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KAREN HART

v.

DOCKET NO. 89-02-80

BERKELEY COUNTY BOARD OF EDUCATION

DECISION

Grievant, Karen Hart, is employed by the Berkeley County Board of Education (Board) as a band director presently assigned to Martinsburg North Middle School. Ms. Hart filed a level one grievance on November 2, 1988 in which she alleged a violation of W.Va. Code §18A-4-5a as she had not received a salary supplement for the years 1977-1987 paid other band directors. The grievance was denied at level two and the matter was appealed to level four on March 1, 1989; an evidentiary hearing was held on April 10.

The facts in this matter are undisputed. The grievant was first employed by the board in 1975 and has been assigned as a band director since 1977. In the fall of 1988 the grievant approached her immediate supervisor and the music chairperson regarding salary supplements received by other band directors. As a result of her inquiry the Board voted to award her the \$240.00 supplement received by other

instrumental music teachers at the middle school level retroactive to include the 1987-88 school year.

The grievant argues that the supplement was not awarded through extracurricular contracts and was not otherwise published; therefore, she could not reasonably have known that she was entitled to receive it. She requests that the supplement be made effective the 1977-78 school year as she had not been aware that the other band directors received the additional salary until 1988 and had not purposefully delayed seeking the compensation.

The Board acknowledges that it has been past practice to award supplements on a sporadic and erratic basis and that Superintendent Sam Meek has recognized that certain inequities have occurred and is making efforts in correcting them. However, due to budgetary restrictions and in reliance upon the doctrine of laches it was determined that further relief could not be granted by the Board.

Laches is an equitable doctrine "...based upon the maxim that equity aids the vigilant and not those who slumber on their rights." Black's Law Dictionary 787 (5th ed. 1979). In application it requires that a party exercise diligence when seeking to challenge the legality of a matter involving a public interest, such as the expenditure of public funds, which operates prejudicially to the other party's rights. "Generally, courts have been reluctant to award retroactive monetary relief to public employees who

have filed actions after a lengthy delay, where to afford such relief would cause substantial prejudice to the public's fiscal affairs." Maynard v. Board of Education of Wayne County, 357 S.E.2d 246 (W.Va. 1987). In this instance the grievant asks for a lump sum settlement covering a period of nine years.¹ It is unlikely that the Board had budgeted for such additional expense which might well harm the financial integrity of the Board. Therefore, even though the grievant would have been entitled to receive the supplemental salary from the time it was first awarded to a middle school music teacher or the date she was hired (whichever might be applicable) recovery after a period of ten years is prohibited by the doctrine of laches. Even if the doctrine of laches were not applicable, the grievant has not established when the supplement was first granted to middle school teachers making it impossible to determine when the backpay should be effective.

In addition to the foregoing narration it is appropriate to make the following specific findings of fact and conclusions of law.

¹The period of time in question is ten years; however, the grievant did not work during the 1987-87 school year as she was on maternity leave.

Findings of Fact

1. The grievant has been employed by the Berkeley County Board of Education since 1975 and has been assigned as a band director at Martinsburg North Middle School since 1977.

2. In the fall of 1988 the grievant states she became aware that other band directors were receiving a salary supplement for after school concerts, etc.

3. The supplement had been paid other teachers on a non-published basis, no extracurricular contracts had been issued and no statement of supplemental salary had been made known public.

4. Upon investigation of the matter the Board determined that the grievant was entitled to the supplement and awarded her that amount (\$240) retroactively for the 1987-88 school year.

5. The grievant is seeking reimbursement of the supplement for the nine previous years, plus interest.

6. The record does not reveal when the supplemental salary was first implemented for middle school band directors.

Conclusions of Law

1. A party must exercise diligence when seeking to challenge the legality of a matter involving the expenditure of public funds for a delay which operates prejudicially to another party's rights constitutes laches. Maynard v. Board of Education of Wayne County, 357 S.E.2d 246 (W.Va. 1987).

2. Employees have a primary interest in their compensation and must share with their employer the burden of insuring their proper remuneration. Spahr, et al. v. Preston County Board of Education, Docket No. 39-86-342-2 (May 5, 1987).

3. The failure of an employee to confirm his proper salary over an extended period of time constitutes laches and bars an award of backpay. Zban v. Cabell County Board of Education, Docket No. 06-87-110, 111, 112, 021 and 033 (July 31, 1987).

4. It is incumbent upon a grievant seeking relief pursuant to W.Va. Code §§18-29-1 et seq. to prove all of the allegations constituting the grievance by a preponderance of the evidence. Romeo v. Harrison County Board of Education, Docket No. 17-88-013 (Sept. 30, 1988).

5. The grievant has failed to prove the effective date of the salary supplements making it impossible to determine the amount of additional backpay to which she would be entitled, if any.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Berkeley County or 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) 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.

DATED:

May 31, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER