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MONTY L. MCCOMAS

v.

DOCKET NO. 22-87-197

LINCOLN COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Monty McComas, was employed as a substitute aide by the Lincoln County Board of Education and first performed in that capacity on October 11, 1983. On September 17, 1986 the Board posted a vacancy position for a part-time aide at \$15.00 per day. Grievant bid on and received the position effective October 1, 1986. She was assigned to Guyan Valley High School under the supervision of Nancy Burns, a special education teacher. In May of 1987 the grievant filed a grievance alleging her contract of employment did not conform to the requirements of W.Va. Code, 18A-2-5; she was not paid in accordance with W.Va. Code, 18-4-8a and she had not been afforded all service personnel employee rights, privileges and benefits as required by W.Va. Code, 18A-4-8.¹

¹Since nearly eight months elapsed between the time grievant signed the contract and the grievance
(footnote cont.)

The grievant proceeded through Levels I, II and III of the grievance procedure and the parties agreed to submit the case for decision at Level IV on the record and briefs.

The contract signed by the grievant and George Chapman, President of the Lincoln County Board of Education, indicates her duties as "Supplemental Special Education Aide" and her compensation as \$15.00 per day and under Item Number 3 the parties acknowledge that "this assignment is entered into pursuant to the West Virginia Code 18A-4-16." (Grievant's Exhibit) That section deals with extracurricular assignments and in pertinent part reads as follows:

1. The assignment of teachers and service personnel to extracurricular assignments shall be made by mutual agreement of the employee and the superintendent, or designated representative, subject to board approval. Extracurricular duties shall mean, but not limited to, any activities that occur at times other than regularly scheduled working hours, which include the instructing, coaching, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly scheduled basis. (Emphasis added)

4. An employee's contract of employment shall be separate from the extracurricular assignment agreement provided for in this section and shall not be conditioned upon the employee's acceptance or continuance of any extracurricular assignment proposed by the superintendent, a designated representative, or the board.

(footnote cont.)

was filed, the Board argued in its brief that it was untimely. Grievant testified at the Level III hearing that she only discovered in May 1986 that other aides working the same hours were getting a higher salary. W.Va. Code, 18-29-4(a)(1) allows the filing of a grievance within fifteen days of the date on which the event became known to the grievant.

Grievant contends the Board cannot use this section of the W.Va. Code to "contract out" for services and regardless of the terms of the contract she signed, she has been performing all the functions and duties of a part-time Aide II. She further asserts that as such an employee she is to be afforded service personnel rights, privileges and the appropriate salary mandated by W.Va. Code, 18A-4-8a and W.Va. Code, 18A-4-8.

It is the Board's position that grievant's regular employment contract was for a substitute aide and the language of W.Va. Code, 18A-4-16, in effect, allows the "contracting out" for supplemental aide services for rates lower than that required by W.Va. Code, 18A-4-8a, which in part reads:

On and after the first day of July, one thousand nine hundred eighty-six, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the "state minimum pay scale" as set forth in this section, and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one half the amount indicated in the "state minimum pay scale", set forth in this section.

(Emphasis added)

The Board in this case has misconstrued W.Va. Code, 18A-4-16 and ignored the fact that the grievant's contract was not supplemental but the only one by which she was rendering services. It has also overlooked the provision in W.Va. Code, 18A-4-8 requiring school

boards to employ only personnel classified as Aide II as aides in any special education program. The language and intent of W.Va. Code, 18A-4-16 is clear and unambiguous and as such shall be given full force and effect. Lavender v. McDowell County Board of Education, 327 S.E.2d 691 (W.Va. 1984). It contemplates contracts between employees and boards of education for activities which occur at times other than regularly scheduled working hours. Grievant worked on all regularly scheduled school days from 7:45 a.m. to 11:15 a.m., Monday through Friday, at Guyan Valley High School under the direct supervision of a special education teacher and she has worked in no other capacity for the Lincoln County Board of Education since October 1, 1986. (T.7,8) There was nothing supplemental in nature about her duties since she began working at Guyan Valley High School. Moreover, W.Va. Code, 18A-4-8 is clear in its requirements that only persons with the class title Aide II be assigned to special education programs and the Board does not and could not claim a violation of that section to support its contention that "supplemental aide" contracts are allowed under the W.Va. Code.

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

FINDINGS OF FACT

1. Grievant, Monty McComas, was first employed by the Lincoln County Board of Education on August 6, 1983 and first performed those duties on October 11, 1983.

2. On September 17, 1986 the Board posted a vacancy position for a part-time aide at a salary of \$15.00 per day.

3. Grievant bid on and received the position effective October 1, 1986.

4. Since the starting date of October 1, 1986, grievant has worked from 7:45 a.m. to 11:15 a.m. on all regular school working days.

5. Grievant has worked in the capacity of a regularly employed service employee, namely, an Aide II since October 1, 1986 at Guyan Valley High School under the supervision of a special education teacher.

6. Grievant has been compensated by the Lincoln County Board of Education at a rate of \$15.00 per day since October 1, 1986.

7. Grievant has not been afforded all service employee rights, privileges and benefits provided to such personnel by the W.Va. Code since beginning to work under her present contract.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-16 allows boards of education to enter into contracts with service personnel for the performance of extracurricular duties but those duties must be ones which occur at times other than regularly scheduled working hours and must be separate from and not part of an employee's regular contract of employment.

2. Grievant's agreement to perform her assigned duties at Guyan Valley High School was not separate from any regular employment contract but instead comprised her regular employment contract with the Lincoln County Board of Education.

3. W.Va. Code, 18A-4-8 requires county school boards to employ only persons with class title Aide II as aides in any special education program.

4. W.Va. Code, 18A-4-8a provides that the monthly pay for each service employee whose employment is for a period of three and one-half hours or less per day shall be at least one half the amount indicated in the "state minimum pay scale."

5. W.Va. Code, 18A-4-8 provides that school service employees shall be entitled to all service personnel employee rights, privileges and benefits provided under Chapter 18A and other chapters

of the West Virginia Code without regard to such employee's hours of employment or the methods or services of compensation.

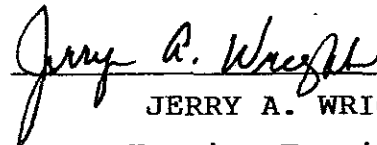
6. W.Va. Code, 18A-4-5b requires uniformity in salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within a county.

7. County school boards are not statutorily required to employ service personnel when it is more efficient and/or economical to contract the work to private industry, Duffle, et al. v. Kanawha County Board of Education, Docket No. 20-87-190, but when the W.Va. Code requires a certain position to be filled by a service employee with a particular class title such position must be filled accordingly and that employee's employment contract and its terms must conform to the requirements of W.Va. Code, 18A-2-5 and said employees must be afforded all the rights, privileges and benefits provided in accordance with W.Va. Code, 18A-4-8.

Accordingly, the grievance is **GRANTED** and the Lincoln County Board of Education is **ORDERED** to establish regular employee status for the grievant, Monty McComas, and award her backpay in the amount of the difference between the salary received and one half the state minimum pay scale for the position Aide II dating

back to October 1, 1986. It is further ORDERED that the Lincoln County Board of Education grant the grievant seniority rights, personal leave days and all other rights, privileges and benefits afforded regular service personnel also dating back to October 1, 1986.

Either party may appeal this decision to the Circuit Court of Lincoln County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this 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: Jan 6, 1988