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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

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**KIM NEAL**

**v.**

**Docket No. 26-86-329-3**

**MASON COUNTY BOARD OF EDUCATION**

**DECISION**

Kim Neal, grievant, is employed by the Mason County Board of Education as an itinerate principal for West Columbia, Hartford and Letart Elementary Schools. He alleges that the school board has violated the uniformity provisions of W.Va. Code, 18A-4-3 and 18A-4-5a regarding salary supplements paid to principals.

The grievance was denied at levels one and two and waived by the board for consideration at level three. The parties have mutually agreed to submit the matter for a level four decision based upon the existing record and neither party tendered proposed findings or legal argument.

Grievant's dispute with the board involves two academic years, 1985-86 and also the current school year. He claims that for year 1985-86 county principals received a \$500 supplement for each school administered but the lone exception was his remuneration which yielded approximately \$166.00 per school. For this he asks for

\$1,000.00 backpay prorated from October 1, 1986 when he began the multiple school assignment.

In addition he charged that the principal of Leon Elementary School was given a salary supplement of \$1,400.00 to administer a second school, but that he (the grievant) currently administers three schools with no supplemental pay for the multiple assignment. He claims the board has set a precedent and he is due an increment of \$1,400.00 for each school in excess of his ordinary administrative assignment for a total of \$2,800 for the current, 1986-87, school year.

In relation to the charges regarding the 1985-86 school year, school officials indicated that grievant's position encompassing three schools was a "regular" singular principalship, and no "supplemental position" existed for which he could receive additional salary.<sup>1</sup>

School officials refuted grievant's charge that principals with multi-school assignments received \$500 supplemental pay for each school, and claimed that each principal in the county received a flat \$500 supplement. Grievant presented no evidence to corroborate his statements and without such substantiation this examiner cannot find a violation of the uniformity requirements as grievant alleges.

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<sup>1</sup> Grievant stated that when he applied for the position he was not aware of what the total salary and supplement would be but when he inquired he had been told he could take the job with no cut in pay. He stated that he did receive a \$120.00 pay cut however. (T. 16, 17).

This board has consistently ruled that it is incumbent upon a grievant to prove the allegations constituting the grievance by a preponderance of the evidence. June Richards, et al. v. Hancock County Board of Education, Docket No. 15-86-170-2; Helen Conley v. Logan County Board of Education, Docket No. 23-86-102; Dingess and Welch v. Kanawha County Board of Education, Docket No. 15-86-170-2.

Respondents also raised a timeliness issue regarding the filing of this grievance. While there is some merit in this regard concerning grievant's dispute with his 1985-86 salary, grievant's filing was timely in relation to the 1986-87 school term. He stated that he learned of the situation giving rise to the second part of his grievance in October 1986. (T. 13, 14, 15).<sup>2</sup>

Grievant's dispute regarding the 1986-87 school year involves a supplemental position which occurred at Mt. Flower Elementary School due to the resignation of its teaching principal, effective the end of the 1985-86 school term, who wanted to devote her time to only teaching and not administration at the school. On or about May 15, 1986 a "professional-supplemental" position for an "Existing Elementary Principal" at Mt. Flower Elementary was posted for a \$500 salary supplement.

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<sup>2</sup> In relevant part, W.Va. Code, 18-29-4(a)(1) provides:

(a) Level one.

(1) Before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant or the designated representative shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought. (emphasis added) Grievant filed at level one on October 13, 1986; he has timely filed as it pertains to his concerns regarding his 1986-87 salary.

At the level two evidentiary hearing conducted October 23, 1986, Albert Stephens, Elementary Director, testified on behalf of the board. Apparently when the Mt. Flower principal stepped down a decision was made to post the position as a supplement for an existing principal but there were no applicants. Stevens testified that "we approached Mr. Evans and Evans was placed on a transfer and subsequent assignment list. Then, according to Mr. Stephens, "...as I understand, he made a counter-proposal..." (T. 19, 20). Upon advice of counsel, the position was reposted; however, the additional amount of the salary supplement, from \$500 to \$1400, was not posted as counsel had recommended. Instead on July 22, 1986, the posting read, "(Reposted due to change in supplemental salary.)" Mr. Evans, Leon Elementary principal, then accepted and was board approved for the supplemental position at Mt. Flower.

Thus, grievant's position that he did not know of the additional salary amount at the time Mr. Evans was hired is substantiated by the evidence. Grievant never applied for the Mt. Flower principal position and does not ask that the position be reposted. He stated that he was not interested in the supplementary principalship at Mt. Flower Elementary. (T. 17, 18).

In addition to the foregoing it is appropriate to make the following specific findings of fact.

#### FINDINGS OF FACT

1. Grievant, Kim Neal, is employed by the Mason County Board of Education as a traveling principal serving three elementary schools.

2. Grievant began his triple school principal's assignment October 1, 1985 upon a voluntary transfer from a single elementary school. His contract, which he signed October 3, 1985, clearly states the nature of the three-school assignment and his total salary.

3. On October 13, 1986, grievant filed a grievance challenging the propriety of both his 1985-86 and 1986-87 salary. Salary matters pertaining to the 1985-86 school year were unproven and the grievance was untimely filed in regard to that school year.

4. In the spring of 1986, a supplemental principal's position was posted for Mt. Flower Elementary School at a \$500 salary. In July, 1986, according to board minutes, the school board approved reposting the position for \$1400; the posting of July 15, 1986, does not give a salary figure, but does note reposting is due to a "...change in supplemental salary."

5. In October, 1986, grievant became aware that the principal who accepted the Mt. Flower position was receiving a supplemental salary of \$1400 and not \$500 as was the salary amount listed in the first posting of the position on or about May 15, 1986. Grievant's grievance was timely filed as it pertains to this dispute involving his 1986-87 salary.

6. Grievant was denied the opportunity to apply for the Mt. Flower position at the \$1400 salary, but he is not interested in the position and does not ask that it be reposted.

## CONCLUSIONS OF LAW

1. A grievant must file his grievance within fifteen days of the grievable event, or within fifteen days on which the event became known to him. W.Va. Code, 18-29-4(a)(1).

2. A school board may establish salary schedules, supplements and increments in excess of minimum salaries. Excess salaries are to be uniformly applied as to training, classification, experience, responsibility and other requirements. W.Va. Code, 18A-4-5a.

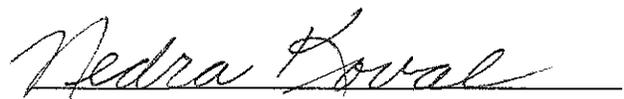
3. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel but such discretion must be reasonably exercised, in the best interests of the schools, and not in an arbitrary and capricious manner. Dillon v. Wyoming County Board of Education, 351 S.E.2d 58 (W.Va. 1986).

4. It is incumbent upon a grievant seeking relief pursuant to W.Va. Code, 18-29-1, et seq., to prove the allegations constituting the grievance by a preponderance of the evidence. June Richards, et al. v. Hancock County Board of Education, Docket No. 15-86-170-2.

The posting and filling of the supplementary principal's position at Mt. Flower Elementary by the Mason County Board of Education was highly irregular; however, grievant does not desire that position but instead seeks a monetary award based on violation of uniformity laws. Grievant has failed to prove his allegations regarding violation of uniformity laws in relation to his salary for either the 1985-86 or 1986-87 school year.

Accordingly, this grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or Mason 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: Feb. 27, 1987