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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
GASTON CAPERTON
Governor

Offices
240 Capitol Street
Suite 515
Charleston, WV 25301
Telephone 348-3361

VIRGIE R. OSHEL

v.

Docket No. 89-50-257

WAYNE COUNTY BOARD OF EDUCATION

DECISION

Virgie R. Oshel is employed by Respondent Wayne County Board of Education. Stating that she,

is employed as an Executive Secretary assigned to an Assistant Superintendent . . . [,] contends that the additional \$50.00 per month supplement paid to two Executive Secretaries violates. . . [W.Va. Code] §18A-4-5b. . . [, and] requests relief in the form of back pay retroactive to January 20, 1989, and an adjustment of her salary schedule to reflect the higher salary supplement,

she initiated this grievance at Level I on March 20, 1989, according to documentation of record.¹ After denials there

¹ For further discussion of the date this grievance was commenced, see this Decision, infra.

and at Levels II and III,² she advanced her claim to Level IV on June 12, 1989³ for disposition on the record.⁴

Most pertinent facts of this case are not in dispute. Grievant and three other women are employed by Respondent under the classification "Executive Secretary."⁵ Respondent has created its own internal job title of "Executive Secretary/Superintendent's Secretary." This individual filling this position, due to its particular requirements, is paid fifty dollars per month more than the Grievant and one other

² The Level III hearing transcript and the Levels I, II and III decisions are all part of the record at Level IV. At least since Level III, Grievant has been represented by West Virginia School Service Personnel attorney John E. Roush.

³ An amended grievance form was filed on June 21, 1989. The undersigned required this supplementation since the first-submitted document did not include a statement of the claim.

On yet another "Level IV" grievance form completed by Grievant, as she had at the lower levels, Grievant requested "that I will not suffer 'Reprisal' as per §18-29-2(p) and §18-29-39(h). . .for having exercised my rights." It is assumed that Grievant has abandoned this previously-sought remedy; however, even if she has not, speculative future causes of action are not cognizable in this forum. Adkins v. Lincoln Co. Bd. of Educ., Docket No. 22-89-232 (Aug. 21, 1989).

⁴ The undersigned was advised shortly before the scheduled August 1 Level IV hearing of the parties' agreement to submission on the record. At that point, Grievant and Respondent agreed to present their individual fact-law proposals by August 31. Respondent filed his on that date but Grievant failed to do so until September 6 without seeking an extension of the deadline. Accordingly, her material has not been considered in arriving at this Decision.

⁵ This is one of the service personnel categorizations codified in W.Va. Code §18A-4-8a.

Executive Secretary.⁶ The fourth Executive Secretary, Ms. Sarah Ferguson, formerly occupied the "Executive Secretary/Superintendent's Secretary" post, thus earning the extra fifty dollars per month. When she was moved to a regular Executive Secretary slot, i.e., secretary to an Assistant Superintendent, her salary level was maintained. Respondent explains this was due to the provisions of W.Va. Code §18A-4-8:

No service employee, without his written consent, may...be relegated to any condition of employment which would result in a reduction of his salary, rate of pay, compensation or benefits earned during the current fiscal year or which would result in a reduction of his salary, rate of pay, compensation or benefits for which he would qualify by continuing in the same job position and classification held during said fiscal year and subsequent years.

The parties stipulate, in essence, that Grievant and Ms. Ferguson perform the same basic duties and have a fairly equal level of responsibility within Respondent's system.⁷ Code §18A-4-5b provides, in pertinent part, that "uniformity shall apply to all salaries, rates of pay, benefits,

⁶ There is division between the parties as to whether the Superintendent's Secretary is appropriately paid this additional salary. Due to the outcome herein, this issue need not be addressed.

⁷ Grievant's opinion that she at times works more closely with the Superintendent than does Ms. Ferguson, T. 15, is not pertinent due to the outcome of this Decision.

increments or compensation for all persons regularly employed and performing like assignments and duties within the county."

Respondent makes rather vague allegations that Grievant's initiation of her case was untimely per Code §18-29-4(a). One argument it poses is that Grievant, as secretary to an Assistant Superintendent with responsibility for personnel since 1980, must have known for several years of the Superintendent's Secretary wage differential. Notice is taken that the Grievant is paid at least monthly and that the timeliness of her complaint of non-uniformity may be measured from her receipt of her most recent paycheck prior to initiation of this claim, regardless of her foreknowledge. Respondent has raised no specific contention in this regard and it will be assumed that that receipt was within fifteen days before January 20, 1989.

January 20 is the date mentioned immediately supra since it is deemed the point at which Grievant actually started this claim process. Code §18-29-4(a) requires a complaining employee to request a conference with her immediate supervisor within fifteen days of the alleged grievable act. In this case, Grievant bypassed her immediate supervisor, Assistant Superintendent Charles Oshel, and met instead with his direct superior, Superintendent Michael Ferguson. She followed this meeting up with letters of January 25 and February 15 to Mr. Ferguson; apparently, the superintendent neither acknowledged those letters nor took

other action to resolve the dispute prior to March 20, when Grievant technically complied with §18-29-4(a) by scheduling a meeting with her assigned Assistant Superintendent. It is unclear why she waited over a month to do this; however, in this situation, no prejudice to Respondent is perceived, particularly since Grievant, in February and March, was again paid in what she avers to be a non-uniform fashion.⁸

The remainder of this Decision will be presented as formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant is one of four women employed as an Executive Secretary for Respondent. Grievant and two other Executive Secretaries work for Respondent's Assistant Superintendents.

2. Respondent classifies one of its Executive Secretaries as "Executive Secretary/Superintendent's Secretary" and pays this individual, due to her position, fifty dollars more per month than other Executive Secretaries.

⁸ This Decision should be interpreted to indicate neither that an employee can readily bypass her immediate supervisor in the grievance procedure nor that a period of over one month is necessarily an excusable amount of time to wait to further process a complaint. With regard to the former point, the undersigned finds it quite significant that all secretaries and administrators discussed in this Decision work in close proximity on a daily basis in Respondent's central office.

3. Ms. Ferguson, one of the Executive Secretaries serving an Assistant Superintendent, was formerly the Superintendent's Secretary. When she was in that latter job, her salary was fifty dollars higher per month than other Executive Secretaries; when her duties changed, she kept, and currently maintains, this heightened wage level due to provisions of W.Va. Code §18A-4-8, as recounted within the body of this Decision.

4. Grievant received a paycheck in January 1989, and within fifteen days thereof conferred with Respondent's Superintendent Michael Ferguson in an effort to resolve her claim of non-uniformity.

CONCLUSIONS OF LAW

1. This grievance is timely. Code §§18-29-3, 18-29-4. The timeliness of its submission may be measured from Grievant's receipt of her most recent prior paycheck. Further, Grievant has made reasonable efforts to resolve this matter continuously since January 20, 1989.

2. A county board of education in West Virginia must "provide uniform salaries for school service employees who perform like assignments and duties." Curry v. Logan Co. Bd. of Educ., Docket No. 23-87-218 (Oct. 5, 1988).

3. Grievant and Ms. Ferguson "perform like assignments and duties" and thus must be paid uniformly. Code §18A-4-5b.

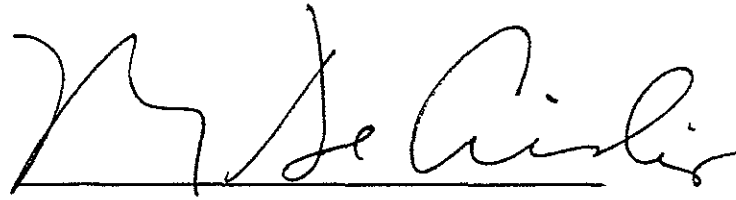
Accordingly, this grievance is **GRANTED**, and Respondent ordered to take steps forthwith to equalize Grievant's pay with that of Ms. Sarah Ferguson.⁹ Further, Grievant is awarded back pay, to January 20, 1989 pro rata, in the amount of fifty dollars per month.

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

⁹ The undersigned notes that Respondent did not terminate Ms. Ferguson's employment contract when she was removed from the position of Superintendent's Secretary, and thus was forced to comply with the highlighted portion of Code §18A-4-8. The reader's attention is invited to Bd. of Educ. of Co. of Fayette v. Hunley, 288 S.E.2d 524 (W.Va. 1982), and to Roach v. Mason Co. Bd. of Educ., Docket No. 26-87-070 (Nov. 30, 1987).

It is conceivable that the West Virginia Legislature intended that Code §18A-4-8 scenarios, such as the instant one, be exceptions to the §18A-4-5b uniformity requirement. However, Morgan v. Pizzino, 256 S.E.2d 592 (W.Va. 1979), requires at 595 that "school personnel laws are to be construed strictly in favor of personnel," and until §§18A-4-8/18A-4-5b situations are otherwise clarified, it would appear persons in Grievant's place should generally prevail.

office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

A handwritten signature in dark ink, appearing to read "M. Drew Crislip", written over a horizontal line.

M. DREW CRISLIP
HEARING EXAMINER

Dated: September 20, 1989