JAMES C. SPEARS

v. Docket No. 93-MCVTC-461

THE ADMINISTRATIVE COUNCIL OF THE

JAMES RUMSEY TECHNICAL INSTITUTE

D E C I S I O N

Grievant James C. Spears is employed as Director at the James Rumsey Technical Institute (JRT) by JRT's Administrative Council (Council). In this action Grievant essentially seeks salary parity with similarly-situated Directors/Principals statewide and/or with that of the principals in the school system in which JRT is physically located and financially administered. Council claims Grievant is not a principal employed by a county board of education and that it is free to set Grievant's director's salary at a different or lesser amount than that of a principal within the county where JRT is locat ed. (See footnote 1)

At the October 7, 1993 level two hearing, the parties jointly entered Joint Exhibit No. 11, a "Stipulation" of "mat ters of fact and law regarding the instant grievance," which contains nineteen entries. From this information and other material found in the level two transcript, the following determinations are made. (See footnote 2)

Findings of Fact

1. JRT is one of several multi-county, vocational schools which fall under the auspices of the State Board of Education (SBE) and are locally governed by administrative councils. These types of schools and other secondary vocational schools are components of SBE's overall area vocational education programming.

2. JRT serves the secondary student populations of Berkeley County Board of Education (BCBE), Jefferson County Board of Education (JCBE) and Morgan County Board of Education (MCBE), is physically located within Berkeley County and has a net enrollment in excess of one hundred seventy high-school students.

3. JRT's Council is comprised of the superintendent and one board member from each of the participating counties, plus the State director of vocational education, or designee. BCBE is the fiscal agent for JRT. 4. Grievant holds a permanent secondary principal's certificate and is fully qualified by education, certification and licensure to serve as principal of a three or four year

vocational and technical high school.

5. Grievant was hired as JRT's Director pursuant to a continuing contract dated April 19, 1989. Paragraph two (2) of Grievant's contract of employment provides:

This contract shall be subject to any and all existing state laws, West Virginia Board of Education policies, Council policies and such laws, policies, rules, and regulations as may hereinafter be enacted or adopted.

6. BCBE, as fiscal agent for JRT, receives the state formula appropriation for Grievant's position from state funds appropriated for this purpose.

7. BCBE, JCBE and MCBE each employ a central-office director of vocational education to oversee vocational curricu lum matters. See Ex 8.

8. As the director and chief administrator of JRT, Grievant not only functions within the school somewhat the same as a county curriculum director (director of vocational educa tion), but also functions much the same as a principal employed in a technical or vocational high school which is totally and exclusively administered by a single West Virginia county board of education. Gr 13-14.

9. Six other directors/principals of public multi-county vocational and technical centers in West Virginia, Oscar Harris (Roane-Jackson Technical Center), Joan Smith (United Technical Center), Kenneth Fisher (PRT Vocational-Technical Center), Robert Sisk (South Branch Vocational-Technical Center), JaneParmer (Calhoun-Gilmer Career Center), and Kenneth Davidson (Fred W. Eberle Technical Center), receive salaries at least equal to the salaries paid to comparable principals in the fiscal agent counties. Gr 12.

10. All of the classroom teachers assigned to JRT are paid according to the appropriate teacher's salary schedule of the fiscal agent county, BCBE. Ex 5.

11. Prior to the 1993-94 school year, Grievant discovered that he was listed on the State Department of Education's (SDE), School Finance Division's, "Professional Personnel Employment List" as a teacher and assigned a vocational teacher's code number for salary purposes for the 1992-93 school year. At that point, he noted on official documents sent to SDE that he should be listed as a high school principal, professional personnel position, Code 113. The record reflects that, for school years 1987-88 through 1989-1990, Grievant was paid under position Code 106 (instructional director's code number) and his salary increased from $41,638.15 to $48,431.92 in the three year span. During the 1990-91 and 1991-92 school years, Grievant was paid under position Code 217 (K-

12 vocational teacher's code number), and he earned $52,406 and $53,709, respectively. In 1992-93, under position Code 113 (high school principal's code number), Grievant's salary increased to $57,589.65. Three other compara ble BCBE high school principals on the list, two with less experience than Grievant and one with more experience, earned salaries in the $64,000 range. Exs 5-5A, Co 1.

12. In communications with Grievant as administrator ofJRT, SDE has consistently referred to Grievant's position as that of a principal.

13. BCBE's Superintendent has, on various occasions, used the titles Principal and Director interchangeably when address ing the director of JRT via written correspondence and other means. For example, in a letter written to the secondary coordinator of JRT, BCBE's Superintendent made reference to the "principal" (Grievant) and "assistant principal" of JRT.

14. Council has made certain allusions as to the nature of Grievant's position. The official minutes of a meeting of the Council, dated December 18, 1992, state in part:

Dr. Ingram asked [Grievant] if he had attended the Evaluation Workshop for Principals. [Grievant] said he had not, because of the court case brought against [JRT]. . .. Mr. Grizzell suggested that [Grievant] investigate attending a future workshop for princi pals, noting that he acted in the same capacity as a principal at [JRT] with his Administrative Staff serving as Assistant Principals.

15. For all practical purposes, as the director and chief administrator of JRT, Grievant functions as a high school principal as well as a vocational education director employed by BCBE.

Grievant must prevail in this dispute. To accept Council's arguments in this matter would be tantamount to agreeing that administrative councils, comprised of members from participating county boards of education, have no accountability with respect to laws governing the administration of public high schools or secondary vocational schools in West Virginia. Council, in effect, argues that administrative councils of multi-countyvocational schools possess more discretionary powers than the representative county boards of education which form the coun cil. Administrative councils of multi-county vocational and/or technical schools do not have such powers; as Council herein argues, these councils "are. . .creatures of. . .the State Board of. . .Education." Council's Brief at 9.

In this case, Grievant, as Director of JRT, essentially performs the duties of a high school principal in the fiscal agent's school system as set forth in a "Notice of Administra tive Vacancy, High School Principal, Berkeley County Schools, February 24, 1992." Council elevates form over substance when

it insists that a meaningful distinction exists between the required qualifications, functions, job descriptions and actual everyday duties of a principal of a secondary school and direc tor of a multi-county vocational center. Moreover, Sark v. Regional Educ. Serv. Agency IV, Docket No. 89-RESA-131 (Aug. 30, 1989), is not controlling in this case. A "RESA" does not establish and run public schools, and RESA personnel are at-will employees who do not hold continuing contracts of employment. See St. Clair v. RESA-V, Docket No. RESA-88-186 (April 27, 1990).

In addition to the foregoing, the following formal conclu sions of law are appropriate.

Conclusions of Law

1. Effective July 1, 1990, schools such as JRT, that is, multi-county, non-higher-education secondary public schools, are the responsibility of the State Board of Education (SBE) and SBE's Division of Secondary Vocational Education and the Divi sion's Director. W.Va. Code §18-2B-2(b).

2. While SBE can delegate operational authority to an administrative council for a multi-county vocational school, that council must operate within the parameters of West Virginia school laws and the policies, rules and regulations of the SBE.

3. JRT is a multi-county vocational center as envisioned by W.Va. Code §§18-2B-1, et seq., and is locally governed by an administrative council, all pursuant to a letter of intent and resolution to participate adopted by the boards of education of the counties operating the facility.

4. JRT is a creation of and an agent for the boards of education of the participating counties.

5. The Administrative Council of JRT serves in place of and is subject to the same laws and regulations concerning the employment and compensation of teachers and principals as the participating county boards of education.

6. W.Va. Code §18-1-1 defines a "school" as "the pupils and teacher or teachers assembled in one or more buildings, organized as a unit." It further defines "teacher" as:

[T]eacher, supervisor, principal, superintendent, public school librarian, registered professional nurse, . . .; or any other person regularly employed for instructional purposes in a public school in this state.

JRT is a school and Grievant is a teacher and principal as envi sioned by W.Va. Code §18-1-1.

7. Professional personnel position Code 113 "Principal, High" is defined by the State Department of Education (SDE) as:

A professional educator who as an agent of the board has responsibility for the supervision, management and control of a school. . .. This includes three-year and four-year vocational and

technical high schools.

Grievant is a high school principal as envisioned by SDE's professional personnel position Code 113.

8. The Establishment Procedures and Operating Policies for Multi-County Vocational Technical Centers §2500.2e(2) states:

The administrative council must afford its employees the same benefits (sick leave, vacation, insurance, retirement, tenure, etc.) as those to which the employees of the fiscal agent county of that center are entitled.

In accordance with this regulation, JRT's teachers are paid on the same basis as Berkeley County Board of Education's teachers.

9. According to W.Va. Code §18A-4-3, a principal of a school is entitled to a specified salary increment as a benefit of employment.

10. The statutes and policies under which JRT is operated requires the compensation of the Director of JRT to be not less than the compensation which would be paid to a principal per forming like assignments and duties and assigned to a vocational or technical center or high school of comparable size within the fiscal agent's school system.

Accordingly, the grievance is **GRANTED**, and Council is Ordered to comply with the directives herein. Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Berkeley 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 Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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NEDRA KOVAL

Administrative Law Judge

Date: June 1, 1994

Footnote: 1 Upon appeal to level four, Grievant requested a record decision. Briefs were tendered by Grievant on December 22, 1993 and by Council, January 21, 1994. Thereafter, the matter was transferred in March 1994 to the

undersigned for administrative reasons.

Footnote: 2 The transcript of the October 7, 1993 level two hearing contains six exhibits proffered on that date, Grievant's Nos. 12-14 (Gr _), and Council's Nos. 1-3 (Co _). It also contains eleven other exhibits (Ex _), apparently marked at an earlier proceeding on September 22, 1993; Joint Exhibit No. 11 was among that group.