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STATE EMPLOYEES GRIEVANCE BOARD**

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**SIDNEY LINVILLE,
WILLIS CALVIN ISAACS,
JAMES SOVINE, and
SHERWIN LEWIS**

v.

DOCKET NO. 40-88-144

PUTNAM COUNTY BOARD OF EDUCATION

DECISION

Grievant Sidney Linville is principal of the Putnam County Vocational Center and Grievants Willis Calvin Isaacs, James Sovine and Sherwin Lewis, also employed by Respondent Board of Education at the vocational center, are classified as vice-principals for pay purposes.¹ Their grievance, filed on June 15, 1988, was denied July 7, 1988, at Level II

¹ Mr. Lewis and Mr. Isaacs are by title assistant principals and Mr. Sovine is a placement director.

after hearing.² Grievants filed their Level III appeal on July 13, 1988, and, when no action was taken by Respondent, appealed to Level IV on July 27, 1988. The hearing was held November 16 and December 9, 1988.³ The parties' submission of proposed findings of fact and conclusions of law was completed on January 12, 1989.

In dispute is the proper interpretation and effect that should be given Putnam County Education Policy GCBAB, "Administrative Salary Schedule," which provides five steps for computing the salaries of certain administrators, including principals and assistant principals. Step 4, the "enrollment factor" is the only step in dispute in this grievance. Prior to March 21, 1988, that provision of the policy provided as follows:

- a. The enrollment shall be determined on the basis of second month enrollment of the preceding year.
- b. When the enrollment increases or decreases more than 10% of the enrollment as determined by (a), the enrollment computation shall be based on the second month of the current year.
- c. Since vocational school students are enrolled for one-half day, the computation shall be based on regular daytime enrollment as determined in (a) above.

² The record does not provide the substance of the Level I decision, although it apparently was adverse to grievants, or the date of appeal to Level II.

³ A hearing scheduled for October 18, 1988, was continued at the request of Respondent.

At the hearing the transcript of the Level II hearing of June 30, 1988, was accepted as evidence.

d. Factors for enrollment (per pupil) are as follows:

| | <u>Principal</u> | <u>Assistant Principal</u> |
|-------------------|------------------|--------------------------------|
| High School | \$5.00 | \$3.00 |
| Middle School | \$4.00 | \$2.00 |
| Elementary School | \$3.00 | |

(There shall be no enrollment factor for central office administrators.)

(Level IV Ex. 1). The policy adopted as part of a policy manual on March 21, 1988, is identical in content except that the "c" provision of the old policy⁴ on vocational school students was deleted. The parties agree that under the old policy, when a vocational student attended a regular high school one-half day and the vocational center the other half-day, the regular high school principal and assistant principal[s] received full credit for his or her attendance at their school and therefore were remunerated \$5.00 and \$3.00, respectively, while the principal and vice principals at the vocational center received only 1/2 credit. They were accordingly allowed \$2.50 and \$1.50, respectively.

Grievants contend that, with the March amendments, they became entitled to full credit for each half-time vocational student, like the regular high school principals and assistant principals. Respondent denies that the policy-change increased the salary for vocational principals and assistant

⁴ The paragraph under "d" of the old policy was relabelled "c" under the March policy.

principals, and argues that, even if it did, the policy was not effective until the beginning of the new fiscal year, which began July 1, 1988. Furthermore, Respondent argues that the policy was further amended by a vote of the Board of Education on June 14, 1988. The minutes of the meeting of that date provide,

A motion was made by Michael Eberbaugh, seconded by William Allen, upon the recommendation of Superintendent Stephen Baldwin, to amend Policy GCBAB Administrative Salary Schedule. For those students who are enrolled at a high school and also enrolled at the Putnam County Vocational Technical Center, the administrative salary schedule enrollment factor will be divided equally between the home school principal and assistant principal and the vocational center principal and assistant principal effective July 1, 1988.

Vote: 4 Ayes
1 Nay - Wood

(Level II Ex. 6).⁵ Grievants, in turn, contend that the June amendments cannot be given any legal effect.

⁵ Respondent appended to its proposed findings of fact a copy of the policy, as amended to accord with the June vote, which adds the following provision to the March policy:

- d. For those students who are enrolled at a high school and also enrolled in a vocational school the administrative salary schedule enrollment factor will be divided equally between the home school principal and vocational school principal and assistant principal effective July 1, 1988.

i.e., Students will be counted as one-half (1/2) at high school and one-half (1/2) at vocational technical school.

In contending that the March changes in policy effected no changes in salary for the vocational principal and assistant principals, Respondent maintains that only the policy itself can be looked at:

7...What the Putnam County Board of Education intended to do, by their own testimony, is unclear at best. Furthermore, the intent of an individual Board Member is not binding or relevant. What the Board actually did is the only consideration.

8. The Board adopted a Policy GCBAB on March 21, 1988. It did not provide for the payment of any salary enrollment factor for Vocational Administrators. Therefore, in the absence of same, none can be imputed to be provided for the Vocational Administrators. However, under West Virginia Code 18A-2-2, the Putnam County Board of Education cannot unilaterally reduce the salary of any employee without their consent within the fiscal year. Therefore, any reduction of the one-half credit to Vocational Administrators must be deemed to begin as of July 1, 1988.

Respondent's proposed findings of fact.

Respondent's contention must be rejected. Certainly the Board Members' testimony is relevant and crucial to interpreting the March policy, for such an ambiguous policy must be interpreted consistently with the intent of the policy-makers, just as an ambiguous statute must be interpreted consistently with the intent of the legislature that enacted it. See Sutherland Stat. Const. §45.05 (4th Ed., 1986 Rev.). The testimony of the Board Members does establish that they were not unanimous in what they intended. However, it also shows that not one Board Member intended to remove the 1/2 credit the vocational principals and assistant principals had been receiving and, further, that, with

the exception of Ms. Irene Ghiz,⁶ all the Board Members did intend a change so that vocational principals and assistant principals would be treated equally to regular high school principals and assistant principals. It was on whether that equal treatment should be by doubling the credit for vocational principals and assistant principals or by halving the credit for regular high school principals and assistant principals that the Board Members disagreed.

Board Members Donald Wood, Michael Eberbaugh, and Paul E. Knell made it clear in their testimony that they intended for the vocational principals and assistant principals to be given full credit for half-time students, just as the regular high school principals and assistant principals had been receiving full credit. One Board Member, William H. Allen, Jr., testified that it was his intent in making the policy change to pay the the principals equally and the assistant principals equally, but not by giving the vocational principals and assistant principals full credit. He stated that the giving of 1/2 credit for both vocational and high school principals and assistant principals effected by the June amendments was what he has supported in March also. Superintendent of Schools for Putnam County Stephen Baldwin,

⁶ Ms. Ghiz testified that, although proposed changes in the policy were discussed at meetings, she thought that no consensus had been reached and therefore no changes made. With issuance of the manual she thought the change in language in Policy GCBAB was due to an error.

who, along with James McGehee, Director of Adolescent Education for Respondent, and a consultant, was responsible for revision of the policy manual, testified that he thought that under the March policy vocational and regular high school principals and assistant principals would receive full credit for each student's half-time attendance.⁷

The interpretation of the March policy offered by Respondent's proposed findings of fact is contrary to the testimony of the individual Board Members and is therefore unreasonable. Furthermore, in that the suggested interpretation would, by Respondent's own admission, have been illegal, it is an arbitrary and capricious interpretation. Since an unreasonable or arbitrary and capricious interpretation of its policy by a board of education cannot be accepted, see Smith v. Board of Education of the County of Logan, 341 S.E.2d 685, 690 (W.Va. 1985), the suggested interpretation of the amended policy is rejected. Instead, the interpretation supported by a majority of the School Board must be given effect. Accordingly, it is concluded that the policy was amended to provide full credit for vocational principals and assssistant principals for the half-time attendance of students.

⁷ Mr. McGehee's testimony only showed that he thought a change for equal treatment was effected by the amendments to the policy.

Respondent's argument that any policy change was not effective until the beginning of the fiscal year also must be rejected.⁸ The parties stipulated that the policy manual itself did not provide for its date of effectiveness. It is well-settled that, unless an effective date is otherwise specifically provided by statute or by constitution, a statute's effective date is the date of its passage. See Sutherland Stat. Const. §33.06 (4th Ed. 1986 Rev.) "The courts should not imply that the legislature intended a special effective date unless such implication is so clear as to allow no other reasonable interpretation." Id. The same construction must apply to the effective date of policy. While Respondent argues, "Any policy affecting salary must be effective as of the beginning of the fiscal year (July 1)," it cites no legal requirement that salaries of its employees could not be increased mid-year. Further, the evidence does not support any such practice. Although Board Member Ghiz stated that all contract changes do not take effect until the beginning of the next school year, Board Member Allen testified that it is up to the administration to decide the effective date of policy.

⁸ Respondent's contention that the March policy-change was not intended to be effective until July 1 is inconsistent with its argument that the deletion of language in the policy dropped the enrollment factor for vocational principals and assistant principals "within the fiscal year," but by operation of W.Va. Code §18A-2-2, the Board of Education was prevented from putting that change into effect.

Superintendent Baldwin testified that the policy was effective on March 21, but that the effectiveness was delayed, although nothing official was done. Accordingly, since the policy did not provide an effective date and there is no compelling evidence establishing that a later effective date was intended or required, the policy must be found to have been effective March 21, 1988. Finally, finding March 21st the effective date is furthermore required in this instance because selection of a later date as the effective date would be contrary to the well-settled principle that school personnel laws and regulations are to be strictly construed in favor of personnel. Morgan v. Pizzino, 256 S.E.2d 592 (W.Va. 1979).

The final issue in this matter is whether the June amendment was effective in once again allowing only half-credit for the vocational principals and assistant principals.⁹ The only argument Grievants make in support of their argument that the June changes were improper is that they were contrary to the following provisions of W.Va. Code §18A-4-3:

No county shall reduce local funds allocated for salary increments for principals and assistant principals in effect on the first day of January, one thousand nine hundred eighty-six, 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

⁹ Whether the June amendment was effective in also halving the credit for regular high school principals and assistant principals is not at issue in this case and is therefore not addressed.

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.

Since the salary increments involved were not effective until March, 1988, and the provision cited by Grievants only disallows reduction of funds allocated for salary increments for principals and assistant principals in effect January 1, 1986, the provision has no applicability to the facts of this case.

In addition to the foregoing narrative, the following findings of fact and conclusions of law are appropriate:

FINDINGS OF FACT

1. Grievants are employed by Respondent Putnam County Board of Education at the Putnam County Vocational Center. Grievant Linville is the principal and Grievants Isaacs, Sovine and Lewis are classified as assistant principals for pay purposes.

2. Prior to March 21, 1988, Putnam County Education Policy GCBAB Step 4 provided that vocational principals and assistant principals receive 1/2 credit for students attending half-time at the vocational school while the principals and assistant principals of the regular high schools the students attended half-time received full credit.

3. The policy was amended and issued as part of the Respondent Board's policy manual on March 21, 1988.

4. In amending the policy no Board Member intended to lower the 1/2 credit the vocational principals and assistant principals had been receiving to no credit and a majority of the Board intended to provide vocational principals and assistant principals full credit for half-time students.

5. On June 13, 1988, the Board voted to amend the policy again, so that vocational principals and assistant principals would receive 1/2 credit for half-time attendance of students at the vocational school. The policy was voted to be effective July 1, 1988.

CONCLUSIONS OF LAW

1. An ambiguous policy such as the March 21, 1988, GCBAB policy must be interpreted consistently with the intent of the policy-makers.

2. An unreasonable or arbitrary and capricious interpretation of a policy of a board of education cannot be given legal effect. See Smith v. Board of Education of the County of Logan, 341 S.E.2d 685, 690 (W.Va. 1985).

4. The reasonable interpretation of Policy GCBAB, as amended in March 1988, consistent with a majority of the Board Member's intent, is that it provided full credit for vocational principals and assistant principals for half-time attendance at a vocational school.

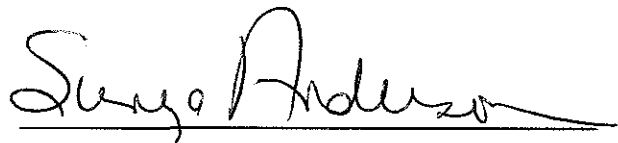
5. The effective date of a policy is the date of its passage unless another date is provided by the policy or

mandated by law. Since no date other than the effective date of passage was provided by the policy manual or by law, the effective date of the March amendments was March 21, 1988.

6. The amendments of June 13, 1988, were not contrary to W.Va. Code §18A-4-3.

Accordingly, the grievance is **GRANTED** insofar as it requests that the Grievants be granted full credit for half-time student attendance at the Putnam County Vocational Center from March 21, 1988, to July 1, 1988, but **DENIED** insofar as it requests that Grievants be granted full credit after July 1, 1988. Respondent Board of Education is accordingly **ORDERED** to grant Grievants full credit for such attendance between March 21, 1988, and July 1, 1988, and to provide any and all increases in pay and benefits attendant to and resulting from providing such full credit under Putnam County Education Policy GCBAB.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Putnam County and such appeal must be filed within thirty (30) days of receipt of this decision. See W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees grievance Board or 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.



SUNYA ANDERSON
HEARING EXAMINER

DATE: January 31, 1989