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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

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NATHAN CURRY

v.

Docket No. 23-87-218

LOGAN COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Nathan Curry, is employed by the Logan County Board of Education as a crew leader/paint foreman. He filed a grievance in June 1987 alleging a violation of the uniformity in pay provisions contained in W.Va. Code, 18A-4-5b. A Level II decision was adverse to the grievant and the Board voted July 31, 1987 to waive proceedings at Level III. A Level IV hearing was held March 10, 1988.¹

¹Level IV hearings were scheduled for December 4, 1987, December 18, 1987 and January 13, 1988 and continued for cause. The parties engaged in discussions in February 1988 concerning the possibility of submitting written stipulations but subsequently indicated the need for a hearing in March 1988. At the conclusion of the hearing, the parties agreed to submit additional documented information which was not furnished by the Board. This information was not received until August 24, 1988.

The parties offer differing interpretations of the applicable law but essentially agree on the facts giving rise to the grievance. During the 1973-74 school term grievant was classified as a paint foreman at a yearly salary of \$6,900.00. Mr. Warren Johnston was classified as "special construction" during that school term at a yearly salary of \$15,346.80. On July 1, 1975 both employees were reclassified as crew leaders and grievant was given a salary of approximately \$335.00 bi-weekly while Mr. Johnston, a less senior employee, was given a salary of approximately \$730.00 bi-weekly. Both employees continued working at these salaries as crew leaders and received uniform salary increases in accordance with local board allocations and state supplements. Mr. Johnston retired during the 1985-86 school term and currently serves as a substitute at a rate of \$104.80 per day. Sometime after his retirement, Mr. Johnston informed the grievant that even though they had the same classification titles, there was a large difference in their salaries.² Grievant confirmed the discrepancy

²Grievant did not recall the date of his discussion with Mr. Johnston but it was apparently during the 1986-87 school term when Mr. Johnston was serving as a substitute. The Board indicated at the beginning of the Level IV hearing that it was not contesting the timeliness of the filing of the grievance.

and initiated grievance procedures. Mr. Curry contends he and Mr. Johnston had been performing the same job functions since they were both classified as crew leaders and Mr. Johnston's higher salary was in direct violation of W.Va. Code, 18A-4-5b, which in pertinent part provides:

The county board of education may establish salary schedules which shall be in excess of the state minimums fixed by this article...

These county schedules shall be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation of equipment or other requirements. Further, uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county ...

(Emphasis added)

Grievant makes no request for back pay and asks only that his current salary be adjusted to an amount equal to that of Mr. Johnston at the time of his retirement.

The Board does not dispute grievant's assertion that he and Mr. Johnston performed like assignments and duties but contends the discrepancy in their salaries was the result of certain provisions of W.Va. Code, 18A-4-4. This position is based on the fact that Mr. Johnston was given a higher salary prior to the enactment of that section of the West Virginia Code and a certain provision contained therein prohibited the Board from reducing that salary to the amount grievant was receiving when they were

both classified as crew leaders. The relevant part of W.Va. Code, 18A-4-8 provides:

No service employee, without his written consent, may be reclassified by class title, nor may a service employee, without his written consent, be relegated to any condition of employment which would result in a reduction of his salary, rate of pay, compensation or benefits for which he would qualify by continuing in the same job position and classification held during said fiscal year.

The Board's argument that it was powerless to take action to achieve parity in the two employee's salaries ignores the fact that grievant's salary could have been raised and this was precisely the duty imposed by the provisions of W.Va. Code, 18A-4-5b which require uniformity in pay for persons performing the same services. The Board provided no rebuttal to grievant's contention that he performed the same duties as Mr. Johnston and was the more senior employee. To the contrary, the Board agreed with these assertions and provided no evidence of any differences in the job functions of the two employees which might preclude the application of the uniformity in pay provisions. The West Virginia Education and State Employees Grievance Board has previously held a county board of education must increase the rate of compensation of certain employees when it identifies inequities in salaries. Vickers v. Lincoln County Board of Education, Docket No. 22-87-217. The inequity in grievant's case would have ceased had Mr. Johnston's retirement been complete but he continues

to work on an intermittent basis at his regular salary.³ He remains under contract with the Logan County Board of Education and the discrepancy in salaries and the violation of W.Va. Code, 18A-4-5b continue.

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

FINDINGS OF FACT

1. The grievant, Nathan Curry, is employed by the Logan County Board of Education as a crew leader/paint foreman and was first classified as a crew leader on July 1, 1975.

2. Mr. Warren Johnston was employed as a full time crew leader by the Logan County Board of Education and was first classified as such on July 1, 1975.

3. Mr. Johnston continued working for the Board as a crew leader at a salary nearly double that of the grievant until his retirement from full time employment in December 1985.

4. Mr. Johnston continues to work for the Board in a substitute capacity at a rate of \$104.80 per day.

³Mr. Johnston's rate of pay at the time he retired was \$104.80 per day, the same amount he now receives when he substitutes.

5. Since their classification as crew leaders, the grievant and Mr. Johnston have been performing the same duties.

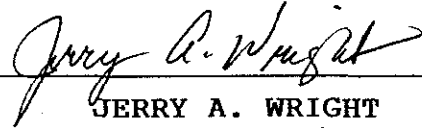
CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-5b requires a county board of education to provide uniform salaries for school service employees who perform like assignments and duties. Swisher, et al. v. Preston County Board of Education, Docket No. 39-87-266-2; Mayle, et al. v. Barbour County Board of Education, Docket No. 01-86-173-2.

2. The Logan County Board of Education violated the provisions of W.Va. Code, 18A-4-5b by compensating Mr. Warren Johnston at a higher salary than grievant for performing the same duties and continues to violate said provisions by compensating Mr. Johnston for substitute service at his former daily rate of pay.

Accordingly, the grievance is **GRANTED** and the Logan County Board of Education is hereby **ORDERED** to adjust the daily salary of the grievant, Nathan Curry, to an amount equal to that paid Mr. Warren Johnston.

Either party may appeal this decision to the Circuit Court of Logan County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of said decision. (W.Va. Code, 18-29-7). Please inform this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



JERRY A. WRIGHT
Hearing Examiner

Dated: October 5, 1988