



10-27-88  
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**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**  
ARCH A. MOORE, JR.  
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Charleston, WV 25301  
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OLIVIA ARCHIBALD

v.

DOCKET NO. 42-88-171

RANDOLPH COUNTY BOARD OF EDUCATION

DECISION

Grievant, Olivia Archibald, is employed by the Randolph County Board of Education (Board) as the Coordinator for Community Education and Public Relations. Ms. Archibald filed a level one grievance on June 28, 1988 in which she alleged a violation of W.Va. Code §18A-4-5a when she was denied a county supplement equal to that of the highest paid county coordinator. The matter was denied following a hearing at level two and consideration was waived by the Board at level three. A level four appeal was filed on September 6 and an evidentiary hearing was conducted on October 4. Post-hearing memoranda of law were filed by October 21, 1988.

The record reveals that the grievant was employed by the Board in January 1980 as Coordinator of Public Relations, Community and Career Education. The grievant was awarded no administrative salary supplement until the Board approved a \$50.00 stipend effective November 20, 1980 through 1983.

The grievant stated that she knew of the salary disparity for several years but interpreted it to be proper and had relied upon the fairness of the Board. She became aware of the uniformity of salaries when she read a newspaper article published on February 15, 1988 which addressed the salaries of the central office personnel. This caused her to wonder if the salaries should have been uniform previously and began to research salary records back to 1979. She then took the information to legal counsel who advised her that a grievable issue did exist. Pursuant to that advice the grievant has requested that she be compensated for the period from January 1980 through the 1982-83 school year at a rate of \$250.00 per month (for a total of \$8,700.00), the same as that received by the Coordinator of Personnel/Student Attendance, a position which she characterizes as comparable to her own.

The Board asserts that the matter is barred from consideration as it was not filed in a timely manner as evidenced by the

grievant's admission that she had been aware of the disparity in salary for several years yet had not pursued her rights until some five years later. The grievant responds that she filed the grievance three days after being advised by counsel that a viable issue existed. She argues that this action was in compliance with W.Va. Code §18-29-4(a)(1) which requires that a grievance be filed within 15 days following the occurrence of the grievable event or within 15 days of the date upon which the event became known to the grievant.

In support of her position the grievant cites the case of Maynard v. Board of Education of Wayne County, 357 S.E. 2d 246 (W.Va. 1987) ,in which the Court determined that a ten-year statute of limitations would apply to a class action suit for declaratory judgment filed by service personnel to recover funds due them as salary supplements. However, because the action was a proceeding in equity and because prejudice to the Board could be shown since sufficient funds to pay the claims were not available, the action was barred by the doctrine of laches. The grievant distinguishes the present matter by presenting the testimony of Superintendent Billy Ray Dunn regarding the Board's financial reserves which she interprets to mean that the Board is in possession of funds sufficient to satisfy her claim without causing it undue prejudice.

W.Va. Code §18-29-4(a)(1) provides the guidelines by which it is determined whether a grievance is timely filed. The grievant's argument that she filed the grievance within 15 days of receiving legal advice confirming the existence of a grievable issue does not meet the statutory time lines. The grievable event occurred at the time the grievant was hired. It is not clear whether the grievant was aware of the salary disparity in January 1980 but she testified that she has been cognizant of the difference for several years. The matter would have been timely filed within 15 days of the time she became aware of the situation but cannot be stretched for a period of several years. Neither does the receipt of a legal opinion control the running of the statutory time lines. Further, the grievant offers no valid reason for the delay in pursuing a remedy other than her assumptions that the varying supplements were proper and that she was being treated fairly. This acceptance of the situation for three and one-half years plus the failure to question the Board in 1984 when adjustments were made in the supplements to insure uniformity illustrate an unexcusable lack of diligence.

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

### Findings of Fact

1. Grievant was first employed by the Randolph County Board of Education in January 1980 as the Coordinator for Community Education, Career Education and Public Relations. Since 1984 she has been Coordinator for Community Education and Public Relations.

2. From January to November 1980 the grievant was paid based on the teachers' salary schedule and did not receive an administrative supplement.

3. From November 1980 through the 1982-83 school term the grievant received a supplement of \$50.00 per month. Other individuals received the same or higher supplements with the highest of \$250.00 awarded to the Coordinator of Personnel/Student Attendance.

4. In 1984 supplements were amended to be uniform for all similarly-situated personnel.

5. The grievant took no action regarding the salary disparity between 1980-1983 nor did she question the matter when the supplements were amended in 1984.

6. Nearly four years after the supplement was amended, and eight years after being hired, the grievant began to question whether she had been correctly compensated for the first three and one-half years of her employment.

### Conclusions of Law

1. The statute of limitations for the filing of a grievance by an employee of the board of regents, state board of education, county boards of education, regional educational service agencies and multi-county vocational centers is set forth in W.Va. Code §18-29-4.

2. The grievance process begins with a conference with the grievant, or his designated representative, and the immediate supervisor to be scheduled within 15 days following the occurrence of the event upon which the grievance is based, or within 15 days of the date on which the event became known to the grievant or within 15 days of the most recent occurrence of a continuing practice giving rise to a grievance. W.Va. Code §18-29-4(a)(1).

3. A grievance must be filed within 15 days of the date on which the event becomes known to the grievant (i.e. within 15 days of the grievant's learning of the salary disparity) not within 15 days of learning that the event was grievable (i.e. within 15 days of receiving legal advice that a grievable issue arose from an event which occurred in 1979 and which was known by the grievant for several years). Ryan et al. v. Berkeley County Board of Education, Docket No. 02-88-060 (September 29, 1988); Spahr et al. v. Preston County Board of Education, Docket No. 39-86-342-2 (August 21, 1986).

4. The grievant failed to pursue a remedy within the statutory time lines and has failed to show a valid reason for the delay.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Randolph County and such appeal must be filed within thirty (30) days of receipt of this decision. (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.

DATED: December 9, 1988

Sue Keller

SUE KELLER  
HEARING EXAMINER