



**Members**  
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**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**

**GASTON CAPERTON**  
Governor

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**BETH ANN BURDETTE**

**v.**

**Docket No. 20-88-263**

**KANAWHA COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant Beth Ann Burdette is employed as a first grade teacher at Bridge Elementary School by Respondent Kanawha County Board of Education. In November 1988, she initiated the following complaint at Level I:

I am being compensated for additional pupils in my first grade classroom at a rate equal to my salary divided by 25, but not on a per pupil basis. This violates. . .[W.Va. Code §]18-5-18a, as amended by. . .[S.B.] 14. The relief I seek is payment for the difference between what I would have received if I had been paid on a per pupil basis and what I actually received."<sup>1</sup>

After denials there and at Level II, this grievance was waived at Level III before being submitted at Level IV, for decision on the record, on December 23, 1988. The parties have filed proposed findings of fact and conclusions of law

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<sup>1</sup> Senate Bill, or S.B., 14 has not been separately considered since Grievant did not provide a copy, and it is otherwise not readily available to the undersigned.

and final arguments and the matter is thus mature for disposition.

Code §18-5-18a provides, in pertinent part, as follows:

Any . . . classroom teacher of grades one through six who has more than twenty-five pupils shall be paid additional compensation based on the affected classroom teacher's average daily salary divided by . . . twenty-five. . . for every day the additional pupils are enrolled in the teacher's classroom. All such additional compensation shall be paid from county funds exclusively.

Grievant had twenty-seven children in her classroom from the beginning of school year 1988-89 for students, September 1, through September 20; twenty-eight pupils from September 21 until October 17; twenty-seven again from October 18 through October 31; twenty-six during the period November 1-November 20; and only twenty-five from then through the present. From September 1 until November 20, Grievant was given per diem supplemental compensation of \$4.84, or one-twenty-fifth of her regular daily salary. She contends that she was instead entitled to \$4.84 for each student over twenty-five per day,<sup>2</sup> citing the phrase "based on" in the statute and Morgan v. Pizzino, 256 S.E.2d 592 (W.Va. 1979), which states at 595, "school personnel laws are to be strictly construed in favor of personnel, and

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<sup>2</sup> According to the undersigned's calculations, this equals roughly \$300.00 more in extra wages than Grievant actually was granted.

regulations and statutes for their protection, carefully complied with."

Respondent replies that the language "based on" does not, by its plain meaning, require the introduction of a multiplication factor, and if it did, it would just as readily provide for one of addition, subtraction or division. It further asserts that the Morgan rule is "statutes, rules, and regulations concerning personnel decisions must be complied with by county school systems," which "does not amount to a principal [sic] of statutory construction."<sup>3</sup> Grievant's only rebuttal to this is that using any computation basis "other than multiplication (addition, subtraction or multiplication) or interpreting 'based on' to mean 'equal to' leads to an absurd result."<sup>4</sup>

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

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<sup>3</sup> Despite the fact that it is frequently characterized as such, it is eminently clear that the Morgan rule is no guarantor that a school employee in West Virginia will always be the prevailing party in a work-related dispute.

<sup>4</sup> Grievant's "absurd result" argument obviously extends to utilization of a multiplication factor of one. Her parenthetical reference to "multiplication" is apparently an error and should be one to division, per March 1, 1989 correspondence from her representative.

## FINDINGS OF FACT

1. Grievant Beth Ann Burdette is a first grade teacher employed by Respondent Kanawha County Board of Education.

2. From the commencement of school year 1988-89 for students through November 20, 1988, Grievant had more than twenty-five children in her class.

3. For each workday through November 20, 1988, Grievant was paid a salary supplement of \$4.84, or one-twenty-fifth of her regular daily wage.

## CONCLUSIONS OF LAW

1. A classroom teacher, grades one through six, is entitled to "additional compensation based on. . .[her] average daily salary divided by. . .twenty-five. . .for every day. . .additional pupils [over twenty-five] are enrolled in the teacher's classroom. . ." W.Va. Code §18-5-18a. The sole source of this additional compensation is monies of her employing county board of education. Id.

2. The phrase "based on," as it appears in §18-5-18a, renders the statute so ambiguous as to require its interpretation, and "school personnel laws are to be strictly construed in favor of personnel." Morgan v. Pizzino, 256 S.E.2d 592, 595 (W.Va. 1979).

3. Respondent's application of this statute to provide a teacher with a supplement equalling one-twenty-fifth of her regular daily salary for each day she has over twenty-five students in her classroom does not constitute strict construction thereof "in favor of personnel." Id.

4. Inasmuch as Code §18-5-18a provides for division of the affected teacher's salary by twenty-five, and recognizes twenty-five as the maximum number of students regularly allowable per classroom, "based on" can quite reasonably be interpreted to provide for payment of one-twenty-fifth of the salary per day for each pupil over twenty-five enrolled in the class. See Tanzey v. Harrison Co. Bd. of Educ., Docket No. 17-87-258-2 (Apr. 25, 1988).<sup>5</sup>

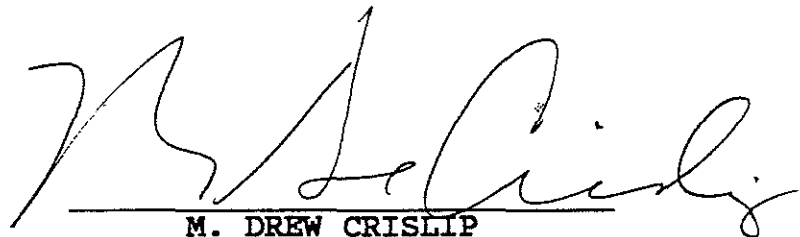
Accordingly, this grievance is **GRANTED**, and Respondent is **ORDERED** to pay Grievant one-twenty-fifth of her daily salary per each student over twenty-five assigned to her classroom for each day of their enrollment, less any appropriate set-off.

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within

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<sup>5</sup> This is not to say that Respondent's construction of §18-5-18a is any less reasonable than that adopted herein. However, in instances, such as this, where there are multiple equally-reasonable interpretations of a school personnel statute, Morgan mandates that the one most favorable to employees should prevail.

Either party may appeal this decision 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.

  
M. DREW CRISLIP  
HEARING EXAMINER

Dated: March 16, 1989