BILLY MOREFIELD

v Docket No. 93-27-319

MERCER COUNTY BOARD OF EDUCATION

DECISION

The grievant, Billy Morefield, is employed by the Mercer County Board of Education (Board) as a classroom teacher at Princeton Junior High School. He filed a grievance at Level I June 9, 1993, alleging, "salary schedules are not uniform, at least five halftime teachers are paid a daily rate that is higher than the rate paid to teachers who teach a full day in the classroom." His supervisor was without authority to grant relief and the grievance was denied at Level II following a hearing held June 28, 1993. The Board, at Level III, affirmed the Level II decision and an appeal to Level IV was made August 13, 1993. The parties subsequently agreed to submit the case for decision on the record developed at Level II. The grievant submitted a short written statement outlining his legal position. The Board did not submit written argument. Its position is gleaned from the Level II decision.

In his Level IV proposals the grievant states, "After reviewing West Virginia Code 18A-4-1, 18A-4-3, 18A-4-5a, 18A-4-7aand 18-9A-4, it is apparent the above-listed classroom teachers are not assigned to curriculum administrative positions but in fact are assigned as classroom teachers." The referenced classroom teachers are five individuals employed by the Board whom the grievant apparently believes are being compensated at a higher daily rate of pay than he. Since W.Va. Code §18A-4-5a is the only statute among those cited which addresses uniformity in pay for employees of a county board of education, it is assumed that the grievant contends the alleged disparity in salaries constitutes a violation of that statute. (See footnote 1)

The July 2, 1993, Level II decision contains the following conclusion of law: The five persons in question were employed by Mercer County Schools as 50% administrators and 50% teachers. It is assumed from this statement that the Board acknowledges somedifferences in the manner in which the grievant and the identified individuals are paid and asserts that the grievant and those employees are not "similarly-situated" for the purposes of Code §18A-4-5a.

At the Level II hearing, the only evidence produced by the grievant were several documents purporting to show a disparity in pay between himself and the other employees and his own brief testimony. One document, a computer printout, (Grievant's Exhibit 2), which was identified at hearing as the "certified list," contains the names of over one hundred eighty employees, their annual salaries, and the number of days in their employment terms. The document also contains information under at least three different "codes" which may or may not be the designations for the work stations and certifications of the various employees and the funding source for their salaries. The grievant offered only brief testimony regarding this document. He merely noted that five individuals on the list had a "50%" notation in a column identified only as "FTE."

A second document, (Grievant's Exhibit 1), contains information gleaned from the printout by the grievant and calculations which, according to the grievant, were "gathered from the Code." This document purports to show that the five employees received "teaching" salaries and "administrative" salaries and that the "teaching" portion was far more than half his yearly salary. The grievant also provided little if any relevant testimony regarding this document. (See footnote 2)

A grievant must prove the allegations contained in his or her grievance by a preponderance of the evidence. Black v. Cabell County Bd. of Ed., Docket No. 89-06-707 (March 23, 1990). The evidence submitted by the grievant is wholly inadequate to support any legal claim he might have under Code §18A-4-5a. (See footnote 3) Since little if any explanatory testimony was offered regarding the printout, it is of little probative value. The various codes and other designations for the information contained therein are at best susceptible to numerous interpretations. Alone, it does not establish that the identified employees were paid higher "teaching" salaries than the grievant. Further, while it is accepted that the above-cited Level II finding is accurate, the printout does not support that those employees served as administrators.

Similarly, the remaining document was not accompanied by sufficient explanation to permit findings of fact based on the information therein. Alone, it too is susceptible to a great many interpretations. Simply stated, the grievant presented insufficient evidence for any reasoned inquiry into his claims.

Accordingly, the grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Mercer 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 intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: March 25, 1994

Footnote: 1*The statute provides,*

> *County boards of education in fixing the salaries of teachers shall use at least the state minimum salaries established under the provisions of this article. The board may establish salary schedules which shall be in excess of the state minimums fixed by this article, such county schedules to be uniform throughout the county as to the classification of training, experience, responsibility and other requirements.*
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> *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.*

Footnote: 2*While the grievant was sworn at the hearing and made several remarks which could be construed as testimony, he essentially made statements concerning his legal position. Board counsel's cross-examination of the grievant was primarily an attempt to ascertain precisely what that position was.*

Footnote: 3*Again, it is assumed that the grievant bases his claims on this statute. Despite that he made legal argument at the Level II hearing and submitted a short brief at Level IV, the grievant's position is far from clear.*