

GRANT THOMPSON

v. Docket No. 95-33-498

MCDOWELL COUNTY BOARD OF EDUCATION

DECISION

The grievant, Grant Thompson, is employed by the McDowell County Board of Education (Board) as a Maintenance Foreman. He filed this complaint at Level I August 11, 1995, alleging, "Respondent has a nonuniform supplement for the Foreman classification in violation of W.Va. Code §18A-4-5b." His supervisor was without authority to grant relief and the grievance was denied at Level II following a hearing held September 21, 1995. The Board, at Level III, declined to consider the matter and appeal to Level IV was made November 13, 1995. A hearing was held January 23, 1996, and on or about March 8, 1996, the parties waived the submission of proposed findings of fact and conclusions of law.

It is undisputed that, pursuant to its authority to do so under W.Va. Code §18A-4-5b, the Board pays its two Maintenance Foremen and one Mechanic Foremen more than the minimum salary for the Foreman position specified in W.Va. Code §18A-4-8a. The parties also do not dispute that the Mechanic Foreman receives a bigger supplement. [\(See footnote 1\)](#)

Code §18A-4-5b, in pertinent part, provides,

The county board of education may establish salary schedules which shall be in excess of the state minimums fixed by this article.

These county schedules shall be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, 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.

The grievant concedes that county boards are not prohibited by this language, or other statutory authority, from providing different supplements to employees in the same classification. He maintains that the disparity in this case is violative of the statute because he and James Kelly, the Mechanic Foreman, perform "like assignments and duties." The Board contends that there are a great many differences in their work. An employee need not show identity in duties to establish that a disparity in pay is violative of W.Va. Code 18A-4-5b, but he must demonstrate that his duties and those of the targeted position are "substantially similar." Weimer-Godwin v. Bd. of Educ. of Upshur County, 369 S.E.2d 726 (W.Va. 1988). The evidence in the present case clearly and convincingly supports the Board's position.

Essentially, the only similarity in duties established by the evidence is that Mr. Kelly and the grievant both serve in supervisory roles and that their duties are "maintenance-related." Beyond these obvious and broadly defined likenesses, there are few parallels between the posts. Moreover, there are even differences in the extent of the grievant's and Mr. Kelly's administrative duties. The record reflects that Mr. Kelly and the Board's Director of Transportation are the only administrators in that division and that the maintenance division has two foremen, a director and an assistant director. The evidence at least suggests that Mr. Kelly is responsible for matters which would be the purview of the maintenance department's director or assistant director.

Testimony on the day-to-day responsibilities of the two positions merely confirms that there are inherent, significant differences in supervising the maintenance of vehicles and overseeing the upkeep of school and office buildings. The record further reflects that the two foremen must possess and apply distinctly different skills and abilities in the performance of their duties. In short, a preponderance of the evidence establishes that while both the grievant and Mr. Kelly supervise employees, the tasks with which their employees are concerned are very much different. Thus, the grievant has failed to show substantial similarity in the duties of the two positions.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of McDowell 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.

JERRY A. WRIGHT
ADMINISTRATIVE LAW JUDGE

April 18, 1996

[Footnote: 1](#)

It is difficult to discern the amount of the disparity. The grievant actually receives two supplements. First, the Board pays him the salary provided in W.Va. Code §18A-4-8a for paygrade H when the statute places the foreman position in paygrade G. Second, he receives an additional \$200.00 per month. The grievant is also eligible for overtime pay. The Mechanic Foreman receives a salary over and above the statutory rate via a formula in which he is treated as a professional with a Bachelor's Degree and 0 years of experience. It appears that he receives a "base" pay of 115% of the salary provided for such a professional in W.Va. Code §18A-4-2 for the 1992-93 school year. The Mechanic Foreman is employed on a 240-day contract and does not receive additional pay for overtime hours. While the parties may disagree on the significance of the treatment of the two positions for the purpose of overtime, they agree that the manner in which the supplements are paid is largely if not wholly irrelevant.