JOHNNIE ADKINS, et al.,

Grievants,

v.

DOCKET NO. 97-22-105

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, Johnnie Adkins, Rhonda McCoy, Dana Smith, and Ollie Hunting, are currently employed by the Lincoln County Board of Education ("Board") as directors of departments in the Lincoln County School system. They filed the following grievance on or about September 12, 1996:

> Violations of WV 18A-4-5a in regard to uniformity of county salary supplement for directors of county board of education departments.
>
> Relief Sought: To be compensated for loss of wages and benefits and granted salary uniform with other county directors.

Following adverse decisions at the lower levels, Grievants appealed to level four on February 26, 1997. (See footnote 1) Hearing was held in the Grievance Board's Charleston, West Virginia,office on June 5, 1997, and this matter became mature for decision on July 3, 1997, the deadline for the parties' submission of proposed findings of fact and conclusions of law.

SUMMARY OF EVIDENCE

Grievant's Exhibits

Ex. 1 -

Lincoln County Board of Education 1996-97 Revised Salary Schedules

Ex. 2 -

Lincoln County Board of Education Analysis of Director Pay for 1996/97

Ex. 3 -

Experience Verification Reports for Johnnie Adkins, Daryle Elkins, Birdie Gandy, Donna Martin, Rhonda McCoy, Danny Plumley, Dana Smith, and Douglas Smith.

Board's Exhibits

Ex. 1. -

Lincoln County Board of Education 1993-94 Salary Schedules

Ex. 4 -

Lincoln County Board of Education 1992-93 Salary Schedules

Testimony

Grievants testified in their own behalf and offered the testimony of Dallas Kelley and Birdie Gandy. The Board offered the testimony of Birdie Gandy.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts.

1. Rhonda McCoy, Director of Food Services, has been employed by the Board for 17 years. She is responsible for the development, organization, administration, and maintenance of the entire food service program for the county. She supervises, directly or indirectly, 47 cooks and 14 or 15 food service secretaries. Ms. McCoy is paid $7.00 per day position pay from the county supplement as a director, and is employed under a 240 day contract.

2. Johnnie Adkins, Transportation Director, has been employed by the Board for approximately 22 years. He is responsible for the entire transportation system within the county, including budget responsibilities. He supervises 50 drivers, 8 aides, 6mechanics, and 1 secretary. He also handles

bus-related discipline problems with students, and works directly with special education students, their parents, and school personnel, in developing and implementing IEP's relating to transportation. Mr. Adkins is paid $7.00 per day position pay from the county supplement as a director, and is employed under a 240-day contract.

3. Dana Smith, Maintenance Director, has been employed by the Board for 13 years. He is responsible for maintaining all of the facilities throughout the county. He supervises approximately 15 maintenance employees and 26 custodians. He is responsible for purchasing, inventory, and warehousing, and maintains the budget for the maintenance department. Mr. Smith receives the $7.00 per day county supplement, and is employed on a 240-day contract.

4. Ollie Hunting, Director of Attendance, has been employed by the Board for approximately 24 years. He works with all school principals, county and state officials, counseling services, Social Security personnel, parents, and students, to ensure that proper attendance is maintained throughout the county. He also assists in the compilation of various state and county enrollment reports. Mr. Hunting receives the $7.00 per day county supplement, and, at the time this grievance was filed, was employed on a 210-day contract. (See footnote 2) 5. County Salary Schedule #16, the schedule under which Grievants are paid, gives directors an additional $7.00 per day supplemental pay. G. Ex. 1.

6. The Director of Vocational Education is paid under County Salary Schedule #18. He is a professional employee and is paid under a Principal's salary schedule, also referred to as the “principal's index.” The principal's index is based on a variety of factors, including the number of professional personnel supervised. Tr., p. 27.

7. The principal's index for the Director of Vocational Education is $20.40 per day, or $13.40 more per day than the $7.00 per day county supplement Grievants are receiving.

8. The Director of Vocational Education does not receive the $7.00 per day county salary supplement paid to directors.

DISCUSSION

Grievants allege the Board has violated the uniformity provisions of W. Va. Code § 18A-4-5a, because they do not receive the $20.40 county supplement provided to the Director of Vocational Education.

W. Va. Code § 18A-4-5a provides that teachers shall receive uniform pay when performing like assignments and duties within the county. Casto, et al. v. Kanawha County Bd. of Educ., Docket No. 95-20-567 (May 30,1996); Earnest v. Brooke County Bd. of Educ., Docket No. 95-05-334 (Sept. 29, 1995); Miller v. Mason County Bd. of Educ., Docket No. 26-86-183-1 (Oct. 7, 1986). That Code Section also provides that "[u]niformity also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county. . .".

W. Va. Code § 18A-4-8 defines "Director or coordinator of services" as:

> . . . personnel who are assigned to direct a department or division. Nothing herein shall prohibit professional personnel or professional educators as defined in . . . § 18A-1-1 . . . from holding this class title, but professional personnel shall not be defined or classified as service personnel unless the professional personnel held a service personnel title under this section prior to holding class title of "director or coordinator of services": . . . Thereafter, directors or coordinators of service positions shall be classified as either a professional personnel or service personnel position for state aid formula funding purposes and funding for directors or coordinators of service positions shall be based upon the employment status of the director or coordinator either as a professional personnel or service personnel.

Grievants testified they are classified as "professional personnel". The Board did not dispute this testimony.

W. Va. Code § 18A-1-1 defines "School personnel" as "all personnel employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise. School personnel shall be comprised of two categories: professional personnel and service personnel."

"'Professional personnel' shall mean persons who meet the certification and/or licensing requirements of the State, and shall include the professional educator and other professional employees. 'Professional educator' shall be synonymous with and shall have the same meaning as 'teacher' as defined in . . . § 18A-1-1. . . of this Code." W. Va. Code § 18A-1-1.

"'Other professional employee' shall mean that person from another profession who is properly licensed and is employed to serve the public schools and shall include a registered professional nurse, . . . ". W. Va. Code § 18A-1-1.

Grievants seek to compare themselves to the Director of Vocational Education. The evidence shows that the individual serving in that position has served as a Principal in thepast. He currently shares duties and responsibilities with the Principal at the vocational school, and from time to time, acts as Principal at the school. Thus, that individual is a "professional educator", does not perform

like duties and responsibilities as Grievants, and is not similarly situated to Grievants, who are "professional personnel", for purposes of their uniformity argument.

CONCLUSIONS OF LAW

1. W. Va. Code § 18A-4-5a provides that teachers shall receive uniform pay when performing like assignments and duties within the county. Casto, et al. v. Kanawha County Bd. of Educ., Docket No. 95-20-567 (May 30,1996); Earnest v. Brooke County Bd. of Educ., Docket No. 95-05-334 (Sept. 29, 1995); Miller v. Mason County Bd. of Educ., Docket No. 26-86-183-1 (Oct. 7, 1986). That Code Section also provides that "[u]niformity also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county. . .".

2. Grievants, classified as "professional personnel", have failed to prove by a preponderance of the evidence that they are subject to the uniformity provisions of W. Va. Code § 18A-4-5a, or that they are performing duties like those of the Director of Vocational Education, who is a "professional educator".

Accordingly, this grievance is **DENIED**.

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 andState 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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MARY JO SWARTZ

Administrative Law Judge

Dated: September 24, 1997

Footnote: 1

The lower level record contains the transcript from the level two hearing conducted on October 2, 1996, and the level two decision of Hearing Examiner Donna Martin, dated February 5, 1997.

Footnote: 2

Mr. Hunting filed a separate grievance involving the amount of county supplement he was receiving, as well as his contract term. See Hunting v. Lincoln County Bd. of Educ., Docket No. 97-22-103 (Sept. 17, 1997). As a result of the filing of that grievance, the Board changed Mr. Hunting's county supplement to $7.00 per day. This Administrative Law Judge found that Mr. Hunting had proven his grievance and ordered that he be awarded a 240-day contract in uniformity with the other directors. Thus, the only remaining relief available to Mr. Hunting in this grievance is the increased supplement to which Grievants claim entitlement in comparison to the Director of Vocational Education.