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GARLAND BARNHART

v.

Docket No. 20-87-201-1

KANAWHA COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Garland Barnhart, is employed by the Kanawha County Board of Education as a vice principal assigned to a county high school. He alleges discriminatory treatment by school officials toward him and other highly senioreed vice principals in relation to salary matters dating back to the 1979-80 school term to the present 1987-88 term. Upon adverse rulings at the lower levels, grievant filed a level four grievance and hearings were conducted October 21, November 25 and December 23, 1987. Briefs were filed January 26 and February 17, by the grievant and board respectively, and the grievant's rebuttal, February 25, 1988.¹

¹ At the onset of the level four hearings the board's attorney objected to grievant's modification of his original grievance, an allegation that a less senior administrator made more money than he. The level two determinations of June 18, 1987 concluded the the named principal had been erroneously overpaid for two years and that steps would be taken to recover the overpayment. Chief Examiner Leo Catsonis, who heard the case at level four, ruled that grievant could proceed upon the newly stated grievance issues. The case was subsequently assigned to the undersigned hearing examiner in March 1988.

Prior to the 1979-80 academic year county administrators became aware that teachers who were promoted to principalships would receive a lower daily salary (the overall salaries would be more but with extended employment days, the salary would be less per day). Accordingly, an effort was made to update the salaries of principals and vice principals. A salary scale was devised for the 1979-80 term with salary levels between 9 and 21. First year vice principals began at entry level 9 and could proceed in successive years to level 21; vice principals already established were placed on a level which was determined by the previous year's salary plus current state increments. Grievant's salary was "fused" at level 20; he had twelve years administrative experience at that time (23 years as an educator) but "topped out" at 21 on the vice principal salary scale in 1980-81. From 1981-82 until 1984-85, five years, grievant remained on level 21 and his only pay increases were those appropriated by the State or county for salary increases.

During the 1985-86 school year, salary schedules with levels were not used. Instead, a formula was applied to determine each salary based on the previous year's salary and adding amounts for various factors including a sum for each year's experience (up to sixteen years for MA, and MA plus fifteen and nineteen years for MA plus fifteen and Doctorate), each degree beyond a MA, days worked, teachers supervised and the like.

The administration devised a new salary schedule with various salary levels for 1986-87, and thereafter, which was similar to the earlier schedule, with levels ranging from 0-15. Again, grievant was placed at a level based on his previous year's salary and current State and county increases. Grievant was "fused" at level 6, \$35,067. The 1986-87 directive for implementing the salary schedule noted that some administrator's salaries were below the ranges established by the schedule and they were to receive an additional \$500 per year until the salary schedule was reached and that all administrators should be placed on the schedule within four years.

For 1987-88, grievant's salary advanced to \$36,343 a \$1276 salary increase over the previous year's salary as he was placed on level 10 in the 1987-88 salary schedule. The directive for implementing the 1987-88 schedule notes:

Some administrators pay levels are below the number of years of administrative experience. All principals and vice principals are scheduled to be paid on their total years of experience as a principal and/or vice principal by the 1989-90 school year. For the 1987-88 school year, principals and vice principals will be placed on a level within six years of their administrative experience. For the 1988-89 school year, they are scheduled to be paid on a level within three years of their experience as a principal and/or vice principal.

Grievant says he does not object to a limit imposed for experiential credit for salary purposes, however, he contends that due to the discriminatory manner in which the outside limit

has been applied by the board, he lost ground to lesser experienced principals during the years he was frozen at level 21 on the old salary scale and this resulted in compounding the problem and an improper placement on the revised 1986-87 scale which was based on his previous year's salary amount.² He argues that the 1987-88 salary directive was not followed and he should have been placed at level 14, \$37,271, which reflected his administrative years of experience less 6 as set forth in the directive.³ He further states that he cannot wait for three more years to advance on the scales and deserves the maximum payment now for all of his years of dedicated service to the school system.⁴

²It appears that grievant does not object to experiential limits as long as it was not he who resided at the top of the limit in 1980, but he fails to articulate how such placement could have been avoided given the total administrative and educational experience he had already acquired at that time. Grievant's logic fails because the only possible solutions would have been to increase the number of levels or scope of the limit thus eliminating the outer limit grievant professes to find compatible in concept or to have placed him at a lower level (and lower salary) so he could have advanced over the years. Surely, grievant would not have been pleased with the latter solution.

³Grievant's counsel urges that the directive is clear, unambiguous and should be applied, not interpreted as the board suggests, and that school regulations and laws are to be strictly construed in favor of the school employee and cites case law in support thereof.

⁴Undoubtably, grievant has rendered a great service to the schools as have, in all probability, many other school personnel. Administrative notice can be taken that few educational personnel in West Virginia make what they deserve but that is not at issue herein.

Grievant argues that the board violated W.Va. Code, 18A-4-3 which requires uniformity of salary increments for principals and has arbitrarily discriminated against older and more experienced vice principals. He requests the level 14 salary, \$37,271, for the current year, a "plan" prepared by the board to compensate him for loss of income from the 1979-80 school year to present plus interest on all sums due him, and an award of attorney fees and costs.⁵

With respect to the 1987-88 school year, counsel for the board contends that vice principals such as grievant who had more than fifteen years administrative experience would have already exceeded the maximum salary level on the new salary schedule (0-15), therefore, all were placed within six years of the maximum 15 levels on the scale rather than within six years of total administrative experience.⁶ Further, counsel asserts, grievant's 1987-88 placement at level 10 allows him an opportunity to advance five additional salary increases-levels and, finally, grievant is one of the highest paid vice principals in the county.

⁵ Absent express authority to do so, the West Virginia Education Employees Grievance Board will not grant awards of attorney fees or costs at level four.

⁶ A personnel administrator explained that, at times over the years, salary levels could change drastically or be frozen due to variables. For example, an entry level vice principal could show an inflated salary level due to board policy prohibiting relegation of personnel to a salary lower than one previously attained or a vice principal could be held at one level because of assignment changes altering employment days or size of school.

Counsel argues that placing an outside limit on the value of experience is utilized in the teachers' salary scale set forth in W.Va. Code, 18A-4-2 and grievant's disagreement with the concept is insufficient to sustain an allegation of discrimination. Counsel urges that grievant has not shown by example or otherwise that he was treated any differently than other similarly situated vice principals.

Numerous exhibits were submitted into the evidence of this case detailing each of twelve senior high school vice principal's educational levels, administrative experience, days worked and salary histories over the years as well as various salary schedules over those years. The voluminous documents have been carefully scrutinized, and while the allocation of salaries is somewhat confusing due to some of the variables determinative of salaries, the data is sufficiently clear to draw some conclusions.

Although Kanawha County schools have implemented means to determine principal salaries somewhat differently, W.Va. Code, 18A-4-3 provides a basis for a board of education to compute principals' salaries by using the teachers' salary schedule denoted in W.Va. Code, 18A-4-2. The latter code section contains a limit for salary increments based on years of experience.

Going back now to the twelve relevant vice principals' salary histories, three administrators had between 2 and 5 years experience, six administrators between 9 and 14 years and three between 18 and 21 years. The present salary range between the three most senior vice principals, including grievant, is \$36,343 for that group to \$30,737, the salary of the least senior vice principal with two years experience. During the years grievant especially complains of, 1979-80 through 1984-85, when he quickly topped the experiential scale, the three most senior vice principals, including grievant, averaged over \$6000 in salary advancements during that period. The remaining present mid-group of five administrators who were then entry level vice principals and who had not topped the existing levels averaged about \$8000 advancement during the same period (they averaged about \$400 more per year to bring their salaries into the then current ranges); one of these mid-range administrators gained \$12,000. Of importance here is that had grievant remained as a teacher in 1980 with 23 years experience as an educator, he would have topped out on the teacher scales several years earlier and he would have enjoyed no further experiential salary increments.

Moving to current matters reveals that although the legislature did not provide educators a salary increase for the present 1987-88 fiscal year, the three most senior vice principals, including grievant, received a \$1275 salary increase, the mid-range

principals an average of \$600 and the three least senior, who were not on the 1979-80/1984-85 scales, \$722. Thus the new salary scale not only attempts to bring entry level people to current scale, but provides more senior administrators an opportunity to overcome the impact of topping out on the salary limits.

Review and analysis of past and present salary schedules for Kanawha County vice principals establishes that an effort has been made to provide principals a salary greater than teachers and create standardized salary schedules for various groups of principals based on prevailing salaries and reflecting number of days worked, school population, institutional level (junior high, senior high), degrees attained and administrative hierarchy (principal, vice principal). Newer administrators whose entry level salaries exceed those provided older administrators are advantaged; older administrators who have topped the experiential levels are disadvantaged, but this is the logical outcome of the process to adjust all salaries to comparable and prevailing levels found in the highest paying counties and to create standardized minimum and maximum salary ranges for various administrative personnel at entry through maximum allowable years' levels.⁷

⁷ At the conclusion of the level four hearing counsel for grievant was advised by the hearing examiner to file comprehensive findings of fact tying the exhibits explicitly into his theory of the case (T.81). Except for one listed example with little explanatory data (See, Findings of Fact, No. 5, herein) counsel did not illuminate his position in relation to the exhibits other than continued assertions of discriminatory treatment.

In light of the facts and circumstances of this case and as the legislature has not seen fit to provide additional salary levels for its most senior teachers and principals, it would appear that the Kanawha County school systems has provided salary adjustments for all of its vice principals, including those most senior, in an equitable fashion.⁸

The foregoing recitation and the following specific findings will serve as the findings of fact and the conclusions of law of this decision.

FINDINGS OF FACT

1. Grievant is a 31 year veteran educator and has served as a vice principal in a county high school for the past 20 years while holding a Master's plus 30 during that period; his salary has advanced from \$9032 in 1967-68 to \$36,343 in 1987-88, a \$27,000 increase, and he is among three similarly situated, most senior, and highest paid vice principals in the county. Four vice principals with half or a little less than half of grievant's administrative experience have averaged just under a \$15,000 total increase over the span of their administrative experience.

⁸ In 1986 the legislature did provide that classroom teachers with 20 years experience shall have an annual salary raise of \$600. W.Va. Code, 18A-4-2. Some counties have provided this annual amount to principals while others have not. Dayoub v. Hancock County Board of Education, Docket No. 4-86-212. In Dayoub it was determined that the \$600 supplement as it related to personnel presently serving as principals, was a discretionary matter for each board.

2. In years 1979-80 through 1984-85, a salary schedule was implemented with salary levels between 9-21 established for vice principals. Grievant and several other administrators were placed according to their previous year's salary plus State and local raises and reached the maximum level within a year or two but still received substantial salary raises over the years while the entry level vice principals trailing behind advanced with slightly greater yields of about \$400 per year.

3. In 1986-87 the salary schedule was revised to provide county principals salary amounts comparable with other counties. The 1987-88 salary schedule with 0-15 levels directed that vice principals be placed on a level within six years of their administrative experience and all three vice principals whose actual experience already exceeded the maximum allowable level were placed within six years of the maximum of 15.

4. Grievant filed a grievance when he discovered that a vice principal less senior than him had a greater salary. The respondent discovered an erroneous overpayment to the administrator in question and took steps to correct the error and recover the overpayment. Grievant pursued his grievance on the allegations and theory that the board discriminated against more senior vice principals over the years and that he was underpaid and deserved salary adjustments as a result thereof.

5. The example provided by grievant to prove discriminatory treatment of senior vice principals does not, in and of itself, reflect impropriety on the part of the board in allocating salaries to vice principals (Grievants Proposed Findings, Nos. 6-7). The data shown for the four cited administrators, academic year 1986-87, indicate each principal's attained level for that year; some less senior principals do have a higher level number. However, their data was taken from an entirely different salary schedule than grievant's since some had different degrees attained and days worked and although their level number was higher, their salary was less than grievant's. Further, the stated salaries show one less senior vice principal with a higher salary than grievant's, an error already remedied by school officials, and in 1987-88 grievant will make \$696 more than the vice principal in question and grievant is now the highest paid vice principal of the four named.

6. Grievant herein has not shown a significant salary disparity between the most senior, mid-range and least senior vice principals, by example or otherwise, nor shown discriminatory treatment of senior vice principals. (Grievant Exhibit Nos. 1, 1-A, B, C, and 3 and 4). Had Kanawha County schools adhered to the statutory means to determine its administrators salaries, grievant would have ceased receiving any experiential increments from 1976 onward.

CONCLUSIONS OF LAW

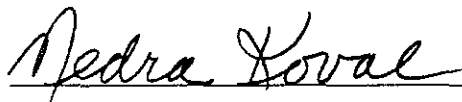
1. A board of education is authorized to fix salary schedules, W.Va. Code, 18-5-33, and experiential salary increments for principals who have reached the uppermost statutory limits are discretionary on the part of a board of education as long as the salary increments, if any, are provided in a similar manner to all like personnel. W.Va. Code, 18A-4-3; W.Va. Code, 18A-4-2; Dayoub v. Hancock County Board of Education, supra.

2. A grievant must prove every element of his grievance by a preponderance of the evidence and grievant herein has shown no violation of law, policy or practice or otherwise demonstrated a basis upon which to grant the monetary relief he seeks.

Accordingly, this grievance is **DENIED**.

Either party may appeal this decision to 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 advise this office of your intent to do so in order that the record can be prepared and transmitted to the court.

DATED: April 6, 1988



NEDRA KOVAL
Hearing Examiner