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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**  
ARCH A. MOORE, JR.  
Governor

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

CARL W. STEELE

v.

Docket No. 50-87-062-1

WAYNE COUNTY BOARD OF EDUCATION

DECISION

Grievant, Carl Steele, is employed as a vocational teacher assigned to the Wayne County Northern Vocational-Technical Center. On January 17, 1987 he filed a grievance alleging that the school board had refused to uniformly apply a salary adjustment policy for prior work experience pay and the refusal amounted to discrimination, favoritism and misapplication of the policy; that other vocational teachers had been given credit and received additional salary for prior work experience. A level two hearing was conducted on February 26 and the decision appealed to the Education Employees Grievance Board on March 20, 1987. An evidentiary hearing at level four was conducted

on September 2, 1987.<sup>1</sup>

Grievant was initially employed in August 1982 as a welding instructor and metal fabrication teacher and assigned to the Southern Wayne Vocational School in Wayne County. He had received a Board of Regents degree from West Virginia State College in secondary education and a vocational certificate from the West Virginia Department of Education with a specialization in welding.<sup>2</sup> (T.4; Exhibit C). At the time of employment he was not given any pay increment for the work experience although he was aware that several other employees in similar

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This hearing had been scheduled in July and continued until August 7 and thereafter by agreement due to the absence of a key witness and scheduling conflict of counsel for the school board. The grievance was submitted on the transcript of evidence adduced at level two (T. ) and the additional evidence of grievant and Superintendent Ferguson at level four.

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The effective date of licensure was July 1, 1985 and the salary classification was masters degree plus 30 hours; the specialization was welding, major 7-12.

The State Board of Education verified grievant's previous work record and no issue is raised as to the previous work experience.

situations were receiving the pay. (T.6). Initially, he made inquiry to Mr. Glenn Fogle, director of the county vocational education department, and was advised that he (Fogle) would look into the matter. Grievant attempted to pursue the inquiry with Mr. Fogle on numerous occasions in 1983 and was assured the matter would be resolved. The information grievant had given to Mr. Fogel to pursue the claim was lost upon Mr. Fogel's death and grievant thereafter reinstituted the inquiry with Mr. James Hale, upon his appointment as acting director of the vocational education division. At the commencement of the 1985-86 school year grievant had attained tenure and in June 1986 took the issue to superintendent Ferguson, who had been elected to his position on January 1, 1986. Mr. Ferguson advised grievant that he would research the law and inform grievant of his decision; in December 1986 Mr. Ferguson denied grievant's claim to the additional pay for experience credit

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3 Grievant testified that he was reluctant to file a formal grievance while on probationary status and had hoped to resolve the matter through his superiors.

According to grievant there was a period of time after Mr. Fogel's death that a replacement was not named and he therefore could not pursue the matter.

and grievant filed the instant grievance on the first working day in January 1987.

Testifying in support of grievant, Mr. Charles C. Campbell acknowledged that he was employed in April 1983 at the Northern Vocational School and received credit for eleven years prior experience credit he had in private employment. The subject of extra compensation for this experience was discussed at the time of employment and no issue was ever raised about the payment thereof. (T.9)<sup>4</sup>

Superintendent Ferguson testified that the verification of work experience given to grievant by the State Department of Education merely entitled grievant to obtain minimum certification as a teacher pursuant to W.Va. Code, 18A-4-1 with zero years of experience. He asserted that Wayne County did not have a written policy on this point and he should not be saddled with the mistakes of previous county superintendents who permitted county supplements as is involved

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<sup>4</sup> At level four grievant's representative submitted the names of six other employees who had received credit for prior work experience in the vocational division. (Grievant's Exhibit 1).

in this grievance.<sup>5</sup>

Grievant's representative contends that to deny grievant this credit while allowing it for others is contrary to W.Va. Code, 18-29-1, et seq, on the basis of discrimination and favoritism and also violative of W.Va. Code, 18A-4-5a, the uniformity of pay provision; that on March 31, 1987 the State Superintendent of Schools issued an opinion concluding that county boards of education could establish special schedules for vocational teachers to recognize years of experience spent not actually teaching but recognizing the years during which these employees had been practicing their trade and that these supplements were required to conform to W.Va. Code, 18A-4-5a. Accordingly, grievant seeks to require the school board to approve his prior years of work experience for pay purposes and to award back pay for three years.

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<sup>5</sup> At level two grievant submitted a copy of a document appearing to be a Wayne County Policy titled "Salaries for Vocational Industrial Teachers" and providing that such teachers were to start on the county pay schedule as an AB degree less \$25.00 for a permit, with experience ranging between 6 and 11 years, depending on the work experience accepted by the Vocational Division of the State Department of Education. (Joint Exhibit 1, exhibit D).

This document was admitted as an exhibit at level two over the objection of superintendent Ferguson that it was authentic or that the board of education abided with it. (T.6).

Counsel for the board contends that the grievance is untimely in that grievant was aware of the disparity of treatment from the time of his initial employment and chose not to pursue it; that the opinion of the State Superintendent of Schools is clearly wrong in allowing vocational teachers pay increments for vocational experience not involving teaching experience. Finally, it is urged that there are other similar potential claims involving other employees in Wayne County and the principles of Maynard v. Wayne County Board of Education, 357 S.E.2d 246 (W.Va. 1987) should be followed.<sup>6</sup>

In addition to the foregoing factual recitation the following specific findings of fact and conclusions of law are appropriate.

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<sup>6</sup> More specifically, counsel relies upon the laches doctrine as enunciated and applied in the Maynard case in the context of charging the present administrators with the administrative responsibility for rectifying a large financial burden created many years ago where the employees did not pursue their rights.

It is to be noted, however, that in the Maynard case the employees did not rely upon the representations of school officials that the situation would be rectified. Also, here the claim was not actually denied until December 1986 and the Maynard case is inapposite.

### FINDINGS OF FACT

1. Grievant was hired in August 1982 as a welding instructor and metal fabrication teacher in the vocational education system of Wayne County.

2. At the time grievant was employed there existed a practice or policy in Wayne County granting pay to vocational teachers for non-teaching prior work experience and at least seven other employees were hired before and after grievant was employed and were allowed the credit for prior work experience. The most recent employee hired in the vocational system as a teacher was Charles Campbell, employed on April 18, 1983, who received prior work experience and pay for eleven years.

3. Over the years grievant made a diligent effort to obtain this prior work experience credit by pursuing the matter with his supervisors and was assured that the matter would be resolved. Finally, in June 1986 grievant requested relief or other action by Superintendent Ferguson and in December 1986 was advised that notwithstanding the prior practice grievant was not entitled to the pay supplements. Accordingly, grievant forthwith filed a grievance in accordance with W.Va. Code, 18-29-1, et seq.

## CONCLUSIONS OF LAW

1. An employee who makes a good faith, diligent effort to resolve a grievable matter with school officials and relies in good faith upon the representations of these officials that the matter will be rectified will not be barred from pursuing the grievance pursuant to W.Va. Code, 18-29-1, et seq., upon the denial thereof.

2. W.Va. Code, 18A-4-5a provides for uniformity of additional salary increments or compensation for all employees performing like assignments and duties within the county and it is incumbent upon a grievant to establish a violation thereof by a preponderance of the evidence. Turner v. Grant County Board of Education, Docket No. 12-86-257; Wright v. Putnam County Board of Education, Docket No. 40-86-328.

3. The State Superintendent of Schools has determined that under W. Va. Code, 18A-4-5a county boards of education may establish schedules for vocational teachers to recognize years of experience not actually spent teaching and when established must meet the uniformity requirements of section 5a. This interpretation is considered as persuasive authority and will be applied unless clearly erroneous. Smith v. Logan County Board of Education, 342 S.E.2d 685 (W.Va. 1985); Martin v. Mason County Board of Education, Docket No. 26-87-156; Bright and Sponaugle v. Tucker County Board of Education, Docket No. 47-86-097.



The school board has failed to demonstrate that the interpretation of the state superintendent is erroneous or to otherwise establish a legal basis for the denial of credit for prior employment. Bright and Sponaugle v. Tucker County Board of Education, Docket No. 47-86-097; Cobb v. Webster County Board of Education, Docket No. 51-86-211.

Accordingly, the grievance is Granted and the board of education is Ordered to credit the grievant for six years of work experience and to compensate him for monies lost due to the denial of the credit for three years.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wayne County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code, 18-9-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the court.



LEO CATSONIS  
Chief Hearing Examiner

Dated:

September 29, 1987