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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
ARCH A. MOORE, JR.
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JEAN B. PETERS

v.

Docket No. 20-88-168

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant Jean B. Peters is employed by Respondent Kanawha County Board of Education as Principal, Chesapeake Elementary School. Claiming "I have over a period of years been denied equal pay for equal work," she initiated this action at Level I on or about April 28, 1988 and, after a denial there and at Levels II and III,¹ at Level IV on August 31. A hearing was conducted before the West Virginia Education and State Employees Grievance Board on November 2, and Grievant submitted her proposed findings of fact and conclusions of law on November 30. Respondent has chosen to not make post-hearing submissions.

¹ Respondent, by letter of July 22, 1988, merely adopted the findings and conclusions of the Level II evaluator as its Level III decision.

As was apparently also true at Level II, Grievant had some difficulty at Level IV articulating what she deemed the relevant issues. While she made repeated reference to a general pattern of salary inequity since school year 1979-80 among elementary principals in Kanawha County, and how often this had been called to Respondent's attention, this was clearly an attempt to show overall bad faith on Respondent's part and not otherwise relevant to this case.² Her specific grievance, as evidenced by her November 30 proposals, is that for several years prior to school year 1988-89, Ms. Lauretha Kellum, another of Respondent's elementary principals, had a higher salary even though less administrative experience than she.³ Respondent was first made aware of this allegedly inappropriate discrepancy, by Grievant at least, in January, 1987. Grievant seeks "a salary adjustment to compensate for the inequity."⁴

² Respondent admitted its awareness of some system-wide salary inequities among its elementary principals, and stated it has attempted and is attempting to address this problem.

³ While Grievant presented documents revealing salary disparity among certain Kanawha County elementary principals, she pointedly limited her complaint to the difference between her pay and that of Ms. Kellum.

⁴ Although certain other variables, e.g., level of education and school size, were and are considered in calculating a principal's salary, it was undisputed that none of these would have justified Ms. Kellum having a higher salary than Grievant.

Respondent admits that Ms. Kellum's level of pay was higher than Grievant's and that its personnel file reveals no justification for the same. It characterizes the difference as likely the result of error; it argues, however, that if a mistake indeed has been made, the appropriate course of action is not to raise Grievant's "salary to some erroneous level of payment retroactively," but to recoup monies from Ms. Kellum,⁵ particularly since Grievant has always been paid in accordance with the "published salary scale."⁶ Respondent did not offer a defense to Grievant's contention that it has not timely dealt with this problem, even though aware of it since at least January, 1987.⁷

⁵ This method has twice received at least implicit approval from the West Virginia Education and State Employees Grievance Board. Barnhart v. Kanawha Co. Bd. of Educ., Docket No. 20-87-201-1 (Apr. 6, 1988), n. 1; Fisher v. Mercer Co. Bd. of Educ., Docket No. 27-86-112 (July 25, 1986). Also see Toney v. Lincoln Co. Bd. of Educ., Docket No. 22-88-005-1 (Nov. 29, 1988).

⁶ Although there was testimony that technically there was no "scale" for school year 1985-86, Grievant's salary then was \$5.00 more per year than her appropriate level on "Kanawha County Schools Principal Salary Schedule, 210 Days, 1984-85, Base for 1985-86." Grievant's Exhibit 5. At any rate, at the Level II hearing, Grievant stated "I have received, I guess, the normal increments. I'm not questioning whether or not my increases have been correct." T. 7. Grievant did imply that her initial principal's salary may have been arbitrarily set, however. T. 6.

⁷ While Grievant may not have established clear bad faith, it is eminently clear that she has every reason to be frustrated with Respondent in this regard.

In addition, it is appropriate to make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Grievant Jean B. Peters is employed by Respondent Kanawha County Board of Education as Principal, Chesapeake Elementary School.

2. Grievant has always been paid in accordance with published salary scales or other appropriate guidelines.

3. For several years prior to 1988-89, Grievant was paid less than Ms. Lauretha Kellum, another of Respondent's elementary principals. Ms. Kellum had similar education and responsibilities as Grievant, but less administrative experience.

4. Ms. Kellum's higher salary is either the result of error or other factors not currently discernible from her personnel file with Respondent.

5. Respondent has been aware of the discrepancy between Grievant's pay and that of Ms. Kellum since January, 1987.

6. At times over the past several years, there has been a problem with salary equity among certain of Respondent's

elementary principals; Respondent has taken, and is taking, some action to deal with this problem.

CONCLUSIONS OF LAW

1. A grievant has the burden of proving his or her case by a preponderance of evidence. Black v. Cabell Co. Bd. of Educ., Docket No. 06-88-020-4 (May 6, 1988).

2. Grievant has failed to prove that Respondent acted in bad faith in this matter.

3. County boards of education in West Virginia must pay principals who have similar education, experience and responsibilities in a uniform manner and at least at the level required by the West Virginia Department of Education. See W.Va. Code §18A-4-3.

4. It is not the intent of West Virginia education law that, when a good faith error in calculation results in a given individual's receiving a greater salary than appropriate, other employees in that classification be given an attendant pay adjustment. See Fisher v. Mercer Co. Bd. of Educ., Docket No. 27-86-112 (July 25, 1986). Nor is it the intent of the law to allow such error, once discovered, to go uncorrected. See id.; also see Curry v. Logan Co. Bd. of Educ., Docket No. 23-87-218 (Oct. 5, 1988).

Acccordingly, this grievance is GRANTED, only to the extent that Respondent is ORDERED to, within sixty days of the date of this Decision, take action to correct the inequity between Grievant's salary and that of Ms. Lauretha Kellum. In all other regards, 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 this decision. See 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 your intent to appeal so that the record can be prepared and transmitted to the appropriate Court.



M. DREW CRISLIP
HEARING EXAMINER

Date: December 28, 1988