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GAIL SARK and

JAMES W. DOUGLAS

v.

Docket No. 89-RESA-131

REGIONAL EDUCATION SERVICE AGENCY IV

DECISION

Grievants, Gail Sark and James Douglas, are employed by the Regional Education Service Agency IV (RESA) as Special Education Coordinator and Legal Services Coordinator, respectively. They filed a grievance on or about February 3, 1989 alleging favoritism and a violation of the uniformity in pay provisions contained in W.Va. Code §§18A-1-1, et seq. in the hiring of a Vocational Education Administrator. The grievance was denied at Levels I, II and III and appeal to Level IV was made March 31, 1989 where a hearing was held May 10, 1989.<sup>1</sup> Proposed findings of fact and conclusions of law were submitted by May 31, 1989.

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<sup>1</sup>The transcript of the Level II hearing held February 17 and March 2, 1989 is part of the record.

The facts of the grievance are undisputed. Grievant Sark was first employed by RESA in her current position on March 16, 1988 at a yearly salary of approximately \$32,000.00. Grievant Douglas was first employed on August 17, 1988 at a yearly salary of \$30,000.00.<sup>2</sup> On January 16, 1989 Mr. Clacy Williams was hired by RESA as a Regional Vocational Education Administrator at a salary of \$40,000.00 per year. The posting for this position listed certification in vocational administration (SBP 5121)<sup>3</sup> as one of the qualifications (Grievant's Exhibit No.12). It is conceded that Mr. Williams did not have the certification and his contract of employment with RESA contained a provision that he obtain such. Mr. Williams resigned his position February 28, 1989 and at that time had not achieved certification.

Grievants contend the higher salary paid Mr. Williams during his brief employment with RESA was in violation of W.Va. Code §18A-4-5b, which in pertinent part provides:

Further, uniformity 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.<sup>4</sup>

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<sup>2</sup>Mr. Douglas is also permitted to maintain a private law practice during days on which RESA employees do not work, i.e. vacation, holidays or weekends.

<sup>3</sup>This is a reference to regulations of the West Virginia Board of Education governing certification of administrative personnel in vocational education.

<sup>4</sup>References to uniformity in pay are also found in W.Va. Code §§18A-4-2b and 18A-4-5a. Grievants place no emphasis on any particular Code section but generally assert all are applicable.

Grievants also assert the allowance made Mr. Williams in regard to the certification constituted favoritism<sup>5</sup> in that they were required to meet all respective qualifications of their positions prior to employment.

RESA maintains the provisions for uniformity in pay contained in W.Va. Code §§18A-1-1, et seq. are not applicable to its employees and even if such were conceded, the duties and responsibilities of grievants are so dissimilar to those of the Vocational Education Administrator that no uniformity in their salaries is required. RESA also contends there was no favoritism shown Mr. Williams as there was good reason to believe he would obtain his vocational administrator's certificate shortly after his employment was to commence.

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

#### FINDINGS OF FACT

1. Grievant Sark was first employed by RESA IV as a Special Education Coordinator on March 16, 1988. Her duties generally entail assistance to county boards of education in the implementation and maintenance in a variety of educational programs for students with special needs. Qualifications for her position

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<sup>5</sup>W.Va. 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.

include a minimum of a Master's degree in special education, staff training experience, familiarity with state and federal law pertaining to handicapped students, special education teaching background and experience in the administration of special education programs.

2. Grievant Douglas was first employed by RESA IV as Regional Legal Services Coordinator on August 17, 1988. The duties of his position entail assistance to county boards of education on a wide variety of legal matters including contracts with private and public agencies, personnel policy, grievance procedures and consumer protection. Qualifications for the position include a Doctor of Jurisprudence degree, completion of all requirements for a license to practice law in West Virginia and knowledge of and experience with West Virginia school law.

3. Mr. Clacy Williams was employed by RESA IV as Regional Vocational Education Coordinator from January 16, 1989 until February 28, 1989. In addition to direction of local boards' vocational education programs at the request of county superintendents, his duties entailed assistance to those boards on a wide variety of matters relating to the implementation, coordination and maintenance of vocational educational programs. Qualifications for the position include a Master's degree and certification in vocational administration, administrative and teaching experience in vocational education and familiarity with

the West Virginia State Plan for the Administration of Vocational Education.

4. Mr. Williams did not possess the certification in vocational administration at the time of his employment with RESA IV but his continued employment was contingent upon his application for and receipt of that certification.

#### CONCLUSIONS OF LAW

1. The provisions contained in W.Va. Code §§18A-1-1, et seq. requiring uniformity in pay relate solely to employees of county boards of education and are not applicable to employees of Regional Education Services Agencies. The language contained therein is clear and unambiguous and as such should not be interpreted but given full force and effect. Lavender v. McDowell County Board of Education, 327 S.E.2d 691 (W.Va. 1984).

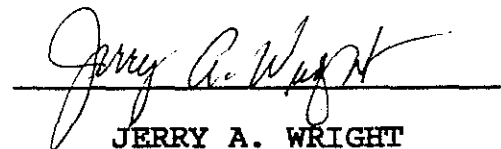
2. Notwithstanding the applicability of the uniformity in pay provisions to the grievants, the duties and responsibilities of their positions are inherently different from those of the Regional Vocational Education Administrator and any differences in the manner in which they are compensated did not constitute favoritism and/or discrimination as defined in W.Va. Code §18-29-2(m)(o).

3. The waiver of the certification requirement for Mr. Williams was a benefit not similarly bestowed on grievants when

they were employed but it was not an action which caused them any loss, monetary or otherwise.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Nicholas County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days after receipt of said 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: August 30, 1989