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RONALD FRAGALE

v.

DOCKET NO. 17-87-189-2

HARRISON COUNTY BOARD OF EDUCATION

DECISION

Grievant, Ronald Fragale, is employed by the Harrison County Board of Education and was assigned as Director of Athletics, Physical Education, Health and Community Services when he initiated the present grievance proceedings in which he alleged a lack of uniformity of salary and benefits among central office administrators. The grievance was denied at level two, consideration was waived by the board of education at level three and the matter appealed to level four in July 1987. Following several continuances of the level four hearing both parties agreed that the matter could be submitted for decision upon the record supplemented by final written statements received by March 9, 1988.¹

¹Some delay was additionally incurred when the grievant chose to obtain new legal counsel.

In July 1981 the grievant was assigned to the position of Coordinator, Community Use of School Facilities with an employment term of 220 days and a salary supplement of \$150.00 (later \$158.00) per month. In 1984 grievant additionally assumed the responsibilities of the Coordinator of Physical Education, Health and Safety without any increase of employment term or salary supplement. Effective July 1, 1986 the grievant was promoted to Director of Athletics, Physical Education, Health and Community Services. His employment term remained at 220 days, however, his salary supplement was increased to \$288.00 per month, the amount awarded to all directors.

The grievant contends that while he was employed as a coordinator (1981-1986) and as a director (1986-87) for 220 days per year, other coordinators and directors were employed for 261, 240 or 230 days per year.² Only the Director of the Office of Health, a nonteaching, professional employee, had a shorter term of employment.

²The position of Director of Athletics, Physical Education, Health and Community Services was eliminated by the board effective the 1987-88 school term and the grievant was reassigned to a teaching position for 1987-88. See Ronald Fragale v. Harrison County Board of Education, Docket No. 17-87-145-2 currently pending appeal.

In support of his contention that his position was similar to directors with a greater employment term the grievant testified that he worked basically all twelve months as he had performed some of the duties of his position in June, July and August, the time other 220 day employees would not be working. (T. Level II p.28) Second, the testimony of Robert Skidmore, Administrative Liaison Officer, was that the duties of the various directors were similar. (T. Level II p.55) Third, he had assumed the duties of the Coordinator of Physical Education, Health and Safety which had previously been classified as a 261 day position.

The grievant argues that W.Va. Code, 18A-4-5a clearly requires that his salary and vacation benefits be uniform with those of similar employees who were classified as 261 day employees and that rules of statutory construction require that a plain and unambiguous statute be applied and not construed. Further, the board of education, a public administrative body, is bound to strictly adhere to pertinent statutes and policies in the conduct of its affairs and that said provisions are to be interpreted and applied favorably to the employee.

The grievant presents three constitutional arguments. First, that the equal protection clause of the W.Va. Constitution, Article III, §§10 and 17, prohibits different treatment than that received by similarly situated employees without any rational justification. Second, that he has substantive due process rights to receive the full benefit of legislative enactments directed to the class in which he is included. Three, that the discriminatory actions of the respondent may well infringe upon the integrity of its paramount mission to maintain an efficient and thorough school system as required by the W.Va. Constitution, Article XXI, §1 as such discriminatory actions toward professional employees undermines the ability to attract and retain the necessary and desirable educational talent required to maintain the system.

Finally, grievant cites an opinion of the State Superintendent of Schools, Brisbin v. Stemple, which held that an employee with a 240 day employment term was entitled to pro-rata vacation time.

The grievant requests that he be granted complete make-whole relief which he indicates to be backpay for a total of 287 days for a total of \$33,097.25 and compensation for 102 paid vacation days for a total of \$12,016.08. (Grievant's Exhibit I submitted under cover letter of February 22, 1988).

The board of education argues that it is not required to employ all professional personnel performing like assignments for the same employment term but rather it is a legislative determination based upon the assigned duties and needs of each position. The board distinguishes the Brisbin opinion as that grievant was a 240 day employee who actually worked only three less days than 261 day employees while the present grievant was employed for only 220 days, a significantly lesser term. The board asserts that the grievant was paid from the same salary schedule as other administrative personnel and argues that the constitutional arguments are without merit as the grievant does not fall within a protected or suspect class covered by the equal protection clause. Neither would the substantive due process clause or the mandate to provide an efficient and thorough school system require that a board employ an individual for an extended term when that individual's services are determined to be unnecessary.

The board additionally argues that the grievant's claim for six years of backpay and vacation time is barred by the equitable doctrine of laches and fails to comply with the time limitations set forth in W.Va. Code, 18-29-4. Contrary to the grievant's argument of an ongoing violation the board asserts that the grievable incident occurred at the time the grievant's employment term was established.

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

Findings of Fact

1. Grievant was employed as a teacher by the Harrison County Board of Education in 1974. He was assigned to the position of Coordinator, Community Use of School Facilities effective July 1, 1987. The position was for 220 days per year and included a salary supplement of \$150.00 per month.

2. During the 1985-86 school term the grievant assumed the responsibilities of Coordinator of Physical Education, Health and Safety in addition to his duties as Coordinator of Community Use of School Facilities. His employment term and salary remained unchanged.

3. The previous Coordinator of Physical Education, Health and Safety had been awarded a 261 day employment term with vacation benefits.

4. The grievant was promoted July 1, 1986 to the position of Director of Athletics, Physical Education, Health and Community Services with a 220 day employment term and a salary supplement of \$288.00, the same amount was received by all other directors.

5. Testimony adduced at the level two hearing indicates that other coordinators and directors have various employment terms ranging from 210 to 261 days.

6. The Harrison County Board of Education vacation and paid holiday policy applies only to employees assigned 261 day employment terms.

7. The grievant began official proceedings regarding his employment term and vacation benefits in May 1987.

Conclusions of Law

1. W.Va. Code, 18-5-32 provides that a board of education may employ such general and special supervisors or directors of instruction and other such educational activities as may be deemed necessary. The period of employment for said personnel shall be at the discretion of the board.

2. W.Va. Code, 18A-4-5a provides that a board may establish salary schedules in excess of the state minimums so long as they are uniform as to training, classifications, experience, responsibility and other requirements including like assignments and duties.

3. The board of education has acted properly in assigning various terms of employment to directors and supervisors based upon the need for the specific services.

4. A party must exercise diligence when seeking to challenge the legality of a matter involving public interest, such as the manner of expenditure of public funds, and failure to exercise such diligence constitutes laches. Maynard v. Board of Education of the County of Wayne, 357 S.E. 2d 246. (W.Va. 1987). See also Turner v. McDowell County Board of Education, Docket No. 33-86-049 and Jude v. Mingo County Board of Education, Docket No. 29-87-184.

Accordingly, the grievance is **DENIED**.

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

March 31, 1988

Sue Keller

SUE KELLER
HEARING EXAMINER