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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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JENNINGS D. MILLER

v.

Docket No. 15-88-013-3

OHIO COUNTY BOARD OF EDUCATION

D E C I S I O N

Jennings Miller, grievant, was hired as a professional employee, a vocational computer instructor, by the Ohio County Board of Education in 1977 and continues in that position to date. On November 30, 1987 he filed a grievance alleging violation of the uniformity provisions of W.Va. Code, 18A-4-5a as he was not receiving credit or remuneration for prior work experience accorded another county vocational teacher. Upon adverse decisions, the grievance was appealed to level four on February 1, 1988 and a hearing was conducted March 17, 1988. Proposed findings of fact and conclusions of law were submitted by the grievant's representative on April 25, 1988 and by the board's counsel on May 2, 1988.

Grievant received a bachelor's degree in accounting in 1966, earned a master's degree in vocational education in 1977 and attained his permanent vocational teaching certificate in 1980. He came to the Ohio County school system after several years with Wetzel County schools. His prior teaching experience was considered and credited by the board in arriving at his original base salary, however, grievant receives no experience credit for past work related employment.

In the fall of 1987-88 grievant learned that another degreed vocational teacher was credited with and paid accordingly for non-teaching related work experience. In November he read an article in a professional journal regarding a grievance involving a situation similar to his which resulted in a West Virginia Education Employees Grievance Board decision favorable to that grievant. Grievant filed the instant grievance after an unsuccessful attempt to resolve his situation with the personnel director and assistant superintendent.

Grievant testified that he asked the vocational director, Robert Quigley, about work experience credit in 1977 when he was first hired but was told that it was county policy not to give such credit to degreed vocational teachers. He further stated that he approached Mr. Quigley on the matter "from time-to-time" over the next ten years, but he could not recall specific times or dates (T.____).

George Johnson testified that he was hired as a vocational instructor in electronics repair and technology by the board for the 1986-87 school year and was given a BA level salary. Mr. Johnson had a teaching degree in art education, but he did not possess the requisite certification in vocational education thus he had to work through the county personnel office and apply to the State Department of Education to verify the appropriate related work experience required for certification. Upon completion of the process, he testified, he was given several years work experience credit and a supplemental salary increment by the county.

Mr. Quigley was also called by grievant to testify. Mr. Quigley recalled that grievant asked about work experience credit when he was first hired but he (Mr. Quigley) had told grievant it was not his function to set salaries and he referred anyone with salary problems to the personnel or board offices. He especially was not concerned with grievant's non-teaching years as grievant was already certified by permit when he came to Ohio County schools. He did not recall grievant bringing the matter to his attention in the years between 1977 and 1987.¹

¹Grievant's contention that he pursued the matter of work experience credit over the years is further weakened by the level one filing of record wherein he wrote that he spoke with Mr. Quigley in September 1977 and, "I asked about this again on September 15, 1987....."

Pat Hannah-Soloman, Personnel Director, testified on behalf of the board. She stated that she did not hold the office when grievant was hired but had responded to his original inquiry to her about work experience credit in November 1987. She had informed him by letter dated November 10, 1987 that state law did not require that he be granted work experience credit and that past county practice was that credit was "negotiated at the time of hiring and based on need at the time." It was her understanding that that county policy was still in effect and work experience credit, if any, was discretionary on the part of a board.

Grievant argues that state law requires uniformity in matters pertaining to salary supplements, that he has several years verified related work experience and is attempting to verify additional years and that he is entitled to back wages from the time of his initial employment in 1977. He relies on Steele v. Wayne County Board of Education, Docket No. 50-87-062-1, decided September 29, 1987.²

² Steele established that when a county credits its vocational teachers for non-teaching work related experience for salary supplements, it must do so uniformly. Steele also addressed a timeliness issue: the grievant, a vocational instructor, was awarded the three years of back pay for work experience credit he requested upon a showing that he raised the issue upon his initial employment and was given assurances the matter would be taken care of and that he persisted in his efforts over several years with changing administrative personnel finally filing a formal grievance in 1987 when the then superintendent refused to grant him the promised relief. Conversely, grievant herein has not shown that he relied upon administrative assurances from the date of his initial employment that his displeasure with his salary was acknowledged and would be taken care of nor has he shown that he appropriately or affirmatively pursued the salary matter from 1977 until 1987.

The board does not dispute grievant's entitlement to uniform treatment regarding salary increments but argues that grievant's ten year delay in instituting a grievance action on his salary deficiency constitutes unexcusable delay and prejudices the board since a timely presentation of his complaint would have had a de minimus economical impact on the board. Therefore, the board urges, grievant is not entitled to a retroactive salary adjustment and is only entitled to relief commencing from the time he brought this matter to the attention of the appropriate school officials, i.e., the 1987-88 school year. Further, any salary adjustment must be limited to only those years of verifiable related work experience and only three of four employment periods are presently verified.

While grievant has shown wrongdoing on the board's part, he did not protest his salary deficiency to the proper administrative personnel or assert his rights for ten years. His failure to exercise diligence in the matter has economically prejudiced the board and the public interest and constitutes laches as a matter of law, Maynard v. Wayne County Board of Education, 357 S.E.2d 246 (W.Va. 1987), and he cannot now claim an entitlement to retroactive back wages.

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

FINDINGS OF FACT

1. Grievant was hired in 1977 as a computer instructor in the vocational education system of Ohio County schools.

2. George Johnson was hired in 1986 in the vocational department and had to apply for vocational certification; upon verification of his related work experience by the State Department of Education the county personnel office granted him credit and salary supplement for those years.

3. At the time grievant was hired he held a vocational certificate (permit) obtained during his employment tenure with the Wetzel County schools; Ohio County schools granted him teaching experience credit for salary purposes but did not credit him for prior related work experience required of vocational teachers for certification purposes.

4. In 1977 grievant voiced dissatisfaction regarding the matter to the vocational director, Robert Quigley, and was told that he (Mr. Quigley) did not determine teacher's salaries. The evidence preponderates that grievant did not bring up the matter again until September 1987 at which time Mr. Quigley advised that grievant seek counsel from the personnel department or the board office.

5. Grievant was not advised or assured in 1977 that his salary dispute would be resolved and he made no effort to obtain prior work credit through other proper administrative persons or procedures from 1977 through 1987.

6. Subsequent to grievant's unsuccessful efforts with the appropriate administrators in September 1987 to correct his salary dispute, he filed the present grievance in November 1987 seeking seven years work experience credit retroactive to 1977.

7. The position of some school administrators that work experience credit for vocational teachers is negotiable and a matter of board discretion is contrary to the respondent board's acknowledgement of the uniformity provisions of W.Va. Code, 18A-4-5a and its admission that grievant herein is entitled to work experience credit for verified years of related work experience.

8. Grievant's work experience previously verified by the State Department of Education and of record are: 1) USAF Logistics Command, Ohio, Programmer, July 1966-January 1967; 2) Internal Revenue Service, Florida, Agent, January 1967-August 1968; 3) Litton Automated Business Systems, Hurricane, WV, Sales Representative, July 1970-October 1973. Pending is verification of: 4) Somerville & Company, CPA, Huntington, WV, Accountant, August 1968-October 1970. (Grievant exhibit No. 1).

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-5a provides for uniformity of additional salary increments or compensation for all employees performing like assignments and duties within the county, Turner v. Grant County Board of Education, Docket No. 12-86-257; Wright v. Putnam County Board of Education, Docket No. 40-86-328, and when a board grants salary supplements for vocational teachers to recognize and credit verified related work experience, the uniformity requirements of Section 5a must be met. Steele v. Wayne County Board of Education, Docket No. 50-87-062-1.

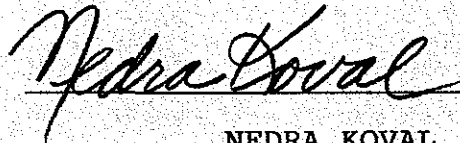
2. It is incumbent upon an employee to timely pursue their rights through the grievance process and when timeliness is questioned to demonstrate the reason for the delay. Badgley v. Parkersburg Community College, Docket No. 54-86-064; Dunleavy v. Kanawha County Board of Education, Docket No. 20-86-240-1.

3. Absent a showing on grievant's part that he made a good faith, diligent effort to resolve a grievable matter in reliance of school officials' representations that the matter would be rectified, grievant herein has economically prejudiced the board because of his failure to timely and appropriately protest his salary deficiency and he is not now entitled to retroactive back wages. Steele v. Wayne County Board of Education, supra; Maynard v. Wayne County Board of Education, 357 S.E.2d 246 (W.Va. 1987).

Accordingly, the grievance is GRANTED, in part, and the board of education is Ordered to credit the grievant for all verifiable years of work experience and to compensate him commencing with the 1987-88 school year and DENIED as to the award of retroactive compensation.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock 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.

DATE: May 13, 1988

A handwritten signature in cursive script, reading "Nedra Koval", written over a horizontal line.

NEDRA KOVAL
Hearing Examiner