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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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CLAUDE STANTON

v.

DOCKET NO. 19-86-071

JEFFERSON COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a level two hearing and decision. That decision was upheld at level three. Thereafter, the grievance was assigned to Sue Keller, Hearing Examiner. The parties agreed, in writing, to waive an evidentiary hearing at level four and submitted the grievance for decision upon the record. Subsequently, the grievance was reassigned to John M. Richardson, Hearing Examiner, for disposition.

In this grievance, the grievant, Claude Stanton, Jr., complains that he has not received supplemental salary increases granted to central office administrators over the past six years in violation of WV Code §18A-1-1(d); 18A-5-2; 18-4-15; 18-8-3; 18A-4-2; 18A-4-5; 18-8-4; 18A-2-2 and Jefferson County Board of Education Policy No. GBRA-R.

The respondent, the Jefferson County Board of Education, denies any violation of the aforementioned statutes and asserts that grievant is not a central office professional employee and does not possess the necessary credentials to be granted the supplemental salary increases which were given to central office professional employees.

The record reveals that grievant was employed in January 1978 as a CETA employee. In August 1979, the grievant was employed as the Youth Employment and Training Program (YETP) coordinator with a salary classification of "H" for a twelve month (240) day term.

Due to the fact that grievant received a Regents Bachelor of Arts degree in May 1980, his salary was changed from classification "H" to the professional salary scale reflecting a Bachelor of Arts degree with zero years of experience.

During the 1985-86 school year, the grievant's job title was changed to "Home Visitor" but his duties remained relatively unchanged.¹ It is uncontested that grievant performed many of the same duties as the Attendance Director, J.V. Walter. However, the grievant did not direct the program or supervise any other employees, and was not accountable for the attendance program or held to the same level of responsibility as was J.V. Walter.² Based upon this similarity of duties, the grievant claims that he was in effect the

¹ Apparently, the duties of the grievant did change from time to time but no such changes occurred during the 1985-86 school year, the relevant period of this grievance. The grievant offered no evidence that the fifteen day filing period provided in WV Code §18-29-4, et seq., should be extended to include prior years.

² J.V. Walter was the grievant's immediate supervisor when he was doing attendance work.

Assistant Director.³

WV Code §18-8-3 (1951 c.), in pertinent part, provides:

The county board of education of every county shall, not later than August first of each year, appoint a county director of school attendance and such assistant attendance directors, as deemed necessary. Such persons shall have the written recommendation of the county superintendent.

The county board of education may set up such special and professional qualifications for attendance directors and assistants as are deemed expedient and proper and are consistent with regulations of the state board of education relating thereto . . .⁴

In addition to the duties the grievant performs in the area of attendance, he also performs duties for the Director of Pupil Services. These duties are primarily to take IEP's (Individual Education Plans) to parents for their signature and then returning them to the Director.

The respondent maintains that while it has not, pursuant to WV Code §18-8-3, supra, set up any special and professional qualifications, the State Board of Education has established certification requirements for attendance directors and assistant directors.⁵ In addition, the respondent asserts that the raise the grievant primarily seeks was given only to "central office professional personnel" and the grievant is not a professional employee.

³ No evidence was introduced indicating that the grievant was ever recommended or appointed as a director or assistant director of attendance.

⁴WV Code §18-8-3 was amended effective July 1986. The amendment is not treated in this decision as it became effective almost a year after the grievance was filed.

⁵The record is not clear as to the specific requirements for certification by the State Board of Education.

Conversely, the grievant argues that WV Code §18A-4-5a requires that uniformity of compensation be paid to all persons performing like assignments and duties.

WV Code §18A-4-5a, in pertinent part, provides:

County salary supplements for teachers.

. . Counties may fix higher salaries for teachers placed in special instructional assignments, for those assigned to or employed for duties other than regular instructional duties and for teachers of one-teacher schools, and they may provide additional compensation for any teacher assigned duties in addition to his regular instructional duties wherein such noninstructional duties are not a part of the scheduled hours of the regular school day. Uniformity also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county . . .

While there is some merit to the grievant's position that he perform duties similar to the Director of Attendance, it is also clear that those duties are only a portion of the grievant's total duties. A significant part of grievant's time is spent performing his duties in the area of Pupil Services. This is a noticeable departure from the duties of J.V. Walter, who is the Director of Attendance, Community Education and Adult Education.⁶

As previously stated, the respondent maintains that grievant is not a "professional" employee and therefore, is not entitled to the supplement granted to central office professional employees.

⁶When viewed as a whole, the grievant's duties and assignment were very different from the duties and assignment of J.V. Walter. In fact, the grievant's situation was different from any other person(s) examined in the record.

This question can be resolved by examination of the definitions contained in WV Code §18A-1-1 and WV Code §18-1-1.

In pertinent part, WV Code §18A-1-1 provides:

The definitions contained in section one [§18-1-1], article one of chapter eighteen shall be applicable to this chapter. In addition, the following words used in this chapter and in any proceedings pursuant thereto, shall, unless the context clearly indicates a different meaning, be construed as follows:

(a) "School personnel" shall mean personnel employed by a county board of education whether employed on a regular full time basis, an hourly basis or otherwise. School personnel shall be comprised of two categories: professional personnel and service personnel.

(b) "Professional personnel" shall mean persons who meet the certificate and/or licensing requirements of the State, and shall include the professional educator and other professional employees.

(c) "Professional educator" shall be synonymous with and shall have the same meaning as "teacher" as defined in section one [§18-1-1], article one, chapter eighteen of this Code. Professional educators shall be classified as:

(1) "Classroom teacher": The professional educator who has direct instructional or counseling relationship with pupils, spending the majority of his time in this capacity.

(2) "Principal": The professional educator who as agent of the board has responsibility for the supervision, management and control of a school or schools within the guidelines established by said board. The major area of such responsibility shall be the general supervision of all the school and all school activities involving pupils, teachers and other school personnel.

(3) "Supervisor": The professional educator who, whether by this or other appropriate title, is responsible for working primarily in the field with professional and/or other personnel in instructional and other school improvement.

(4) "Central office administrator": The superintendent, associate superintendent, assistant superintendent, and other professional educators, whether by those or other appropriate titles, who are charged with the administering and supervising of the whole or some assigned part of the total program of the county-wide school system.

(d) "Other professional employee" shall mean that person from another profession who is properly licensed and is employed to serve the public schools and shall include a registered professional nurse, licensed by the West Virginia board of examiners for registered professional nurses and employed by a county board of education, who has completed either a two-year (sixty-four semester hours) or a three-year (ninety-six semester hours) nursing program.

In part, WV Code §18-1-1 provides:

The following words used in this chapter and in any proceedings pursuant thereto shall, unless the context clearly indicates a different meaning, be construed as follows:

(g) "Teacher" shall mean teacher, supervisor, principal, superintendent, public school librarian, registered professional nurse, licensed by the West Virginia board of examiners for registered professional nurses and employed by a county board of education, who has a baccalaureate degree, or any other person regularly employed for instructional purposes in a public school in this state;

While the grievant contends he was in effect the assistant director, it is clear that he was not so appointed nor appropriately certified/licensed as a professional employee within the definitions of WV Code §18A-1-1 or WV Code §18-1-1(g), supra.⁷

It appears in the level two decision that the respondent board agreed to provide the grievant with ten days of his employment

⁷ The grievant did not contest the assertion that he was not licensed or certified nor did the grievant offer any proof that he was indeed licensed or certified.

term during the summer to attend college, together with reimbursement of necessary and reasonable expenses. This would seem to be an equitable solution to the grievant's predicament.

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

FINDINGS OF FACT

1. The grievant, Claude Stanton, was first employed as a CETA employee in January 1978. Subsequently, in August 1979, the grievant was employed as the Youth Employment and Training Program coordinator with a salary classification of "H".
2. The grievant received a Regents Bachelor of Arts degree in May 1980. That same month the grievant's salary classification of "H" was changed to the professional salary scale reflecting a Bachelor of Arts degree with zero years of experience.
3. The grievant's duties were partially in the area of Pupil Services and partially in the area of Attendance.
4. The grievant performed some similar duties as that of an Attendance Director but was not held to the same level of responsibilities.
5. The grievant was not recommended by the superintendent nor appointed by the respondent board to the position of Assistant Attendance Director.
6. J.V. Walter was the Director of Attendance, Community Education and Adult Education. He performed duties in all of his titled areas.

7. The grievant's duties and assignments were not similar to the duties and assignments of J.V. Walter.

8. The grievant did not supervise or direct other employees.

9. The grievant is not certified or licensed as a professional employee or teacher as the same is set forth in WV Code §18-1-1 and WV Code §18A-1-1.

10. Effective July 1, 1985, the respondent granted an additional salary supplement to central office professional personnel. The grievant did not receive this additional supplement.

11. The respondent has agreed to provide the grievant with ten days of his employment term during the summer to take courses towards certification and reimburse any reasonable and necessary expenses.

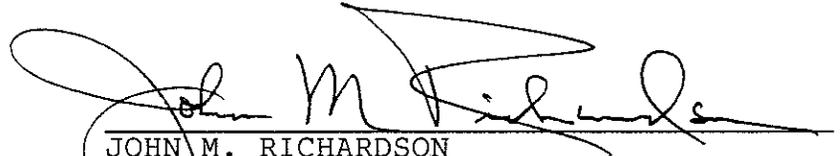
CONCLUSIONS OF LAW

1. Pursuant to the provisions of WV Code §18A-1-1 and WV Code §18-1-1, supra, the grievant was not a professional employee as that term is defined therein.

2. The grievant did not prove by a preponderance of the evidence that he performed like assignments and duties entitling him to be covered by the uniformity provision of WV Code §18A-4-5a. Whelley v. Jefferson County Board of Education, Docket No. 19-86-272-2.

For all the foregoing reasons, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Jefferson County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (WV 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.


JOHN M. RICHARDSON
Hearing Examiner

DATED: March 12, 1987