

ALEX TUNNING

v. DOCKET NO. 96-52-203

WETZEL COUNTY BOARD OF EDUCATION

DECISION

Grievant Alex L. Tunning, employed by Respondent Wetzel County Board of Education (WCBE) as a teacher, recently earned his masters degree. Because Grievant did not apply for a salary upgrade until after WCBE's cut-off date for the first semester of the 1995-96 school year, he was not given any additional wages until the beginning of the second semester. He filed a grievance seeking back wages. Following adverse decisions at the lower grievance levels, Grievant appealed to level four on or about May 21, 1996, and requested a decision based on the record adduced below. The case became mature for decision on July 18, 1996, upon receipt of the last of the parties level four written argument.

There is little, if any, dispute about the underlying facts which gave rise to the grievance. Based on all matters of record, including the testimony adduced at the April 24, 1996 level two hearing, the following findings of fact are made.

Findings of Fact

1. Prior to the beginning of the 1995-96 school year, Grievant had been enrolled in a program at Salem-Teikyo University (STU) to obtain his masters degree. His salary at that time was based on his teaching experience and a baccalaureate degree plus fifteen hours.

2. To complete graduation requirements for his masters degree, Grievant enrolled in a final course for Summer 1995. Grievant submitted to his STU professor his completed thesis in July 1995 and applied for graduation in August 1995. T.24-25.

3. WCBE's Policy GCB, "Employee Contracts and Compensation Plans," requires teachers to apply for a first semester, classification-based salary upgrade by September 30 of the current school year. Upgrades for the second semester must be filed by January 31 of the then-current school year.

4. Because so much time had gone by following Grievant's July 1995 submission of his thesis, he contacted his professor's office to inquire about the status of his work and the final grade, but he received no information at that time. September 30, 1995, came and went, and Grievant never received word whether he had attained a passing grade for his final, summer school course work.

5. In November 1995, Grievant was advised by STU that he had received a passing grade for his final course. 6. Following notice from STU that he passed his final course, Grievant applied to the State Department of Education (DOE) for a pay-grade classification adjustment commensurate with his masters degree and course (training) hours.

7. Grievant was also expected to complete an oral examination in conjunction with his thesis, but his STU professor did not schedule the oral exam until late December 1995. T.17.

8. Ultimately, on or about January 20, 1996, Grievant received a formal letter from DOE that, effective August 24, 1995, his salary classification was upgraded to "Master Degree + 15 Hours."

9. Because DOE considered Grievant's "salary effective date" as August 24, 1995, Grievant requested a salary upgrade for the second semester and also that WCBE retroactively pay him for the first semester of the 1995-96 school year. WCBE refused to pay the advanced salary retroactively for the first semester.

10. In mid-October of a current school year, WCBE must file with DOE a certified list of its workers' current salaries. That list determines WCBE's State financial aid and teacher salary classification reimbursements for the next school year. T.28.

11. Based on the list generated in October, the upgraded portion of the salary of any teacher who timely applied for a first semester salary classification advancement is paid from county funds for the entire school year and will not be State funded until one school year later. The upgraded portion of the salary of any teacher who timely applied for a second semester salary classification advancement will not be State funded until two years later.

12. A full year's certification-based salary upgrade from bachelors plus fifteen

to masters plus fifteen would have increased Grievant's annual salary by approximately \$4000.00 during the 1995-96 school year. Because WCBE effectuated the salary upgrade for only the second semester of the school year and refused to pay the increase retroactively for the first semester, Grievant received only \$2000.00.

Discussion

The salary scale for teachers found in W.Va. Code §18A-4-2 provides for increased minimum salaries based on a teacher's years of experience and the level of training attained. The salary ranges include zero (0) through nineteen (19) years of experience and pre-baccalaureate through doctorate levels of training. Furthermore, Code §18A-4-6 states:

Upon the change of the training classification of any teacher, his salary shall be made to comply with requirements of this article and of any county schedule, where such exist, based upon his new classification and allowable years of experience.

It was noted in Strippel v. Wetzel County Bd. Of Educ., Docket No. 94-52- 192 (Sept. 30, 1994), at 2, that

[i]mplicit in this statutory provision is the fact that both DOE and county boards of education must be informed by affected personnel of proposed classification changes before any new licenses can be processed and issued by DOE and before any salary adjustments can be made by county boards.

WCBE's Policy GCB was at issue in Strippel, in that the grievant knew in June she qualified for a classification/salary upgrade for the upcoming school year. However, she did not apply for the (first semester) upgrade by the September 30 deadline, purportedly because she had been unaware of the cut- off date. The propriety of WCBE's refusal to grant the grievant a salary increase until the beginning of the second semester was not addressed in that case, due to a holding that the grievant untimely filed her claim.

In this case, Grievant was fully cognizant of WCBE's Policy GCB and the cut-off day to apply for a first semester salary upgrade. However, he argues that, under W.Va.

Code §§18A-4-2 and 18A-4-6, he is entitled to a retroactive salary upgrade, because his failure to file for the first-semester upgrade on time was due to circumstances beyond his control.

For reasons more fully explained below, it is determined that WCBE not only violated Code §18A-4-6, but also abused its discretion and acted arbitrarily and capriciously when it refused to grant Grievant a retroactive salary upgrade for the first semester of the 1995-96 school year. Given the facts in this case, WCBE's three essential arguments in defense of its actions are not persuasive.

To begin, WCBE's stance that Grievant failed to timely apply for a first semester adjustment prior to the deadline of September 30, 1995, and was, therefore, not entitled to the advanced wages for the first semester is unreasonable. This is not a case such as Strippel where the teacher failed to keep abreast of relevant policy or otherwise inexcusably failed to heed requirements to contact the proper authorities promptly to upgrade her classification and receive a salary advancement.

Grievant's STU professor had Grievant's final work in July 1995, but it was the professor who failed to act promptly on grading the materials and setting a schedule for an oral exam. Grievant even inquired about the matter with STU officials in an effort to speed up the process. Then, Grievant acted swiftly when he learned in November 1995 that he had passed his final course for his masters degree, and he applied to DOE for a new, upgraded license based on his advanced training. Grievant simply cannot be accused of neglect or dalliance in this situation.

Additionally, WCBE's level two decision suggested that Grievant should have applied for the advanced salary by the cut-off day despite the fact he had not received his grade for his final course. However, Policy GCB does not include a provision which permits teachers to apply for a first semester salary upgrade and be paid contingent upon passing their final course work. [\(See footnote 1\)](#) Therefore, such a course of action on Grievant's part would have been unethical and dishonest. Further, had Grievant applied for and received a first semester salary advance, only to learn later he had not passed all his course work for the masters degree, he may have been liable to repay WCBE for the salary overage. Furthermore, WCBE's contention at level two

that Grievant had not "fully" completed "the requisites for receipt of his degree until sometime in December, 1995, when he took and passed the oral component of his final examination" is not a good reason to deny the retroactive salary increase (see the Level Two Decision at 3.) Regardless of when STU finally got around to scheduling the oral examination, DOE acted on information received by Grievant, and, presumably, the information and recommendations received from STU officials, and awarded Grievant's classification upgrade retroactively to August 1995. It is not within WCBE's purview to question DOE's decision on this matter.

Finally, WCBE's argument that Policy GCB must be enforced for fiscal purposes generally, and in this case specifically, is not convincing. Had WCBE paid Grievant's 1995-96 first semester salary upgrade retroactively from county funds, its fiscal position would have differed little from the instances when it paid teachers who applied for a second-semester salary upgrade during the 1995-96 school year, because, under both circumstances, WCBE will list those upgraded salaries in its October 1996 report and not receive State funding and/or reimbursement for any salary differences until the 1996-97 school year.

The problem here is that WCBE promulgated an essentially good policy which compels teachers to act responsibly in matters relating to salary classification upgrades and attendant salary advancements, but failed to allow for any extenuating circumstances which might curtail a teacher's ability to apply for a salary advancement in a timely fashion. Policy GCB in its present, inflexible form is unreasonable and untenable when applied in contravention of Code §18A- 4-6. See Byers v. Marion County Bd. of Educ., Docket No. 94-24-388 (Dec. 29, 1995).

In addition to the foregoing discussion and findings, the following conclusions of law are made.

Conclusions of Law

1. Pursuant to W.Va. Code §18A-4-6, a school board must advance the salary of a teacher when the teacher's training classification has been upgraded from one level to another by the State Department of Education.

2. While boards of education may promulgate regulations and policies which promote efficient management and fiscal responsibility, it may not craft and apply such policies in contravention of school law. See Byers v. Marion County Bd. of Educ., Docket No. 94-24-388 (Dec. 29, 1995).

3. Respondent Wetzel County Board of Education's Policy GCB is inflexible, and its refusal to pay Grievant retroactively because of his non-compliance with the policy, due to no fault of his own, was an abuse of discretion and violative of W.Va. Code §18A-4-6.

4. It is not within a school board's purview to dispute the licensing, classification and certification procedures of the State Department of Education.

5. Because the State Department of Education issued Grievant's classification-salary upgrade to be effective August 24, 1995 for salary purposes, that date must be accepted by Respondent.

6. Grievant was adversely affected by Respondent's application of Policy GCB, and he is entitled, under the facts and circumstances in this case, to the remedy he requested.

Accordingly, the grievance is **GRANTED**, and WCBE is Ordered to pay Grievant the difference between the wages he was paid during the first semester of the 1995-96 school year and what he would have earned with a first-semester salary upgrade for the masters degree plus fifteen salary classification.

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

NEDRA KOVAL

Senior Administrative Law Judge

Date: July 18, 1996

[Footnote: 1](#)

Policy GCB was not made part of the evidence at level two. However, WCBE's counsel submitted a copy of Policy GCB along with a letter stating WCBE would stand on the level two decision. On July 18, 1996, the undersigned received a letter from counsel stating he would not be submitting rebuttal to Grievant's fact/law proposals.