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

v.

DOCKET NO. 17-88-014-2

HARRISON COUNTY BOARD OF EDUCATION

DECISION

Grievant, Johnny Mayo, was employed by the Harrison County Board of Education as Director of Buildings and Grounds until July 1, 1987. Mr. Mayo filed a level four grievance appeal form on January 28, 1988 in which he alleged that he had been deprived of salary increases granted service personnel from 1984-86. The matter had previously been heard at level two and was submitted for decision based upon the record supplemented by proposed findings of fact and conclusions of law received by July 14.

The record indicates that the grievant had been assigned as the Director of Buildings and Grounds from 1970 until the position was eliminated as a part of reduction in force in 1987. The grievant argues that during the 1984-85 and 1985-86 school years he was deprived of a legislative salary increase for service personnel and was not credited with the increased incremental salary for service personnel from 16 to 20 years. Because of this failure to properly credit him with the salary adjustments his increase in salary for 1984-85 was only \$1,804.82 while service personnel classified under pay grade "H" received \$2,035.80 for a difference of \$230.09. During 1985-86 the grievant received a salary increase of only \$893.92 while service personnel under the expanded years of service increment received \$1,879.20 for a difference of \$985.28.¹ When he questioned his salary status at the time he was advised that he was paid as professional personnel and he did not question the matter further. (T. p.6)

¹The level two transcript indicates that the grievant is asking for a total of \$1,216.26 which he believes he is due. (T. p.4)

The board of education argues that the grievant had been considered a professional employee for salary purposes and was compensated based on the professional salary scale including the professional salary supplement. In 1986-87 the grievant's base salary was \$27,269.28 plus the professional director's supplement of \$3,465.00. Had he been paid pursuant to the service personnel salary schedule at pay grade "H" he would have received only \$23,124.60. Therefore, if the grievant wishes to have his salary adjusted to pay grade "H" then he has been overpaid.² The board further argues that the grievance was not filed within the timelines of W.Va. Code, 18-29-1 et seq. and that any claim is also barred by the equitable doctrine of laches.³

W.Va. Code, 18A-4-8 provides class titles and definitions for service personnel. "Director or Coordinator of Services" is defined as personnel who are not professional personnel or professional educators and are assigned to direct a department

²The grievant concedes in his proposed findings of fact that his total salary during the 1984-85 and 1985-86 school years was in excess of that for pay grade "H" with maximum experience increment.

³The grievant asserts that he was not aware that his position was classified as service personnel until after it was eliminated during the reduction in force.

or a division. W.Va. Code, 18A-4-8a classifies director as pay grade "H". Although the board of education may have mistakenly believed that all directors, professional and service, were to be paid uniformly, this is not required. If the grievant was properly compensated the state minimum salary for pay grade "H" with the appropriate years of experience plus any applicable county supplement due a service personnel employee of that classification, that is all that is required.

Because of the outcome of this matter the issue of timeliness will not be exhaustively addressed; however, the grievant has indicated that he was aware of the salary changes at the time they occurred and made an initial inquiry but did not pursue the matter further until approximately two years later.

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

Findings of Fact

1. The grievant was employed by the Harrison County Board of Education as Director of Buildings and Grounds from 1970 until 1987 when the position was eliminated as part of a reduction in force.

2. The position of director is classified as pay grade "H" on the service personnel salary chart.

3. While holding the title of director the grievant's salary was computed on the professional salary scale with an administrative supplement.

4. Effective the 1984-85 school term service personnel were awarded a legislative salary increase. Effective the 1985-86 school term salary increments for service personnel were increased from 16 to 20 years experience. The grievant claims he was not credited with either increase.

5. At some point during this time period the grievant inquired about the service personnel salary increases and was advised that he was paid on the professional salary scale. He did not pursue the matter further.

6. Had the grievant been paid according to the service personnel salary scale with the increases his 1986-87 salary would have been \$23,124.60. The actual salary he received was \$30,734.28.

Conclusions of Law

1. As the grievant was compensated in excess of that required by W.Va. Code, 18A-4-8a, including legislated increases

from 1984-1986, for service personnel employees classified as pay grade "H" with the maximum allowable experience, he is not entitled to the amount of those salary increases in addition to his established salary.

2. When an employee is aware of a possible violation of his rights and does not timely pursue a resolution of the matter or show valid reason for a delay in excess of the timelines for filing a grievance such matter is untimely and barred by the doctrine of laches as a matter of law. Grievance rights must be exercised with particular diligence when the employee seeks to exert a right to public funds. Earls v. Cabell County Board of Education, Docket No. 06-86-360-1; Zban v. Cabell County Board of Education, Docket No. 06-87-010; Spahr, et al. v Preston County Board of Education, Docket No. 39-86-342-2; Maynard v. Board of Education of the County of Wayne, 357 S.E.2d 246 (W.Va. 1987).

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

Aug. 31, 1988

Sue Keller

SUE KELLER
HEARING EXAMIER