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**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**  
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**CHERYL HEATER and**

**PATRICIA SJOSTROM**

**v.**

**Docket No. 11-88-078**

**GILMER COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Cheryl Heater, is professionally employed by the Gilmer County Board of Education as a speech/language pathologist. She filed a level four grievance on May 11, 1988 protesting school board action which terminated the supplemental salary enhancement she had received in the past. The matter was remanded for processing at the lower grievance levels and was refiled to level four on August 9, 1988. The parties agreed to submit the case for decision upon the record developed at the March 24, 1988 termination hearing and the level three hearing.<sup>1</sup> Proposed findings and conclusions were received from grievant's representative and the board's counsel September 30, 1988 and October 4, 1988, respectively.

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<sup>1</sup> At the level three hearing conducted June 27, 1988, grievant's representative stated that the co-grievant in this case, Patricia Sjostrom, had withdrawn from the grievance.

The basic facts giving rise to the grievance are not contested. Grievant was originally employed for the 1977-78 school year and has held a basic 200-day contract through the 1987-88 school term. On or about March 11, 1988 grievant received a letter from School Superintendent Dr. Clacy Williams which advised her that the board would consider terminating her contract for the 1988-89 school year due to declining operating revenues and student population. The letter further stated that the superintendent would recommend that she be rehired to her position.

Grievant appeared at a March 24 hearing before the school board in response to the notice. At the hearing, grievant answered some employment questions posed by her representative. The board's counsel then cross-examined grievant; it was clear grievant had no idea of the scope of the proposed termination and reemployment action. Counsel then told grievant that he would soon reveal what her working conditions would be under the reemployment. Counsel then presented the school superintendent's position paper in support of some staff reductions, e.g., reduction-in-force (RIF) actions. The superintendent testified that he intended to recommend that grievant's contract be terminated and that she be reemployed with a deduction of the \$1895 local supplement presently paid for the position. He emphasized that the county-wide decline in student enrollment had not impacted upon grievant's caseload of students or her positional responsibilities. An addendum to the transcript characterizes the personnel actions affecting grievant, and others with various professional appoint-

ments, as a "reduction in contract" (RIC) procedure. The board also acted on RIFs affecting school personnel.

Grievant was notified via a March 29, 1988 letter from Dr. Williams that the school board had acted on March 28 to terminate her extra-duty contract and approved his recommendation that she be reemployed on a 200-day contract for the 1988-89 school year. Grievant has never held an extra-duty contract for work performed beyond the normal workday or 200-day teaching term. Dr. Williams admitted at the level three hearing that State Board of Education approval was not sought to eliminate or reduce grievant's position supplement.

Sometime after the board's RIC and RIF actions it reduced the non-teaching term of all its teachers by six (6) days.<sup>2</sup> When grievant received her salary calculations for the 1988-89, 194-day teaching term, the figures included a \$500 "Supplement for Position" allocation. Grievant's representative thus concluded in his proposals that grievant's supplement had been reduced from \$1895 to \$500. However, her entire supplement was eliminated as per the board's earlier action.<sup>3</sup>

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<sup>2</sup>It must be noted that this grievance does not touch upon the reduction of grievant's teaching term applied to all teachers after the RIC action. The crux of this dispute is the reduction of grievant's positional salary supplement based on a 200-day contract.

<sup>3</sup>The undersigned examiner, the board's counsel and grievant's representative had a telephonic conference about this matter on or about October 17, 1988. Counsel researched the matters contained on the salary calculations prepared for grievant by school personnel. He said the \$500 amount added for the positional supplement was an error and Dr. Williams did not know how it happened. The total salary accorded grievant was the same but was calculated in an entirely different manner than shown on the document.

Grievant questions the erroneous notices that were sent to her but essentially relies on the "clear and unambiguous language" of W.Va. Code, 18A-4-5a to support her argument that the salary reduction was improper. Grievant argues that the board's failure to obtain permission from the State Board of Education was violative of the statute and asks that her \$1895 supplement be reinstated.

The respondent contends that W.Va. Code, 18A-4-5a is not applicable in this grievance situation as the statute speaks to reductions of the total amount of local funds allocated for salaries, i.e., a county-wide reduction. It maintains that because the personnel action affecting grievant involved only the termination of her continuing contract and the reissuance of a contract based on a new salary, W.Va. Code, 18A-2-2 is controlling in this matter. Despite some admitted "surplusages" and inaccuracies contained in the various notices sent to grievant, the respondent argues it complied with the statute's mandates and errors attendant to the termination procedure at no time prejudiced grievant in any manner.<sup>4</sup>

Grievant's argument in this matter is persuasive. The respondent board had severe budgetary problems which had to be resolved. The RIC actions, which included grievant, terminated the contracts of ten (10) professional staff with special assignments. However, the board did not uniformly reduce the supplements of all those employees. Eight of the staff had extended contracts, from 210

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<sup>4</sup> Due to the disposition of this grievance, this argument will not be reached. However, officials of this school board need to provide its employees with accurate accounts of their employment status to avoid confusion and misunderstanding. See footnote 3, supra.

to 250 days. Each of these eight persons were terminated and rehired with a contract term reduction of five (5) to twenty (20) days and a corresponding salary supplement reduction. Conversely, grievant and the former co-grievant held standard 200-day contracts which included a positional supplement. Grievant was terminated and rehired to perform exactly the same duties for the same period of time but for less money unlike the other staff who had their overall duties and responsibilities reduced accordingly. The disparity of treatment is obvious. The personnel action to which grievant was subjected differed from the RIC action imposed on others and the respondent board's position that W.Va. Code, 18A-4-5a is not applicable in this matter cannot be upheld. In pertinent parts, W.Va. Code, 18A-4-5a provides:

County boards of education in fixing the salaries of teachers shall use at least the state minimum salaries established under the provisions of this article. The board may establish salary schedules which shall be in excess of the state minimums fixed by this article, such county schedules to be uniform throughout the county as to the above stipulated training classifications, experience, responsibility and other requirements. . . .

Counties may fix higher salaries for teachers placed in special instructional assignments. . . . Uniformity also shall apply to such additional salary increments. . . within the county: Provided, That in establishing such local salary schedules, no county shall reduce local funds allocated for salaries in effect on the first day of January, one thousand nine hundred eighty-four, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction.

The plain language of the statute makes it abundantly clear that local funds allocated for across the board county-wide salary supplements and for positional supplements, i.e., supplements allocated for teachers placed in special assignments, may not be reduced without prior approval from the State Board of Education. The reduction of grievant's supplemental salary by the respondent school board without a corresponding reduction of her teaching term and assigned responsibilities clearly places the personnel action to which she was subjected under the purview of W.Va. Code, 18A-4-5a. The respondent board's reduction of grievant's positional supplement without prior approval from the State Board of Education was violative of the statute.

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

#### FINDINGS OF FACT

1. Grievant has been an itinerant speech/language pathologist for eleven years. She held a 200-day regular teaching contract for school year 1987-88 and received a supplemental salary for her position all of the years of her employment.

2. In early March 1988 grievant was notified that due to declining student population and school revenues the respondent board would consider a recommendation that her contract be terminated and that she be rehired. The parties agree that the county decline in student population has not affected grievant's caseload of pupils or her work responsibilities.

3. At the termination hearing grievant learned that she was part of a so-called reduction-in-contract (RIC) action. While other similarly situated professional staff identified for the RIC had contract terminations and rehires which reduced their extended contract/employment term and concurrently reduced their salary supplement, grievant's employment term remained intact and only her supplement was eliminated.

4. Grievant was subjected to a reduction of her supplemental salary and the school superintendent and respondent board did not seek prior approval from the State Board of Education for that express personnel action.

#### CONCLUSIONS OF LAW

1. School law requires that a county board of education must elicit approval from the State Board of Education before it reduces local funds allocated for existing salary supplements of its professional staff. W.Va. Code, 18A-4-5a.

2. The respondent's failure to obtain the permission of the State Board of Education prior to eliminating grievant's positional salary supplement was violative of W.Va. Code, 18A-4-5a.

Accordingly, the grievance is **GRANTED** and the board is ordered to reinstate grievant's 1987-88 salary supplement to her 1988-89 salary calculations.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Gilmer 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: October 25, 1988



**NEDRA KOVAL**  
Hearing Examiner