 while Davis, Gaston and Taflan began employment with the 1980-81 school term.

2. In September, 1979 the board granted \$50.00 per month salary increases to four school secretaries in the county.

3. These grievants were entitled to the salary increase but did not know of the raise granted to the four secretaries. Other county secretaries filed grievances and some subsequently pursued court actions.

4. The Memorandum of Opinion issued in Betty French et al. v. Hancock County Board of Education, Civil Action No. 81-P-58 stated that the board violated uniformity requirements of law and all secretaries were entitled to the salary increase.

5. 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.

6. These grievants timely filed grievances for back wages pursuant to the provisions of W.Va. Code, 18-29-1, et seq.

7. The grievants are entitled to retroactive pay as a matter of law.

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.

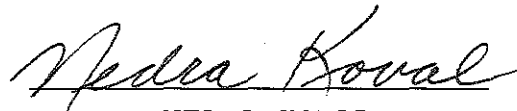
2. All secretaries performing like duties and responsibilities in 1979 were entitled to the salary increase at that time. Betty French et al. v. Hancock County Board of Education; supra.; Evelyn Dello, et al. v. Hancock County Board of Education, Docket No. 15-86-100-2.

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

For all of the foregoing reasons, grievants Freeland, Jones and Murray shall be awarded additional compensation of \$50.00 per month for the period September 1979 through January 1, 1986; the equity issue of Murray is thereby moot. Grievants Davis, Gaston and Taflan shall be awarded additional compensation of \$50.00 per month for the period September 1980 through January 1, 1986 and their equity issue is thereby moot.² In the absence of express authority relative to the award of interest, that request of one of the grievants shall be denied.

² Grievant Taflan has a separate grievance whereby she has further salary adjustment.

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



NEDRA KOVAL
Hearing Examiner

Dated: 2/3/87