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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
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ROGER D. PERRY

v.

Docket No. 50-88-242

WAYNE COUNTY BOARD OF EDUCATION

DECISION

Grievant Roger D. Perry is employed as Coordinator of Electrical Services, a service personnel position, by Respondent Wayne County Board of Education. By this grievance, he complains of favoritism per W.Va. Code §18-29-2(o) and violation of Code §18A-4-5b by Respondent's failure to pay him a salary supplement similar to one granted another service employee. After denials at Levels I and II and Respondent's waiver of consideration at Level III, Grievant initiated his claim at Level IV on December 8, 1988. The parties agreed that the matter could be resolved on the record of the lower level proceedings and were directed to file proposed findings of fact and conclusions of law on or before January 20, 1989. Respondent submitted its findings and conclusions on January 18 but Grievant's version was not received until January 26.

The instant grievance is stated as follows:

Supplement was given to another employee for additional work load and position was not bid. I was denied an increase in pay for extra work load. Consistency should be given in all supplements.

It is uncontroverted that Grievant is, and has since August of 1986, been classified as a "director or coordinator of services" per Code §18A-4-8 and compensated at Pay Level "H", the highest level established by Code §18A-4-8a; in addition, he is eligible for remuneration for overtime. T. 27. The other service staff member in question, Sanitation Plant Operator/Water Plant Operator William Adkins, is paid at Level "G", i.e., a lower level than Grievant, but is also the recipient of a \$200.00 dollar per month salary supplement for what Respondent characterizes as "additional job responsibilities."¹ Grievant believes he is entitled to the same supplement over his regular pay due to what he alleges to be his enhanced job requirements, e.g., rewiring Buffalo High School (BHS) in its entirety. Grievant claims he was told in January, 1988, that supplements in excess of pay scales were "frowned upon" and he assumed this meant such were not available to service employees in Wayne County. T. 17, 19. Adkins' supplement was awarded in July,

¹It is presumed that Mr. Adkins' W.Va. Code §18A-4-8 classification is "sanitation plant operator," since no "water plant operator" designation appears. Since the state minimum pay level for a sanitation plant operator is "F," Respondent has apparently exercised its option to provide for salary for such personnel at a greater level than the state requires. See Code §18A-4-5b.

1988, and Grievant seeks the same consideration as of that date.²

Three other electricians are employed by Respondent, although the evidence, e.g., T. 16, 18, tends to indicate they are not under Grievant's authority.³ It is presumed that part of Grievant's argument is that he has more responsibility than they; since they are classified as Electricians, paid at either Level "F" or "G"⁴, it is reasonable that they would have lesser job requirements. See Code §18A-4-8a. At any rate, Grievant did not present clear evidence that his duties were different from those of the electricians.⁵ Grievant further argued that his assignments, e.g., the BHS task, were analogous to those "additional job responsibilities" that earned Adkins his supplement. Adkins is neither an electrician nor otherwise in the same or a

²Grievant, over the years, has expressed several salary concerns to Respondent; one of these expressions resulted in his promotion to Coordinator of Electrical Services and consequent elevation to Pay Grade "H" in 1986.

There was no evidence as to whether Grievant's January, 1988 assumption regarding pay supplements was accurate at that time or not.

³This is somewhat confusing, given Grievant's title and its Code §18A-4-8 definition.

⁴The minimum salary scale for Electrician I is "F", for Electrician II, "G". No evidence was presented that Respondent pays its Electricians at Pay Grade "H". At any rate, Grievant's classification title clearly indicates superior status to the Electricians.

⁵He did suggest such was the case. See, e.g., T. 16, 18.

similar category of employment as Grievant, save that they are both service personnel. Grievant is admittedly not qualified to perform Adkins' job in water and sewage management. T. 24. ⁶

Code §18A-4-5b provides, in pertinent part:

The county board of education may establish salary schedules [for service personnel] which shall be in excess of the state minimums fixed by this article. . . .

These county schedules shall be uniform throughout the county. . . . Further, uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments within the county.

Code §18-29-2(o) defines "favoritism" as "unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees."

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

⁶Grievant testified at Level II that he was not certified as a "water sewage treatment plant operator" or a "water treatment plant operator", T. 24; nor did he present evidence of any knowledge or ability to compare, on any level, Mr. Adkins' duties with his. Accordingly, any claim Grievant is herein making regarding the "position" for which Adkins receives his supplement not being posted for bidding must be dismissed due to Grievant's lack of qualification in the area and attendant lack of standing.

FINDINGS OF FACT

1. Grievant Roger D. Perry is employed by Respondent Wayne County Board of Education as Coordinator of Electrical Services. In this service position, Grievant is compensated at Pay Grade "H" and is paid overtime wages "for any time that he spends in excess of his work load, due to any added responsibilities." T. 26.

2. Another service employee of Respondent's, Sewage Plant Operator/Water Plant Operator William Adkins, has been compensated since July, 1988 at Pay Grade "G" and with a \$200.00 per month supplement for "additional job responsibilities." There is no evidence that Adkins is or is not eligible for overtime pay.

3. Grievant and Adkins do not perform like assignments or duties for Respondent, and no significant basis for comparing the degree of responsibility between these two employees, or Grievant and Respondent's electricians, was presented.⁷

⁷The undersigned notes that Grievant's attorney afforded him every opportunity to give testimony in these and other pertinent regards. See, e.g., T. 12, 14-16, 19-21, 25. Grievant's testimony regarding the much more extensive training required for his position as opposed to Adkins', T. 21-22, in and of itself, is insufficient to establish anything of relevance.

4. Grievant does not contend that Adkins should not receive his salary supplement; instead, he asserts he is likewise entitled to a \$200.00 per month supplement over his salary because of the importance and amount of his job requirements.

CONCLUSIONS OF LAW

1. It is incumbent upon a grievant to prove the elements of his claim by a preponderance of the evidence. Black v. Cabell Co. Bd. of Educ., Docket No. 06-88-020-4 (May 6, 1988).

2. Grievant has failed to establish favoritism per Code §18-29-2(o) by a preponderance of the evidence.

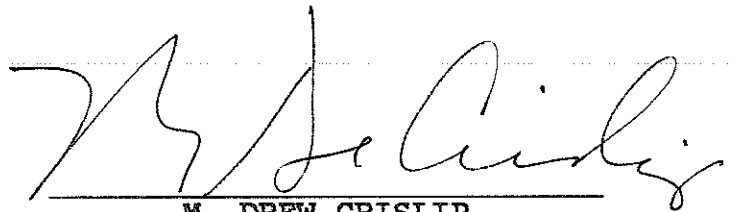
3. "[U]niformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county." W.Va. Code §18A-4-5b, emphasis supplied.

Accordingly, this grievance is **DENIED**.

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. 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 any intent to appeal so that the record can be prepared and transmitted to the appropriate court.

Dated: February 3, 1989

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

M. DREW CRISLIP
HEARING EXAMINER