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PAITSEL LOCKHART

v.

Docket No. 89-33-362

MCDOWELL COUNTY BOARD OF EDUCATION

DECISION

Grievant, Paitsel Lockhart, was employed by the McDowell County Board of Education (Board) as Coordinator of Chapter I Programs as of June 30, 1989, the date of her retirement. She filed a grievance at Level I alleging a violation of the uniformity in pay provisions of W.Va. Code §18A-4-5a. Grievant's supervisor was without authority to grant relief and the grievance was denied at Level II following a hearing held June 8, 1989. The Board, after review of the record, also denied the grievance at Level III. Appeal to Level IV was made July 14, 1989 where hearing was held August 21, 1989. The grievant submitted proposed findings of fact and conclusions of law by October 4, 1989. The Board declined to submit proposals.

Grievant was awarded her position in August 1985, shortly after the retirement of the former coordinator. While it is not at all clear from the record how grievant's salary was calculated at that time, she received a base pay which was equal to that of

a classroom teacher with the same years of experience and degree(s), plus a percentage of that base as a supplement. In any event, it is not disputed that directors employed by the Board likewise have salaries which are derived through a formula but their higher percentage supplement results in greater salaries.

Grievant contends she and other coordinators perform the same duties as the higher-paid directors and the disparity in pay is a violation of W.Va. Code §18A-4-5a,¹ which in pertinent part provides:

Counties may fix higher salaries for teachers placed in special instructional assignments, for those assigned to or employed for duties other than regular instructional duties and for teachers of one-teacher schools, and they may provide additional compensation for any teacher assigned duties in addition to his regular instructional duties wherein such noninstructional duties are not a part of the scheduled hours of the regular school day. Uniformity also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties with in the county.

The Board maintains the duties of the two positions are distinctly different and no uniformity in pay is required. The Board further asserts that grievant was fully aware of differences in the salaries of the positions when she became a coordinator in 1985 and the grievance was not timely.

¹Grievant also alluded to disparities in her salary and that of other coordinators but no such disparities were ever established. Indeed, the only evidence presented in this regard was the testimony of Mr. Clinton Henry, Coordinator of Special Education, who stated he was not sure if there were any discrepancies in the salaries of coordinators. This particular part of the grievance is therefore not further addressed herein.

Although grievant's representative indicated there were on going attempts to correct the difference in salaries, there was no testimony to establish any such attempts. There was essentially no explanation by the grievant as to why the grievance was filed in May 1989 or any testimony to establish when she discovered the difference. Nevertheless, the Board's assertion that it was not filed in a timely manner is without merit. W.Va. Code §18-29-4(a)(1) permits filing within fifteen days of the latest occurrence of a continuing practice. Disparities in salary supplements have been held to constitute such a practice. McClanahan, et al. v. Lincoln County Board of Education, Docket No. 89-22-151 (July 19, 1989).

The evidence presented does not support grievant's claim that she performed the same duties as directors. Essentially, the only evidence presented concerning grievant's day-to-day responsibilities or those of coordinators was her assertion that they were the same. It cannot even be determined from testimony at either Level II or Level IV precisely what grievant's job entailed.² At Level II, Ms. Jerry Roncella, Assistant Director of Personnel, testified that there were numerous differences in the positions, the most significant of which was the number of

²During the Level IV hearing, the parties focused upon the manner in which salaries of coordinators and directors were calculated, almost to the exclusion of any evidence concerning their actual responsibilities, workloads, or functions. The undersigned advised the parties that evidence of the latter appeared more relevant to grievant's claim but the focus shifted little, if any.

persons supervised by each. Mr. Kenneth Roberts, Superintendent of Schools, gave similar testimony at Level IV. A comparison of the job descriptions reveal a great many similarities but there are enough differences to support the Board's contention that the coordinators have a significantly higher level of responsibility in terms of the scope of programs they supervise. The descriptions, however, are not conclusive and evidence of actual responsibilities would be of greater probative value. Grievant failed to produce such evidence and, therefore, did not meet her burden of proof.

In addition to the foregoing, the following findings of fact and conclusions of law are made.

FINDINGS OF FACT

1. Grievant was employed by the Board as a Coordinator of Chapter I programs assigned to its central office from August 1985 until her retirement in June 1989.

2. The Board employs other coordinators and directors who are in charge of various facets of the administration of the school system, including maintenance, curriculum, special education and finance. Directors are paid higher salaries than coordinators.

CONCLUSIONS OF LAW

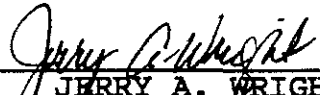
1. A grievant must prove the allegations of his or her grievance by a preponderance of the evidence. Taylor v. Putnam

County Board of Education, Docket No. 89-40-429 (September 21, 1989); Hanshaw v. McDowell County Board of Education, Docket No. 33-88-130 (August 19, 1988); Andrews v. Putnam County Board of Education, Docket No. 40-87-330-1 (June 7, 1988).

2. Grievant failed to prove her allegation that coordinators and directors performed duties so similar that the uniformity in pay provisions of W.Va. Code §18A-4-5a were applicable.

Accordingly, the grievance is **DENIED**.

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


JERRY A. WRIGHT
Chief Hearing Examiner

Dated: December 14, 1989