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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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PETER T. WHELLEY

v.

Docket No. 19-86-272-2

JEFFERSON COUNTY BOARD OF EDUCATION

DECISION

Grievant, Peter T. Whelley, is employed by the Jefferson County Board of Education as a school psychologist. Mr. Whelley alleges the board of education has misapplied W. Va. Code, 18A-1-1(c)(4) by failing to classify him as a central office administrator and has violated W. Va. Code, 18A-4-5a by denying him an increase in supplemental salary awarded to administrators and other employees.¹ The grievance was denied at levels one

¹On July 1, 1985, central office professional personnel received an increase in position pay. These individuals included the administrative assistant, program directors and the elementary and secondary supervisors, all of whom are awarded a two hundred sixty-one (261) day employment term.

Effective July 1, 1986, increments granted to coaches, sponsors, departmental heads, band directors and head teachers were increased.

through three and an evidentiary hearing was held at level four.²

Evidence presented at the level four hearing establishes that the grievant, along with all school psychologists, is allotted office space at the central administration building. From this base the psychologist travels to his assigned schools. Psychologists are awarded a two hundred forty (240) day contract and their salaries are computed based on the teacher's salary schedule plus fifty (50) dollars per month supplemental pay. The psychologists work primarily with students, teachers and parents in the planning and execution of student evaluations.

The grievant argues that psychologists are entitled to classification as central office administrators based on the

²A level two hearing was held on July 15, 1986 by George R. Frame, designee of Superintendent Raymond Frazier. The grievant was given less than twenty four hours notice of the hearing and was unable to secure a WVEA representative to appear on the fifteenth. Mr. Whelley requested a continuance of the hearing and the request was agreed to by Braun Hamstead, legal counsel for the board of education, who expressed concern that the grievant was being deprived of representation. Mr. Frame nevertheless denied the requested continuance with no explanation. (T.pp. 1-6). By not providing a reasonable explanation of his denial of the continuance, this action may only be viewed as a violation of W. Va. Code, 18-29-3(f) which provides that an employee may have the assistance of one or more fellow employees, employee organization representative(s), legal counsel or any other person in the preparation and presentation of his case.

similarity of certification requirements and work schedules of administrators, their supervision of interns and the administration and supervision of the psychology program. The grievant states that of those employees receiving position supplements, only the psychologists were not granted an increase either in 1985 or 1986, and therefore requests an increase in salary proportional to those granted other employees.

The respondent argues that the grievant is assigned office space at the central administration building as a matter of convenience and that he does not perform supervisory duties or meet the definition of central office administrator.

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

Findings of Fact

1. The grievant is employed by the Jefferson County Board of Education as a school psychologist. All psychologists are employed two hundred forty (240) days per year and are awarded fifty (50) dollars per month position pay in addition to their salaries as determined by the teacher's salary schedule.

2. The grievant's primary duty is the psychological evaluation of students, although a portion of his time is spent supervising student interns.

3. It is the grievant's understanding that his certification

and work schedule are similar to that required of other administrators and that his evaluative responsibilities and his supervision of interns qualify him for classification as an administrator.

4. The grievant has no supervisory or administrative authority over any other employees of the board of education.

5. The grievant works under the supervision of the Director of Pupil Services, Gary Sokol. While not a licensed psychologist, Mr. Sokol is responsible for the administrative functioning of the psychology program.

6. Mr. Sokol does not believe the grievant performs any supervisory duties.

Conclusions of Law

1. W. Va. Code, 18A-1-1(c)(4) defines central office administrator as an individual charged with the administration or supervision of the whole or a part of the total program of the county wide system.

2. The evidence has established that the Director of Pupil Services is charged with the administration of the psychology program while the grievant performs the duties of a staff psychologist.

3. It is incumbent upon the 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. Linda Booth v. Grant County Board of Education, Docket No. 12-86-243; Paul Cool v. Webster County Board of Education, Docket No. 51-86-118-2 and Harpal Singh v. West Virginia University, Docket No. 30-86-044.

4. The grievant has failed to show that he is responsible for the administration or supervision of the psychology program, in whole or in part.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Jefferson 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.

DATE February 17, 1987

Sue Keller

SUE KELLER

Hearing Examiner