JACKIE L. WILKINSON, .

Grievant, .

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v. . Docket Number: 95-22-248

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LINCOLN COUNTY BOARD OF EDUCATION, .

Respondent. .

D E C I S I O N

Jackie Wilkinson (hereinafter Grievant) filed this grievance on or about February 23, 1995, pursuant to the provisions of West Virginia Code §§18-29-1, et seq., alleging the following:

> The Lincoln County Board of Education violated West Virginia Code 18A-4-5b by failing to provide uniform compensation for coordinators in pay grade "H". To resolve this dispute, I request the position pay provided to other coordinators in pay grade "H" and all back pay to which I am entitled.

The grievance was denied at levels one and two and Grievant waived participation at level three pursuant to W. Va. Code §18-29-4(c). Appeal was made to the Grievance Board on June 16, 1995, and an evidentiary hearing was held on July 19, 1995, at the Board's Charleston, West Virginia office. The case became mature for decision at the conclusion of the level four hearing.

The following findings of fact have been properly deduced from the evidentiary record developed in the case.

Findings of Fact

1. Grievant is multi-classified and holds the school service personnel titles of executive secretary, accountant I and coordinator of services (certification).

2. Grievant has been an employee of the Lincoln County Board of Education (hereinafter Board) for approximately twenty-four years.

3. Grievant was granted the in-house title of coordinator of certification by Board action on January 17, 1995.

4. As a coordinator, Grievant reports directly to assistant superintendent Larry Pritchard.

5. The Board has established a salary schedule for the positions within its central office and those employees classified by the Board as directors receive a salary based upon the following: "certification, experience and position pay of $140.00 per month." Board Exhibit #2, level IV. Only those employees understood by the Board to be professional personnel receive this county supplement or "position pay".

6. In regard to Grievant's duties as a coordinator of services, she maintains records for the Board relating to teachers' certifications. She updates the certification records, answers questions for the professional staff and attempts to help the Board's teachers maintain the proper certification.

7. The executive secretary to the superintendent has received a base salary plus $7.00 per day ($140.00 per month) "position pay" since Board vote on January 17, 1995.

8. Grievant performs like assignments and duties to the employee employed by the Board in the position of executive secretary to the superintendent.

Discussion

Grievant contends that the Board violated W. Va. Code §18A-4-5b by not paying her the $140.00 per month "position pay" that it pays other employees classified as directors. She also maintains that she is entitled to this salary increase because the executive secretary to the superintendent receives the supplement. Grievant contends that her duties and responsibilities are similar to those of the many employees classified by the Board as directors or coordinators, and also to that of the superintendent's executive secretary. The Board denies that Grievant is entitled to this "position pay" based upon a uniformity of salary theory because the directors and coordinators who receive this supplement are classified as professional employees while she is a service employee. The Board

also asserts that Grievant did not raise the issue of a comparison of her salary to that of the superintendent's secretary at level two; therefore, the Undersigned may not now consider such a claim. This second argument is not supported by the record as this exact issue was addressed through questions and answers on the direct examination of Grievant. See, Transcript,level two, pp. 17-19. No argument that the doctrine of laches should apply was presented by the Board.

The titles for all county board of education school service personnel positions are set forth and described in W. Va. Code §18A-4-8. Minimum salaries for each of the positions included in section eight have been prescribed by the Legislature in Code §18A-4-8a. Pursuant to Code §18A-4-5b, county boards of education may establish salary schedules for service personnel in excess of the state minimums set forth in section 8a. With regard to the uniformity of salaries for school service personnel, section 5b states as follows:

> These county salary schedules shall be uniform throughout the county with regard to training classification, experience, years of employment, responsibility, duties, pupil enrollment, size of buildings, operation of equipment or other requirements. Further, uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county: . . .

Because Grievant is multi-classified, her minimum salary is that salary established for the highest rated position she holds, "director or coordinator of services". See, W. Va. Code §18A-4-8.

As noted earlier, the Board has established a salary schedule for its central office administrators, and within this schedule, those employees who hold the title of director receive a salary based upon their certification and experience, along with "position pay" of $140.00 per month. Also, the Board has adopted a salaryschedule for service personnel. (See footnote 1) At the Board's meeting on January 17, 1995, it voted to award a $7.00 per day ($140.00 per month) salary supplement to the executive secretary to the superintendent. Interestingly, Code §18A-4-8 defines the class title of executive secretary as "personnel employed as the county school superintendent's secretary or as a secretary who is assigned to a position characterized by significant administrative duties." The Board has adopted job descriptions for both positions of executive secretary and executive secretary to the superintendent.

According to the Board's Flow Chart of Organizational Structure, it employs no fewer than seven directors who report directly to the superintendent, and two directors and five coordinators who report

to the assistant superintendent. There is also a position titled curriculum and instruction supervisor who reports to the assistant superintendent. According to the testimony of Superintendent Dallas Kelley, the majority of the individuals who hold these various positions are professional employees and not service employees. Grievant asserts that the Board does employ service employees in director or coordinator positions and pays them the supplemental salary paid to other coordinators who are professional employees. She also opined that her duties are similar to those performed by many of the directors who are paid by the Board under its salary schedule for central office administrators. However, only a limited amount of evidenceconcerning the duties and responsibilities of just a few of these positions was presented.

In Pugh v. Hancock Co. Bd. of Educ., Docket No. 90-15-024 (Jul. 12, 1990), a similar claim of entitlement to a county salary supplement was made by that board's supervisor of transportation. Mr. Pugh contended that his status should be considered equal, for the purpose of salary supplements, to that of other professional administrators within the Hancock County Board of Education's central office. In denying this grievant's claim, the Administrative Law Judge stated,

> A board of education's Central Office staff may be comprised of employees variously labeled as directors, coordinators or supervisors. All may have comparable levels of actual work, though distinct in nature and scope. However, West Virginia law does not presently recognize employment other than professional or service, so an employee or position must be one or the other. The uniformity mandates of Code §§18A-4-5a and -5b provide only that salary and salary supplements within the two distinct employment areas, service and professional, be uniform, and HCBE is not legally bound to award its Central Office staff the same salary supplements provided to its professional staff even though duties may be comparable in some respects.

It was also recognized in Pugh that the grievant was not a professional employee, as his position was not consistent with the types of professional positions listed, defined and described in W. Va. Code §18A-1-1. (See also, Dillon v. Cabell Co. Bd. of Educ., Docket No. 93-06-438 (Aug. 9, 1994), for a thorough discussion of the types and nature of school personnel positions.) To the extent that any of the positions referred to by Grievant either in her testimony or by reference to the Board's organizational flow chart are professional positions as defined in W. Va. Code §18A-1-1, herargument that she is entitled to a uniform salary as compared to those employees, based upon a reading of Code §18A-4-5b, is unpersuasive.

The fact is that most of the employees in the Board's central office who are classified either as directors or coordinators are service personnel because they are neither professional educators nor

"other professional employees." (See footnote 2) The record also establishes that many of these employees' base salaries are based upon paygrade "H" according to W. Va. Code §18A-4-8a. In Meadows v. Jefferson Co. Bd. of Educ., Docket No. 19-88-192 (Dec. 29, 1988), an employee holding the position of director of transportation contended that he was entitled to the same county salary supplement as the employee in the position of director of maintenance. The Administrative Law Judge held as follows:

> In addition to the similar duties and responsibilities, both positions place the assigned individual as head of a department or division and are categorized as paygrade "H". The fact that both positions are included within the same statutory definition and salary classification indicates legislative intent that the positions are to be compensated uniformly. Therefore, any salary supplements provided by the county to directors of service personnel departments or divisions must be awarded on a uniform basis.

This grievance was granted and the board of education was ordered to pay the grievant the same salary supplement that it had awarded its director of maintenance.

Also, in Oshel v. Wayne Co. Bd. of Educ., Docket No. 89-50-257 (Sep. 20, 1989), this Board addressed facts similar to those inthis case in that the grievant was an executive secretary who was not being paid a county salary supplement, while another executive secretary who was assigned to work for the superintendent was paid such a supplement. The parties in Oshel stipulated that the two secretaries in question performed the same basic duties and had an equal level of responsibility. It was held that the grievant was entitled to the same salary supplement paid the other executive secretary.

In Dillon v. Cabell Co. Bd. of Educ., Docket No. 93-06-438 (Aug. 9, 1994), a service employee, classified as a coordinator of technical services, complained that his salary was not in conformity with that paid to the board's coordinator of systems development. (See footnote 3) In Dillon, the focus was not on the classification of the two employees, but instead, on the "similar skills, duties and responsibilities" of the employees. Id., p. 3, citing Dillon v. Cabell Co. Bd. of Educ., Docket No. 89-06-702 (Feb. 28, 1990), remanded for further proceedings Case No. 90-C-427 (Cabell County Cir. Ct. Aug. 6, 1990). The Administrative Law Judge stated that "[n]ot all employees who perform support functions and hold a similar title need to be paid identically under §18A-4-5b." Id., p. 10, citing, Wetherholt v. Cabell Co. Bd. of Educ., Docket No. 93-06-017 (Jun. 30, 1993). In the 1994 Dillon decision, the conclusion was that the two employees, although they both held the same

service personnel class title and provided support functionsto the school's infrastructure, did not hold positions which were "substantially similar"; therefore, they did not perform "like assignments and duties" requiring payment under the same wage scale pursuant to Code §18A-4-5b.

Whether this case is analyzed under the approach discussed in Meadows, i.e., a presumption that service personnel in the same classification must be paid uniformly, or whether one looks at the specific duties and responsibilities of the positions in question as was done in Dillon, the outcome is the same. (See footnote 4) Grievant performs substantially the same duties and maintains substantially the same responsibilities as does the executive secretary assigned to the Superintendent; therefore, she is entitled to the same salary supplement. The job descriptions for the two positions are almost identical, and the differences which do exist are subtle and not significant. Therefore, Grievant has established a violation of W. Va. Code §18A-4-5b. No further comparison of the nature of Grievant's position to the other positions titled as director or coordinator in the Board's central office is necessary at this point.

The foregoing discussion of the case is hereby supplemented by the following appropriately made conclusions of law.

Conclusion of Law

1. Grievant has established by a preponderance of the evidence that the Lincoln County Board of Education has violatedWest Virginia Code §18A-4-5b in failing to award her a salary inclusive of $140.00 per month "position pay" as it has chosen to do for another employee within the service employee classification of executive secretary and who performs "like assignments and duties."

Therefore, this grievance is hereby **GRANTED**. The Lincoln County Board of Education is hereby **ORDERED** to pay Grievant damages in the amount of $140.00 per month from January 17, 1995, until the date of this decision. Further, Grievant's salary is to be adjusted to include this "position pay" from the date of this Decision and thereafter, subtracting any appropriate deductions or set-offs from both the back pay and Grievant's future salary.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln 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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ALBERT C. DUNN, JR.

Administrative Law Judge

September 7, 1995

Footnote: 1A copy of this salary schedule was not admitted into the record.

Footnote: 2See, definitions, W. Va. Code §18A-1-1.

Footnote: 3The school board had created levels of pay grade "H" which is a recognized paygrade in Code §18A-4-8a.

Footnote: 4The issue of whether the holdings in Meadows and Dillon are in conflict need not be addressed.