



Members
James Paul Geary
Chairman
Orton A. Jones
David L. White

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

GASTON CAPERTON
Governor

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

DAVID ROBBINS, DIANA PARKS, and JAMES DAVID

v.

Docket No. 89-33-697

MCDOWELL COUNTY BOARD OF EDUCATION

DECISION

Grievants, employed by Respondent McDowell County Board of Education as teachers at its vocational center, contend that Respondent violates W.Va. Code §18A-4-5a¹ in paying other vocational teachers a salary increment denied them.²

¹W.Va. Code §18A-4-5a requires that schedules for salaries of teachers be "uniform throughout the county as to the above stipulated training classifications, experience, responsibility and other requirements...." It also 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 within the county.

²The grievance was filed October 12, 1989. Consideration of the grievance was waived at Level I due to
(Footnote Continued)

The facts are not in dispute. In 1975 Respondent enacted a policy whereby vocational teachers at the center would be paid as though they had taught three years longer than they actually had in an effort to recruit hard-to-attract skilled employees from private industry. In Summer 1984, however, Respondent enacted a new policy, McDowell County Schools Policy 8-044, which repealed the prior policy, although it expressly did not affect the status of the employees hired under the prior policy. Accordingly, vocational teachers hired or assigned to the vocational center after the effective date of Policy 8-044, July 1, 1984, were disallowed the three-year increment while employees hired before continued to benefit from the 1975 policy. Grievants are those vocational teachers at the center hired since July 1, 1984.

This matter mirrors McClanahan v. Lincoln Co. Bd. of Educ., Docket No. 89-22-151 (July 19, 1989).³ In that case

(Footnote Continued)

lack of authority. The grievance was denied at Level II, after hearing of November 2, 1989, and at Level III, upon consideration of the record. Grievants appealed to Level IV on December 4, 1989. While Grievants initially requested a hearing, they later notified the undersigned that they wished a decision based on the evidence presented at Level II. The record was received February 6, 1990. Grievants have submitted proposed findings of fact and conclusions of law and Respondent has waived its briefing rights.

³Before scheduling the hearing the undersigned provided copies of the decision to the parties and noted that the documents of record indicated that this case may parallel it, stating, "Please advise me if [McClanahan] affects how this case should be handled at Level IV." Grievants
(Footnote Continued)

the respondent also paid certain vocational teachers, called technical and industrial (T & I) instructors, more than its regular vocational teachers. As in this case, the disparate compensation had resulted from a need in the 1970's to entice skilled workers from private industry. It was found that there was no significant difference between the duties and responsibilities of the vocational teachers and the T & I instructors and therefore a violation of W.Va. Code §18A-4-5a was found.⁴

The record is clear that there is no significant difference in the duties and responsibilities of Grievants and the teachers hired before 1984. Accordingly, a violation of W.Va. Code §18A-4-5a has been established.

In McClanahan the grievants requested as relief future compensation on par with the T & I instructors plus back pay. It was ruled,

Grievants have shown by this action that the T & I instructors are not entitled to the higher position pay; they have not shown that they have a legal right to be paid it. Indeed, if Grievants were granted the position pay, their pay would be nonuniform with the pay of the other teachers of Lincoln County and a new inequity would result.

(Footnote Continued)

responded with the arguments made again in their proposals. Respondent simply contended that McClanahan "supports our position that the McDowell County grievants are not entitled to the relief requested."

⁴The case factually differed from this in that the respondent paid all T & I instructors at the higher rate, regardless of when hired. However, that new employees were also paid the higher rate had no pertinence to the holding therein.

The grievance was therefore granted "only to the extent that Respondent is ordered to correct the inequity in pay between [the g]rievants and the T & I instructors it employs as soon as such correction can legally be made."

Grievants also ask for compensation at the same level as the higher-paid vocational teachers, plus back pay. They rely on the provision of Code §18A-4-5a, "Counties may fix higher salaries for teachers placed in special instructional assignments," in apparently arguing that McClanahan's denial of the requested relief was wrong. Grievants are correct in stating that that provision "permits" county school boards to set higher salaries for teachers in special instruction; it does not require a board to do so. Since such a decision is within the discretion of a school board and Respondent, like the respondent in McClanahan, did not base payment of the higher salary on the fact that the recipients were in special instruction but instead denied such salary to some individuals in the same area of instruction, ordering Respondent to pay all vocational teachers the higher compensation would improperly nullify its discretion to decide whether to compensate its vocational teachers because they have special instructional assignments.⁵

⁵ Nothing in McClanahan or this decision prohibits Respondent from paying vocational teachers more than other teachers because of their special instructional assignments and it may be proper for Respondent to decide to raise Grievants' salaries for that reason. Accordingly, it will
(Footnote Continued)

In addition to the foregoing, the following findings of fact and conclusions of law are appropriate:

Findings of Fact

1. In 1976, in order to entice skilled employees from private industry, Respondent instituted a policy of paying vocational teachers at the McDowell County Vocational Education Center as though they had been employed three years longer than their actual time of employment. That policy was repealed by Policy 8-044, effective July 1, 1984, providing that vocational teachers hired or assigned to the vocational center thereafter, including Grievants, would be paid according to their actual years of employment. However, the policy continued the incremental pay for those employees who had been so compensated under the prior policy.

2. There is no significant difference in the duties and responsibilities of the vocational teachers paid the higher incremental pay and Grievants.

(Footnote Continued)
not be assumed that, in order to equalize salaries, Respondent will lower the salaries of the vocational teachers hired before 1984 and therefore no issue of whether such lowering would in any way be illegal need be addressed here.

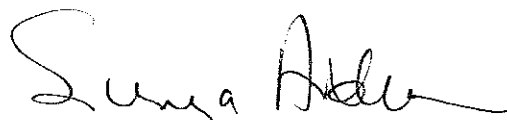
Conclusions of Law

1. Grievants established a violation of the uniformity of pay provisions of W.Va. Code §18A-4-5a. See McClanahan v. Lincoln Co. Bd. of Educ., Docket No. 89-22-151 (July 19, 1989).

2. Grievants have not established that they are entitled to the requested relief of compensation at the rate of the incremental pay. McClanahan.

The grievance is accordingly **GRANTED** only to the extent that Respondent is ordered to correct the inequity as soon as such correction can legally be made.

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



SUNYA ANDERSON
HEARING EXAMINER

Dated: February 28, 1990