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

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DAVID L. WORKMAN
PHYLLIS OSENTON
PAT JOE WHITE
and
BEATRICE ORR

v.

Docket No. 89-23-287

LOGAN COUNTY
BOARD OF EDUCATION

DECISION

Grievants David Workman, Phyllis Osenton, Pat Joe White, and Beatrice Orr are employed by Respondent Logan County Board of Education as Supervisor of Science, Supervisor of Music, Supervisor of Reading K-6 and Language Arts K-6, and Supervisor of Health Education and Physical Education, respectively. The Level IV¹ pleadings allege

Violation of WV Code 18A-4-5[a]. WV State Board of education approval must be received before professional

¹This grievance, which was filed August 29, 1988, has a complicated procedural history. The Level I evaluator ruled he had no authority to decide the grievance and it was denied without explanation at Levels II and III in March and June 1989. Appeal was taken to Level IV June 23, 1989. The case was remanded, however, for proper determinations, which were not made by the Level III evaluators until October. The matter was returned to Level IV October 16, 1989. The record was received in November and proposed findings of fact and conclusions of law were received from the parties on and before January 12, 1990.

salaries are cut. This grievance can be resolved by restoring the days cut and giving the grievants back pay for the salaries improperly taken.

The facts comprising the background of this case are not in dispute. Grievants, apparently like all Supervisors in Logan County, prior to the 1985-1986 school year had 240-day contracts, but because of budgetary problems their contracts were cut to 220 days and their pay lowered because of the shorter time, although the rate of pay per day was not lowered. In Summer 1989, the 20 days were restored to the contract of Joann Gore, Director of Guidance and Testing, which had been reduced like Grievants' when theirs had. Grievants filed shortly thereafter.²

Grievants contend,

The Logan County Board of Education did not obtain approval from the West Virginia State Board of education prior to cutting the salary of the supervisors by reducing their employment from 240 days to 220 days.

Grievants' proposed finding of fact 8.

The Respondent['s] failure to obtain the permission of the State Board of Education prior to eliminating Grievants' positional salary supplements was violative of West Virginia Code §18A-4-5a.

²Grievants explained that throughout the years that they operated under the 220-day contracts they had been assured by Respondents, through its agents, that the lost time would be restored, and they had therefore foregone filing a grievance. Grievants contend, therefore, that the grievance is timely. Whether they were justified in waiting to file their grievance need not be addressed since the timeliness of their filing is not in issue, for Respondent has not raised it and it is therefore considered waived. See Hunting v. Lincoln Co. Bd. of Educ., Docket No. 22-88-152 (Nov. 22, 1988).

Grievants' proposed conclusion of law 3.

W.Va. Code §18A-4-5a, entitled "County salary supplements for teachers,"³ is a complex provision, not all of which need be set out here. It initially mandates that county boards of education "use at least the state minimum salaries" established by Code §18A-4-2, allowing the boards to fix such "salary schedules above the minimums there provided," "such county schedules to be uniform throughout the county as to the above stipulated training classification, experience, responsibilities and other requirements," The second paragraph 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 the teacher's 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: Provided, That in establishing such local salary schedules, no county shall reduce local funds allocated for salaries in effect on the first day of January, one thousand nine hundred and eight-four, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction

(emphasis added).

³Since the definition of "teacher" at W.Va. Code §18-1-1 includes "supervisor," Grievants are teachers under all cited statutory provisions.

The "state minimum salary schedule[s]" of Code §18A-4-2 set yearly schedules for teachers based on number of years experience and education.⁴ The schedules are for employment terms for teachers of ten months of 20 employment days each. See W.Va. Code §18-5-15(a).⁵ Accordingly, the schedules do not purport to provide minimum salaries for any employment term other than the 200 employment days that is standard for teachers. Similarly, Code §18A-4-5a makes provision for salary supplements to the base pay scales of Code §18A-4-2 so that the salaries for 200-day contracts for teachers may be raised above those minimums. There is nothing in the provision that relates to changes in an employment term for a teacher.⁶ Accordingly, the provision on which Grievants

⁴For example under Schedule I, applicable for school years 1986-88, a teacher with an A.B. degree and 6 years experience is entitled to \$16,466, while a teacher with an M.A. plus 30 and one year's experience \$16,055.

⁵That provision states, in pertinent part, "The employment term for teachers shall be no less than ten months, a month to be defined as twenty employment days exclusive of Saturdays and Sundays: Provided, That the board may contract with all or part of the personnel for a longer term."

⁶Grievants' contention, that the requirements of the highlighted text of W.Va. Code §18A-4-5a apply to individual salary supplements and therefore that any reduction of an employee's supplement must be reported to the state board, may be contrary to the language of the statute requiring such reporting of reduction of "local funds allocated for salaries," which may be the total of such funds, although it is recognized that Heater v. Gilmer Co. Bd. of Educ., Docket No. 11-88-078 (Oct. 25, 1988), on which Grievants rely, supports their view. However, because such salary supplements were not involved in this case, the issue need

(Footnote Continued)

rely, highlighted above, is not applicable to the reduction of their contracts from 240 days to 220 days.

Throughout the proceedings Grievants have also contended that Respondent also violated the uniformity requirements of Code §18A-4-5a by failing to provide them 240-day contracts, particularly pointing to Ms. Gore's receiving a 240-day contract. Grievants make no argument that, for the 220 days covered by their and Ms. Gore's contracts, the salaries are not uniform and therefore violate Code §18A-4-5a.⁷ Their argument again relates only to the fact that Ms. Gore has 20 more days of employment than they do. Again, there is nothing in Code §18A-4-5a that mandates uniformity in employment terms for different employees.

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

(Footnote Continued)

not be addressed. Nevertheless, it is noted that Respondent's justification for the reductions of Grievants' terms of employment, the need to save money, tends to indicate that the total funds allocated to salaries was reduced, albeit not necessarily below the 1984 levels and not in establishing Respondent's salary schedules. Further, on Respondent's fiscal reports to the state board for the 1987-88 and 1988-89 school years several Grievants were shown to be 240-day employees earning higher salaries than they actually earned. See Gr. Ex. 1 and 9.

⁷While the parties have disputed whether Ms. Gore is a supervisor or a director, the record establishes, and Respondent concedes, that the job descriptions of supervisors and directors are essentially the same.

Findings of Fact

1. Grievants have been employed by Respondent as supervisors since prior to 1984, when they had 240-day contracts of employment. Their employment terms were reduced to 220-day contracts, effective the beginning of the 1985-1986 school year.

2. Although Jo Ann Gore, Director of Guidance and Counselling, like Grievants, had had her employment contract reduced to 220 days, Respondent reinstated a 240-day contract for her effective the 1989-1990 school year.

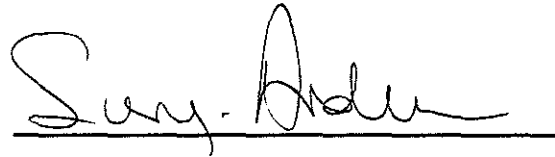
Conclusions of Law

1. It is incumbent upon a grievant to prove the allegations of his or her complaint by a preponderance of the evidence. Hanshaw v. McDowell Co. Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988); Andrews v. Putnam Co. Bd. of Educ., Docket No. 40-87-330-1 (June 7, 1988).

2. The uniformity requirements of Code §18A-4-5a do not apply to the lengths of employment terms for school personnel, nor does that provision's prohibition against reducing "local funds allocated for salaries" except under certain delineated circumstances relate to reductions of such employment terms. Grievants accordingly failed to establish any violation of Code §18A-4-5a.

Accordingly, the grievance is **DENIED**.

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

A handwritten signature in cursive script, reading "Sunya Anderson", is written over a solid horizontal line.

SUNYA ANDERSON
HEARING EXAMINER

Dated: January 30, 1990