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ALICE FERGUSON

v.

Docket No. 89-29-58

MINGO COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Alice Ferguson, is employed by the Mingo County Board of Education (Board) as an Aide IV assigned to Dingess Grade School. She filed a grievance at Level I on December 12, 1988 alleging she had been improperly assigned to supervise students without the assistance of a classroom teacher. Grievant's principal, Mr. Noble Harper, found the assignment lawful at that level and a decision following a Level II hearing held January 19, 1989 was also adverse to the grievant. The Board waived Level III proceedings and a Level IV hearing was held March 22, 1989.

The parties do not dispute the facts of the case but offer differing interpretations of applicable law and policy. At the beginning of the 1988-89 school year, grievant was placed on a schedule which required her to supervise forty to forty-five

first grade students from 7:20 a.m. to 8:05 a.m. for five days during each six-week period of the school term.¹ All aides at the school were given similar assignments on a rotating basis in order to cover all grades for that period of time. Grievant contends she provides the sole supervision of the students during that time and the Board's failure to award her an increase in pay is a violation of W.Va. Code §18A-5-8(a), which in pertinent part provides:

Within the limitations provided herein, any aide who agrees to do so shall stand in the place of the parent or guardian and shall exercise such authority and control over pupils as is required of a teacher as defined and provided in section one [§18A-5-1] of this article. The principal shall designate such aides in the school who agree to exercise such authority on the basis of seniority as an aide and shall enumerate the instances in which such authority shall be exercised by an aide when requested by the principal, assistant principal or professional employee to whom the aide is assigned.

. . . .

An aide designated by the principal under this subsection shall receive a salary not less than one pay grade above the minimum salary to which said aide would otherwise be entitled under section eight-a [§18A-5-8a]² of this article, and any county salary schedule in excess of the minimum requirements of this article.

¹Students apparently disembark from school buses at approximately 7:20 a.m. and classroom instruction begins at 8:15 a.m. The record does not reveal who is responsible for their supervision from 8:05 a.m. and 8:15 a.m.

²W.Va. Code §18A-5-8a does not exist and inasmuch as 18A-4-8a deals exclusively with pay grades of various school service personnel positions, it is assumed the reference is made thereto.

As relief grievant requests the difference in her current pay grade and the pay grade above for the period of September 1988 to January 1989.³

The Board maintains grievant did not have sole responsibility for students during the time she claims and even if her argument in that regard were conceded, any increase in pay would be barred by the absence of a written agreement approved by the Board. The latter assertion is apparently based on W.Va. Code §18A-5-8(b), which in pertinent part provides:

An aide shall not be required by the operation of this section to perform noninstructional duties for an amount of time which exceeds that required under the aide's contract of employment or that required of other aides in the same school, unless the assignment of such duties is mutually agreed upon by the aide and the county superintendent, or the superintendent's designated representative, subject to board approval. The terms and conditions of such agreement shall be in writing, signed by both parties, and may include additional benefits.

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

³According to grievant's testimony her principal discontinued the assignment following the Level II hearing held January 19, 1989. Grievant does not raise the issue of whether the Board could properly make such a change at that time and asks only that she receive the difference in pay for the period of time when she had the higher aide designation.

FINDINGS OF FACT

1. Grievant, Alice Ferguson, is employed by the Mingo County Board of Education as an Aide IV assigned to Dingess Grade School.

2. At the beginning of the 1988-89 school term grievant was given an assignment by her principal, Mr. Noble Harper, to supervise forty to forty-five first grade students in a classroom from 7:20 a.m. to 8:05 a.m. for five days every six weeks. Although the principal and teachers were present in various parts of the school building, grievant was not assisted in this assignment and was responsible for the care and well-being of the students during that time.

3. Grievant carried out the assignment as scheduled from the beginning of the 1988-89 school term until sometime in January 1989 when it was discontinued by her principal. The record does not reveal whether grievant completed the scheduled January 30 - February 3 assignment.

CONCLUSIONS OF LAW

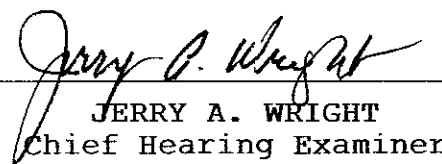
1. Aides designated to exercise the authority granted teachers by W.Va. Code §18A-5-1 to stand in the place of the parent or guardian must be paid a salary not less than one pay grade above the minimum salary to which said aides would otherwise be entitled. W.Va. Code §18A-5-8(a).

2. W.Va. Code §18A-5-8(b) requires a written agreement subject to board approval only when the designation of duties pursuant to W.Va. Code §18A-5-8(a) requires an aide to perform noninstructional duties for an amount of time which exceeds that required under the aide's contract of employment or that required of other aides in the same school.

3. The failure of the Board to provide the grievant a higher rate of pay for the period of time during which she was assigned the responsibility for the supervision of students was a violation of W.Va. Code §18A-5-8(a).

Accordingly, the grievance is **GRANTED** and the Mingo County Board of Education is hereby **ORDERED** to compensate the grievant for any loss of wages she may have incurred as a result of the Board's failure to properly calculate her salary between the beginning of the 1988-89 school term until such time as her assignment to the supervision of the students was discontinued. The Board is further **ORDERED** to base the rate of said compensation on the difference between grievant's present salary and that she would have been paid at one pay grade above.

Either party may appeal this decision to the Circuit Court of Mingo County or the Circuit Court of Kanawha County and said 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.


JERRY A. WRIGHT
Chief Hearing Examiner

Dated: May 31, 1989