EDWARD LEE BENNETT AND JANICE BENNETT,

Grievants,

v. DOCKET NO. 96-42-485

RANDOLPH COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Edward Lee Bennett and Janice Bennett, Grievants, filed this grievance against their employer, the Randolph County Board of Education (Respondent). Grievants allege "that they are performing supervisory duties which are outside of their classification," and that Respondent has violated West Virginia Code §§ 18A-4-8, 18A-4- 8a(10) and 18A-5-8. As relief, Grievants seek "supervisory aide designation, wages and benefits retroactive to the beginning of the 1996-1997 school year." (See footnote 1)

Grievants were denied relief at Levels I and II. Grievants elected to bypass Level III, pursuant to W. Va. Code §18-29-4(c), and appealed directly to Level IV on November 15, 1996. At Level IV, an evidentiary hearing was held at the Grievance Board's office in Elkins, West Virginia, on February 11, 1997. The case became mature for decision on March 25, 1997, at the end of the briefing period. The following findings of fact were derived by theundersigned from the record.

FINDINGS OF FACT

1. Grievants are school service employees of Respondent.

2. Grievants hold paraprofessional certification and are currently classified as paraprofessional/aide IVs. (See footnote 2)

3. Grievants are placed in pay grade F based on theirparaprofess-ional classification.

4. The highest pay grade under W. Va. Code §18A-4-8a for an Aide IV is Pay Grade D, one pay grade less than the paraprofessional classification.

5. Grievants perform services as Supervisory Aides and as Paraprofessionals in the Randolph County School system. Each Grievant supervises students for periods of time on a daily basis without

the presence of certified personnel.

DISCUSSION

Grievants cite W. Va. Code §18A-5-8(a). It, in pertinent part, provides:

> An aide designated [as a supervisory aide] by the principal under this subsection shall receive a salary not less than one pay grade above the highest pay grade held by the employee under section eight-a [§ 18A-4-8a], article four of this chapter, and any county salary schedule in excess of the minimum requirements of this article.

In their Level IV proposed findings of fact and conclusions of law, Grievants asserted:

> Prior to the 1996 legislative session the above quoted portion of West Virginia Code §18A-5-8(a) contained the word “aide” in place of “employee” in the third line. The legislative intent of this alteration was to permit a multi-classified employee who is performing supervisory
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> duties to receive one pay grade above the highest pay grade said employee is currently receiving. The highest pay grade that a teacher's aide may receive is the D pay grade, whereas a paraprofessional/aide IV is compensated on the F pay grade. Clearly, this amendment only makes sense if it is applied to permit multi[-]classified aides, such as the grievants, to receive the additional pay grade. If this were not the intent, there would be no reason to change the word “aide” to “employee”.
>
> Grievants also note that in the 1996 legislative session, the class title of “paraprofessional” was incorporated into the Aide classification category. West Virginia Code §18A-4-8b. Therefore, when the cited portion of West Virginia Code §18A-5-8(a) refers to an “aide”, that reference would also include the “paraprofessional” classification title.

The 1996 Legislature's intent is not as clear as Grievants propose. State Superintendent of Schools Henry Marockie takes an opposing position. He contends “[t]he Legislature amended the Code with regard to classification of paraprofessionals for one reason only - seniority.” See Attachment No. One.

Not only is the State Superintendent's opinion, in this case, more persuasive, it is also entitled to great weight unless it is clearly erroneous. Lincoln County Bd. of Educ. v. Adkins, 188 W. Va. 430, 424 S.E.2d 775 (1992); Smith v. Bd. of Educ., 176 W. Va. 65, 341 S.E.2d 685 (1985). See Security Nat'l Bank v. First W. Va. Bancorp, 166 W. Va. 775, 277 S.E.2d 613 (1981). It is not clearly erroneous.

The rest of Grievants' allegations are based on a distinction in duties between the paraprofessional and aide IV classification. Grievants further allege that based on the possible distinction in

duties, W. Va. Code §18A-5-8(a) entitles them to an additional pay

grade, from pay grade “F” to pay grade “G”. Grievants' reasoning is flawed.

Grievants are multi-classified paraprofessional/aide IVs, and are in pay grade “F”. Their aide IV classification pay grade is “D”. W. Va. Code §18A-4-8a. If Grievants are supervisory aides, W. Va. Code §18A-4-5 entitles them to “one additional pay grade.” Oneadditional pay grade would bump their aide classification pay grade to an “E”. The pay grade for the paraprofessional classification is “F”. Grievants failed to cite any authority which would allow Respondent to add one additional pay grade to the paraprofessional classification pay grade set forth in the Code. W. Va. Code §18A-4-8, in pertinent part, provides: “'Multiclassification' means personnel employed to perform tasks that involve the combination of two or more class titles in this section. In such instances the minimum salary scale shall be the higher pay grade of the class titles involved.” (Emphasis added.) In this case, the classifications Grievants hold do not rise above a “F” pay grade. Therefore, they are only entitled to be compensated at the “F” pay grade rate. Grievants failed to prove by a preponderance of the evidence that either of their classifications which comprise their “multiclassification” is higher than a “F” pay grade.

In addition to the foregoing findings of fact and narration, it is appropriate to make the following conclusions of law.

CONCLUSIONS OF LAW

1. In a nondisciplinary action, Grievants have the burden of proving their case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995).

2. W. Va. Code §18A-4-8 defines paraprofessional as:

> a person certified . . . to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of pupils under the direction of a principal, a teacher, oranother designated professional educator: Provided, That no person employed on the effective date of this section in the position of an aide may be reduced in force or transferred to create a vacancy for the employment of a paraprofessional: Provided, ... however, That if any employee has held or holds an aide title and becomes employed as a paraprofessional, the employee shall hold a multiclassification status that includes aide and paraprofessional titles in accordance with section eight- b of this article: Provided further, That once an employee who holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade. (Emphasis added.)

3. “Upon the change in classification or upon meeting the requirements of an advanced classification of or by any employee, the employee's salary shall be made to comply with the

requirements of this article, and to any county salary schedule in excess of the minimum requirements of the article, based upon the employee's advanced classification and allowable years of employment." W. Va. Code §18A-4-8.

4. Under the West Virginia Supreme Court of Appeals' well- settled doctrine regarding interpretation of statutes by bodies

charged with their administration, a State Superintendent's opinion is entitled to great weight unless it is clearly erroneous. Lincoln County Bd. of Educ. v. Adkins, 188 W. Va. 430, 424 S.E.2d 775 (1992); Smith v. Bd. of Educ., 176 W. Va. 65, 341 S.E.2d 685 (1985). See Security Nat'l Bank v. First W. Va. Bancorp, 166 W. Va. 775, 277 S.E.2d 613 (1981). Grievant failed to prove by apreponderance of the evidence that the opinion of the State Superintendent of School was clearly erroneous.

5. Grievants failed to cite any authority which would allow Respondent to add one additional pay grade to the paraprofessional classification pay grade set forth in the Code.

6. Grievants failed to prove by a preponderance of the evidence that either of their classifications which comprise their "multiclassification" is higher than a "F" pay grade.

Accordingly, the grievance is **DENIED**.

Any party may appeal this DECISION to the Circuit of Kanawha County or to the Circuit Court of Randolph 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.

DATED:_October 15, 1997_____ _____

JEFFREY N. WEATHERHOLT

ADMINISTRATIVE LAW JUDGE

Footnote: 1 The legal issues in this grievance are the same as those presented in Doss v. Pocahontas County Bd. of

Educ., Docket No. 97-38-054 (Aug. 28, 1997), and Sites and Murphy v. Pendleton County Bd. of Educ., Docket No. 97-36-113 (Aug. 28, 1997).

Footnote: 2 W. Va. Code 18A-4-8 defines Aide IV as:

> *personnel referred to in the "Aide I" classification who hold a high school diploma or a general educational development certificate and who have completed eighteen hours of state board-approved college credit at a regionally accredited institution of higher education, or who have completed fifteen hours of state board- approved college credit at a regionally accredited institution of higher education and successfully completed an in-service training program determined by the state board to be the equivalent of three hours of college credit.*

W. Va. Code §18A-4-8 defines paraprofessional as:

> *a person certified . . . to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of pupils under the direction of a principal, a teacher, or another designated professional educator: Provided, That no person employed on the effective date of this section in the position of an aide may be reduced in force or transferred to create a vacancy for the employment of a paraprofessional: Provided, ... however, That if any employee has held or holds an aide title and becomes employed as a paraprofessional, the employee shall hold a multiclassification status that includes aide and paraprofessional titles in accordance with section eight-b of this article: Provided further, That once an employee who holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade. (Emphasis added.)*