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JANIE SPAHR, CAROLYN BOLYARD,  
CATHERINE BURKE, KAREN HUFFMAN  
and MARILYN WOLFE

v.

DOCKET NO. 39-86-342-2

PRESTON COUNTY BOARD OF EDUCATION

DECISION

Grievants, Janie Spahr, Carolyn Bolyard, Catherine Burke, Karen Huffman and Marilyn Wolfe are employed by the Preston County Board of Education as business education teachers. In October, 1986 they filed a grievance alleging a violation of W. Va. Code, 18A-4-5a as they did not receive a salary supplement awarded to other vocational teachers. A level two hearing was conducted on October 29, 1986 and in a decision issued November 10, 1986 Superintendent Elmer Pritt determined that, subject to board approval, the supplement would be granted retroactive to the beginning of the 1986-87 school term. Grievants who do not teach vocational subjects one hundred percent of the day would receive a prorated amount of the supplement, proportional to

time assigned to vocational classes. An award of the supplement retroactive to 1982 was denied as the grievance was not timely filed for those years.<sup>1</sup> Grievants appealed the issue of backpay to level four where an evidentiary hearing was held on March 17, 1987.<sup>2</sup>

Testimony offered by the grievants' representative and Superintendent Pritt establishes that in 1982 a group of employees filed a grievance alleging that they were entitled to a salary supplement received by other similarly situated employees. Their representative and Superintendent Pritt negotiated an agreement which resulted in the employees receiving the supplement in exchange for their waiving any rights to retroactive application. The business teachers assigned to high schools throughout the county were not included on the list of eligible employees and have not been paid the supplement received by other vocational teachers. There is no allegation that the respondent has acted

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<sup>1</sup>Grievant Janie Spahr has been employed by the respondent only since 1984 and Grievant Marilyn Wolfe began teaching business courses during the 1985-1986 term and would be ineligible for pay before that time.

<sup>2</sup>Hearings scheduled for January 21, 1987, February 17, 1987 and March 4, 1987 were continued at the request of the grievants.

in bad faith and the failure to include the grievants on the list of eligible employees appears to have been no more than an oversight which was not brought to the respondent's attention until some four years later.<sup>3</sup>

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

#### Findings of Fact

1. Grievants are employed by the Preston County Board of Education as business education teachers. They are assigned to the various high schools throughout the county.

2. A grievance filed in 1982 resulted in many additional teachers receiving a salary supplement.

3. The grievants were not included on a list of employees compiled by the respondent nor were they identified as eligible for the supplement by their representative in 1982.

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<sup>3</sup>Grievant Catherine Burke was employed at the county vocational center from 1973 through 1975 and at that time received the salary supplement. When she transferred to Central Preston High School she no longer received the supplement but does not appear to have questioned the change in salary.

4. A grievance was not filed by the affected employees until October, 1986.

5. Grievant Burke had previously received the supplement but did not question the reduction in salary when she transferred to another school.

6. At level two the grievants were awarded the supplement effective the 1986-1987 school year.

#### Conclusion of Law

Employees must share with their employer the burden of insuring their proper compensation. Retroactive compensation cannot be awarded when underpayment results as an oversight and the mistake is not brought to the employer's attention by the employee who knew, or should have known, of the error.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Preston 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: May 5, 1987

Sue Keller

SUE KELLER  
Hearing Examiner