



Members
James Paul Geary
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone 348-3361

LAURETTA SOLTES

v.

Docket No. 05-86-259-3

BROOKE COUNTY BOARD OF EDUCATION

DECISION

Lauretta Soltes, grievant, is employed by the Brooke County Board of Education as a regular, full-time teacher. She alleges violation of W.Va. Code, 18-5-39, as amended during an extraordinary session of the Legislature in 1986 and effective July 1, 1986. She states that the board did not adjust her salary to reflect the "daily rate" prescribed by the statute. Therefore, she contends, she is entitled to an additional \$671.22 for her summer teaching employment for the period of July 1 through July 30, 1986.

The grievance was denied at levels one and two, waived for consideration at level three by the school board, and appealed to level four in early September, 1986. The parties expressed their desire to submit the matter for decision based upon the existing evidence and the complete record was received by the undersigned hearing examiner on or about September 25, 1986. On October 15, 1986 the was matter was remanded to level two for written findings

of fact and conclusions of law as required by W.Va. Code, 18-29-6. The level two findings and conclusions were filed by the county superintendent in mid-November and level four proposed findings and conclusions in support of grievant's position were filed by her WVEA representative January 15, 1987.

By letter dated May 29, 1986 grievant was informed of her employment for a summer teaching position; the summer school term began June 10 and ended July 30, 1986. No contract was executed between the board and grievant as is required by W.Va. Code, 18-5-39. Grievant testified at the level two evidentiary hearing conducted August 8, 1986 that initially she received a salary of two-thirds of her daily rate (during the regular school term) and on July 25 received three-fourths of her daily rate retroactive to June 10. (T. 7).

Grievant contends that she taught courses in summer school which are offered for credit during the regular school year and that she worked a full workday each day of the summer session, said workday determined by the school board pursuant to State Board Policy 2510.

Respondent's position is that grievant's instructional day during the summer session totaled four and one half hours but an instructional day during the regular school year totals seven hours and nine minutes. Thus, the school board maintains that grievant's salary was correctly determined at three-quarters her regular daily rate in accordance with law; that its determination was consistent with a letter opinion rendered by the State Superintendent of Schools.

Both parties rely on the amended statute, W.Va. Code § 18-5-39 which states in pertinent part:

The board of education of any county shall have authority to establish a summer school program... The county board of education shall have the authority to determine the term and curriculum of such summer schools based upon the particular needs of the individual county. The curriculum may include, but is not limited to, remedial instruction, accelerated instruction, and the teaching of manual arts. The term of such summer school program may not be established in such a manner as to interfere with the regular school term.

The county boards of education may employ as teachers for this summer school program any certified teacher. Certified teachers employed by the county board of education to teach in the summer school program shall be paid an amount to be determined by the board and shall enter into a contract of employment in such form as is prescribed by the county board of education: Provided, That teachers who teach summer courses of instruction which are offered for credit and which are taught during the regular school year shall be paid at the same daily rate such teacher would receive if paid in accordance with the then current minimum monthly salary in effect for teachers in that county. (emphasis added).

The plain language of the statute requires that a board of education pay certified teachers instructing courses offered for credit during the regular school year the same daily rate to which the teacher would be entitled according to then current county minimum monthly salary in effect for teachers in that county. The present law provides that a contract for services be executed, but not for hourly based remuneration per se.

Less clear is the interpretation-opinion rendered by the state superintendent in a letter dated June 30, 1986, upon which the school board relied. In part, the letter stated:

You have asked whether it will comply with W.Va. Code, 18-5-39 if a county board of education "...employs teachers for summer school...on a four (4) hour daily basis for a six (6) week period with an hourly salary rate based upon the county pay scale (certification and experience).

The answer appears to be yes, assuming that you pay the part-time summer school teachers as though they were,*working at least the same portion of a regular term workday.

The asterisk denotes a citation of W.Va. Code, 18-5-39. The difficulty with this interpretation is that no distinction is made regarding such matters as planning periods, lunch hours or other non-instructional times accorded a teacher during a regular school day and how this would affect a part-time summer school teacher, nor does it address the issue of the need for a summer school contract to modify the regular term workday.

FINDINGS OF FACT

1. Grievant, Laoretta Soltes, is a teacher regularly employed by the Brooke County Board of Education.

2. Grievant was employed to teach summer school from June 10, 1986 through July 30, 1986. She was notified of the employment by letter but the parties did not execute a contract of employment separate and apart from grievant's regular teaching contract.

3. Grievant was paid three-fourths of her regular school year daily rate for the summer employment.

4. The school board set the summer school workday at 8:00 a.m. until 12:30 p.m., a total of four and one-half hours. Grievant works seven hours and nine minutes during the regular school year but the record is silent as to total instructional/contact hours she works during the regular term school day and those she worked during the summer.

5. There is no provision in the present applicable law enabling school boards to pro-rate a summer teacher's salary when the teacher has worked the entire instructional day, as established by the board.

CONCLUSIONS OF LAW

1. A teacher's work day are those hours established by a county board not exceeding eight hours.

2. A school board and a certified teacher must enter into a contract of employment for summer school teaching. Employment for a partial work day, one that does not conform to the regular school year workday must be stipulated by contract. W.Va. Code, 18-5-39.

3. In lieu of a mandated contract for the employment of summer school teachers, a county board of education must pay its summer school teachers who work an entire instructional day and who teach courses offered for credit during the regular school term the daily rate of the current county salary scale. W.Va. Code, 18-5-39.

The grievant has proven that she worked an instructional day, as established by the school board, each summer teaching day; that she worked without alteration of her regular contract or benefit of a summer contract as required by law; and that the plain language of W.Va. Code, 18-5-39, as amended, requires that she be paid the same daily rate she would receive during the regular teaching

year at county scale. Accordingly, it is ORDERED that this grievance is GRANTED.

Either party may appeal this decision to the Circuit Court of Kanawha County or Brooke 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: February 19, 1987