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

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CARL MICHAEL GABBERT

v.

Docket No. 13-88-187

GREENBRIER COUNTY BOARD OF EDUCATION

DECISION

Grievant, Carl Michael Gabbert, is employed by Respondent Greenbrier County Board of Education as Curriculum and Instruction Coordinator. Seeking increased pay, he filed this grievance at Level I on or about July 12, 1988, where relief was not granted. After subsequent denial at Level II¹ Respondent, pursuant to W.Va. Code §18-29-4(c), waived the matter to Level IV, at which a hearing was conducted October 25, 1988. Respondent submitted proposed findings of fact and conclusions of law on November 15, 1988; Grievant has chosen to not submit such a proposal.

Grievant has worked for Respondent continuously since September, 1968. In order of job assignment, Grievant was a

¹A transcript of the Level II hearing is included in the record of this case.

classroom teacher for three years; Title I² administrator for three years; principal for one year; and, since 1974, has again been an administrator in Respondent's central office. For pay purposes, Grievant obtained the level of twenty years of experience on June 30, 1988.

Respondent's written policy titled "Administrative Salaries" was adopted March 20, 1981³ and provides, in pertinent part:

Salaries for administrators, including... central staff, shall be determined by the use of an index, or ratio relationship to the classroom teacher salary scale. Once in effect, the ratio relationship between teacher and administrator shall be consistently applied from year to year until such time as this policy is superceded [sic] by [Greenbrier County] Board [of Education] action."

. . . Computations.

A. Salaries shall be computed on a base daily rate to be derived as follows:

(1) Step on the appropriate teacher scale, reflecting years' experience and academic credentials.

(2) The teacher scale (monthly), reduced to a daily rate.

(3) The daily rate is then indexed by the amount designated for the type and size of school, or position. . . .

Code §18A-4-2 provides, in pertinent part:

On and after the first day of July, 1986,

²Title I is a program underwritten by the United States government. See Title 20, U.S. Code.

³Amendments to this policy since March 20, 1981 are not relevant to the instant matter.

\$600.00 shall be paid annually to each classroom teacher who has at least twenty years of teaching experience. Such payment shall be in addition to any amounts prescribed in the "state minimum salary schedule," shall be paid in equal monthly installments, and shall be deemed a part of the state minimum salaries for teachers.

Code §18A-1-1(c) provides, in pertinent part:

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

. . .
(4) "Central office administrator": The superintendent. . .and other professional educators. . .charged with the administering and supervising of the whole or some assigned part of the total program of the county-wide school system.

Code §18A-4-8 provides, in pertinent part:

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

Grievant alleges that Code §18A-4-2 and/or Respondent's "Administrative Salaries" policy entitles him to have the \$600.00 salary supplement considered in the computation of his salary.⁴ At the Level IV hearing, he conceded that, to his knowledge, there was no other program coordinator in Respondent's employ who was subject to this consideration.⁵

⁴No evidence that Respondent has been afforded funds by the West Virginia Department of Education to cover this salary supplement for central office administrators was offered.

⁵By way of post-hearing memorandum of law, Grievant argues his salary is no longer uniform with other of Respondent's coordinators since they are receiving 110% of a classroom teacher's salary with like years of experience and
(Footnote Continued)

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

FINDINGS OF FACT

1. Grievant, Carl Michael Gabbert, earned twenty years of experience with Respondent Greenbrier County Board of Education as of June 30, 1988. Only three years of this experience was as a classroom teacher, with most of the remainder being as a central office administrator.

2. Grievant's salary, which by Respondent's 1981 written policy is 110% of that of a classroom teacher, was computed without inclusion of the \$600.00 per year supplement granted classroom teachers in 1986 via the adoption of W.Va. Code §18A-4-2.

CONCLUSIONS OF LAW

1. W.Va. Code §§18A-4-2, 18A-1-1(c)(1) and 4, read in pari materia provide that the \$600.00 supplement is an entitlement of classroom teachers with twenty years' experience as classroom teachers only.

(Footnote Continued)

he is not, due to Respondent's position on the \$600.00 supplement. It may reasonably be presumed, however, that Respondent's intention is to exclude the \$600.00 supplement from the pay computation of all coordinators at the "twenty years" level.

2. A county board of education may establish salary scales above the state minimum requirements. Code §18A-4-8.

3. The \$600.00 supplement for certain classroom teachers is "in addition to. . .the 'state minimum salary scale'," Code §18A-4-2, and does not attach thereto. Dayoub v. Marshall Co. Bd. of Educ., Docket No. 15-86-212-3 (December 31, 1986).

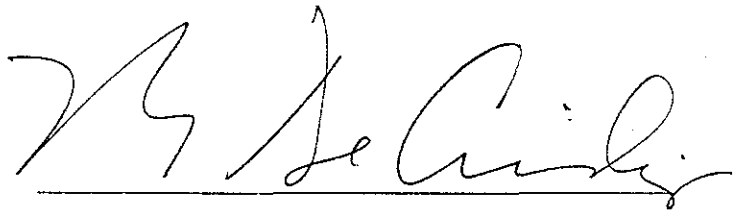
4. A county board of education in West Virginia is bound by procedures it properly establishes to conduct its affairs. Powell v. Brown, 238 S.E.2d 220 (W.Va. 1977). However, said county board of education may likewise interpret its own policies, so long as it does so in a manner not unreasonable, arbitrary or capricious. Fairchild v. Boone Co. Bd. of Educ., Docket No. 03-88-160 (December 7, 1988).

5. Respondent's interpretation of its "Administrative Salaries" policy, consistent with previous legal interpretation of Code §18A-4-2, e.g., Dayoub, is reasonable as a matter of law.

6. Respondent's policy does not require payment of the \$600.00 supplement, or any salary revision based thereon, to Grievant in this case.

Accordingly, this grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Greenbrier County and such appeal must be filed within thirty (30) days of receipt of this decision. See W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.



M. DREW CRISLIP
HEARING EXAMINER

Dated: December 12, 1988