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JO ELLEN RYAN, et al.

v.

DOCKET NO. 02-88-060

BERKELEY COUNTY BOARD OF EDUCATION

DECISION

Grievants, Jo Ellen Ryan, Theresa Morrison, Rebecca Gamble, Susannah McCulloch, Mary Ann Fahey and Cheryl Cain are employed by the Berkeley County Board of Education as speech therapists. They filed a level four grievance appeal on April 20, 1988 in which they alleged that for a period of several years the board of education has denied them supplemental salary awarded to other speech therapists. At the level four hearing conducted on June 13 both parties agreed to submit the matter for decision based upon the record supplemented by proposed findings of fact and conclusions of law.

The facts are uncontroverted that prior to the 1975-76 school year all speech therapists in Berkeley County were awarded

a salary supplement of \$500.00 beyond the regular teacher's salary. This supplement was discontinued in 1975 for new employees but was continued for those hired before that time. In January 1988 the above-mentioned individuals filed a level one grievance seeking payment of the supplement retroactive to the time they were hired. At level three the board of education granted the supplement effective July 1987 and the only remaining issue is that of backpay.¹

The board of education argues that the grievants failed to pursue their rights in a timely fashion and such a lengthy delay is particularly disfavored in matters regarding public finances. The grievants argue that they had previously inquired about the supplement but had relied in good faith on the explanation of their supervisor that the salary schedule was not violative of the uniform salary statute. In September 1987 they became aware that one therapist who was first employed in 1985 was receiving the supplement and from that moment began to pursue the issue in a timely manner.

¹Pending the outcome of this matter the board of education has not implemented the supplement which it awarded at Level III. The grievants now request interest which is not awarded in the grievance procedure.

Generally, when an employee makes a good faith and diligent effort to resolve a grievable matter he will not be barred from filing a grievance immediately after the cessation of or apparent futility of the efforts. Steel v. Wayne County Board of Education, Docket No. 50-87-062. In the present matter the grievants made inquiries about the salary discrepancy but did not pursue the issue further until 1987. Even though the grievants may have naively accepted the administrator's explanation of the salary difference it does not alter the fact that they were aware of the situation and chose not to seek advice from their professional organization or other source or to pursue the matter in any other way. A lack of diligence when seeking to challenge a matter regarding an expenditure of public funds constitutes laches. Maynard v. Board of Education of Wayne County, 357 S.E. 2d 246 (W.Va. 1987)².

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

²This matter may be distinguished from Goodwin v. Lewis County Board of Education, Docket No. 21-86-021, in which the grievant, who had acted to his detriment in relying upon the advice of an administrator, had made a diligent effort to resolve the matter upon his becoming aware of the error.

Findings of Fact

1. Grievants are six speech therapists employed by the Berkeley County Board of Education.

2. Prior to 1975 the board of education had paid speech therapists a salary supplement of \$500.00 in addition to the regular teacher salary.

3. The six grievants, employed at various times between 1976-1986, were not awarded the supplement.

4. When the grievants had inquired about the discrepancy they were advised that the supplement was not awarded to employees hired after 1975. They accepted the representation that the difference in salaries was not in violation of the uniform salary statute.

5. On September 1987 the grievants became aware that another therapist who had been hired in 1985 was receiving the \$500.00 supplement. They then began to pursue the issue informally and filed this grievance in January 1988.

Conclusions of Law

1. Counties may fix higher salaries for teachers placed in special instructional assignments for those assigned to or employed for duties other than regular instructional duties and

for teachers of one-teacher schools. Uniformity shall apply to additional salary increments or compensation for all persons performing like assignments and duties within the county. W.Va. Code, 18A-4-5a.

2. The grievants failed to exercise diligence in resolving this matter as they were aware of the salary discrepancy yet neglected to pursue the issue for as long as ten years, choosing instead to rely upon the assertion of the administration that they were not entitled to the supplement.

3. Claims to public funds not made in a timely manner are barred by the doctrine of laches. Maynard v. Board of Education of Wayne County, 357 S.E. 2d 246 (W.Va. 1987).

Accordingly, the claim for backpay prior to July 1987 is **DENIED.**

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Berkeley 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 September 29, 1988

Sue Keller

SUE KELLER
HEARING EXAMINER