

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**RANDALL MYERS,
Grievant,**

v.

Docket No. 2018-0972-LewED

**LEWIS COUNTY BOARD OF EDUCATION,
Respondent.**

DECISION

Grievant, Randall Myers, filed this action against Respondent on February 14, 2018, alleging pay inequality and lack of salary uniformity as compared to other Central Office administrators. Following a conference, this grievance was denied at Level One by decision dated March 14, 2018. A Level Two mediation session was conducted on June 12, 2018. Grievant perfected his appeal to Level Three on June 29, 2018. A Level Three evidentiary hearing was conducted before the undersigned on April 1, 2019, at the Westover office of the Grievance Board. Grievant appeared in person, and by his representative, Susan Lattimar Adkins, WV Professional Educators. Respondent appeared by its counsel, Denise M. Spatafore, Dinsmore & Shohl LLP. This matter became mature for consideration upon receipt of the last of the parties' fact/law proposals on June 12, 2019.

Synopsis

Grievant asserts that he was performing like assignments and duties as other Central Office employees with respect to the salary supplement given to his position. Grievant argues that the past failure of Respondent to provide him with a larger salary

supplement violates uniformity provisions. Respondent demonstrated that other central office administrators and Grievant do not perform like assignments and duties. This grievance is denied.

The following Findings of Fact are based upon the record of this case.

Findings of Fact

1. Grievant was employed by Respondent for many years as Attendance Director. Grievant retired from his position on June 30, 2018.

2. Grievant's job duties were specific to student attendance, truancy and student transfers. He was not responsible for supervising or evaluating other employees or departments. Grievant's position requires a bachelor's degree. Grievant held a 225-day contract with a \$3,173 pay supplement.

3. Respondent employs a number of Central Office administrators, most of whom hold the job title of Supervisor, and each is responsible for several departments of the county school system, including all programs and employees within each assigned area. Each of those employees is required to hold a Professional Administrative Certificate from the West Virginia Board of Education, has a minimum of a required master's degree, and evaluates employees within the departments they oversee. Central Office Supervisors hold a 255-day contract with an \$11,331 supplement.

4. All Central Office Supervisors report to the superintendent as their direct supervisor.

5. While employed as Attendance Director, Grievant was supervised by Chris Derico, a Central Office Supervisor responsible for several departments and programs, including Attendance.

6. Terry Cogar is a service employee, employed by Respondent as Supervisor of Transportation. Mr. Cogar does not hold a professional license from the West Virginia Department of Education. He is responsible for overseeing and supervising the Transportation Department, including its numerous bus operators and mechanics. He holds a 255-day contract, with a pay supplement of \$8,371. Respondent does not employ any other service personnel in a supervisory capacity.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2018); *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievant seeks to compare himself to other central office administrators for salary purposes. It is well-settled in school personnel law that equal pay and benefits are only required for employees with similar jobs, duties, and contract arrangements. WEST VIRGINIA CODE § 18A-4-5a allows county boards of education to "establish salary

schedules . . . in excess of the state minimums” and these schedules must be uniform for employees with similar “training, experience, responsibility and other requirements” . . . “[u]niformity also shall apply to . . . addition salary increments or compensation for all persons performing like assignments and duties within the county.”

County boards of education are required to provide uniform benefits and compensation only to similarly situated employees, meaning those who have “like classifications, ranks, assignments, duties and actual working days.” *Bd. of Educ. v. Airhart*, 212 W. Va. 175, 569 S.E.2d 422 (2002); *Covert v. Putnam County Bd. of Educ.*, Docket No. 99-40-463 (Feb. 29, 2000). Grievants seeking to enforce the uniformity provisions must establish that their duties and assignments are like those of the employees to whom they are attempting to compare themselves. *Lockett v. Fayette County Bd. of Educ.*, Docket No. 01-10-477 (Dec. 28, 2001).

The record of this case supports a finding that Grievant was not performing similar assignments and duties to other administrators, and described his job as unique and not comparable to others. The attendance director in state-wide county school systems is performing duties that are not similar to those of any other employee. In Lewis County, the Central Office Supervisors have specific qualifications and job requirements that Grievant does not.

The record also demonstrated that there are differences in the assigned job duties of the Attendance Director, as compared to the Central Office Supervisors. As previously mentioned, the Attendance Director has one assigned area of responsibility. By comparison, each Supervisor is responsible for the oversight and management of multiple full departments of the entire school system. Grievant’s Supervisor is in charge of the

entire departments of child nutrition, student discipline, and attendance. Supervisors have associated budgetary and management responsibilities for each assigned department and report directly to the superintendent. The Attendance Director and his department are one of the many areas of supervision under the responsibility of one Central Officer Supervisor.

Although there is no doubt that the duties of the Attendance Director are important and numerous, they are not comparable to or the same as those of the Supervisors, who have multiple departments for which they have responsibility and supervision. Concerning any comparison to Mr. Cogar, Grievant's assigned responsibilities and qualifications were different from that of the Supervisor of Transportation. Mr. Cogar is a service personnel employee whose job and title are governed by WEST VIRGINIA CODE § 18A-4-8b, responsible for supervising and overseeing the transportation department and its employees, and working a longer contract term.

It is within Respondent's discretion to determine the needs of the school system for management personnel, employment contracts, and compensation, within the requirements of school personnel law. "County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonable, in the best interests of the schools, and in a manner which is not arbitrary and capricious." Syl. pt. 3, *Dillon v. Wyoming County Board of Education*, 177 W. Va. 145, 351 S.E.2d 58 (1986). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996).

The undersigned finds that Respondent's actions cannot be viewed as arbitrary and capricious in determining the applicable contract length and salary supplements for its various categories of administrators. They would appear appropriate to the requirements of the positions, including education, certification requirements, supervision of other employees, and level of responsibilities. Grievant's position and qualifications are different from those to whom he has compared himself, making similar compensation inappropriate. Grievant has failed to establish by a preponderance of the evidence a violation of the uniformity provision or any other law or policy has been violated with respect to the salary supplement given to his position.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2018); *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988).

2. WEST VIRGINIA CODE § 18A-4-5a allows county boards of education to “establish salary schedules . . . in excess of the state minimums” and these schedules must be uniform for employees with similar “training, experience, responsibility and other requirements” . . . “[u]niformity also shall apply to . . . addition salary increments or compensation for all persons performing like assignments and duties within the county.”

3. Grievant's position is not comparable to other positions in the county for uniformity of salary purposes.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. See W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by WEST VIRGINIA CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. See *also* 156 C.S.R. 1 § 6.20 (2018).

Date: July 2, 2019

Ronald L. Reece
Administrative Law Judge