WOOD COUNTY ASSOCIATION OF

SCHOOL ADMINISTRATORS, RICHARD

KISER, PRESIDENT,

Grievant,

v.

DOCKET NO. 97-54-357

WOOD COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

The Wood County Association of School Administrators, Richard Kiser, President, is an unincorporated association composed of professional administrators employed by the Wood County Board of Education ("Board"), in Wood County, West Virginia. Since the late 1960's or early 1970's, all Wood County principals were employed under 261-day contracts. In 1995-1996, a new superintendent began reducing terms of employment for principals and administrators through attrition, without any corresponding reduction in professional responsibilities. On December 19, 1996, following the receipt of certain financial information, the Association's President, Richard Kiser, a principal in Wood County, had an informal conference with the Superintendent to discuss the matter, following which a formal level one grievance was filed by Mr. Kiser, on behalf of the Association.

Dated January 26, 1997, the grievance statement is as follows:

GRIEVABLE EVENTS

> The Wood County Board of Education is spending less local dollars on salaries of principals and assistant principals in the 1996-97 school year than was spent in the 1995-96 school year. This is in violation of West Virginia State Code, Section 18a-4-3. [Workmen vs. Logan County Board of Education, Civil Action No. 90-C-158 in the Circuit Court of Logan County, Conclusions of Law, Paragraph 14].

West Virginia State Code, Section 18a-4-3 states in part " . . . . and for which the county board has received approval from the state board prior to making the reduction." To our knowledge no prior approval was sought or given for the reductions in local funds. [Workman vs. Logan County Board of Education, Civil Action No. 90-C-158 in the Circuit Court of Logan County, Conclusions of Law, Paragraph 19].

West Virginia Code, Section 18a-4-5a states in part ". . . . and for which the county board has received approval from the state board prior to making such reduction." [Workman vs. Logan County Board of Education, Civil Action No. 90-C-158 in the Circuit Court of Logan County, Conclusions of Law, Paragraph 19].

Furthermore said reductions have created a lack of uniformity for persons performing like duties and assignments as required by West Virginia State Code, Sections 18a-4-3 and 18a-4-5a. [Workman vs. Logan County Board of Education, Civil Action No. 90-C-158 in the Circuit Court of Logan County, Conclusions of Law, Paragraph 20].

RELIEF SOUGHT

To return all county administrative positions' contracts to their status in effect July 1, 1995.

On January 27, 1997, the grievance was denied at level one by Superintendent Daniel D. Curry. A level two hearing was held on June 3, 1997, and a decision denying the grievance was issued by Grievance Evaluator, George B. Summers, on July 18, 1997. Grievant by-passed level three and appealed to level four on July 29, 1997. Hearing was held on September 23, 1997, and at that hearing, Wood County Administrators WilliamBoggess, Francis Bono, and Monzell Stoops, signed an agreement that Mr. Kiser, as President of the Wood County Association of School Administrators, could represent their individual interests in the grievance. By agreement of the parties, the record was later supplemented by an updated Level Two Employer's Exhibit No. 1, and by an "Agreed Stipulation". This matter became mature for decision on May 11, 1998, the deadline for the parties' submission of proposed findings of fact and conclusions of law. (See footnote 1)

SUMMARY OF EVIDENCE

Level Two General Exhibits

Ex. 1 - 15 -

Grievance documents.

Level Two Grievant's Exhibits

Ex. 1 -

Wood County Schools Job Description Principal (261-day).

Ex. 2 -

Wood County Association of School Administrators Constitution and By- Laws.

Ex. 3 -

Wood County Schools Job Description Principal (230-day).

Ex. 4 -

Chart of Wood County Administrators' Salaries for 1995-96 and 1996-97 school years.

Ex. 5 -

Comparison of Emerson Elementary School Principalship and Worthington Elementary School Principalship.

Level Two Employer's Exhibits

Ex. 1 -

Wood County Board of Education Increment Rates for Principals, January 24, 1997, updated October 7, 1997.

Ex. 2 -

Average Salaries 1994-95.

Ex. 3 -

January 18, 1996 memorandum from Dan Curry to Wood County Board of Education re: Wood County Goals, with attachments.

Ex. 4 -

Proposed Principal Contract Change Through Attrition Effective July 1, 2000.

Ex. 5 -

Wood County Board of Education Principal and Assistant Principal Indexes, effective July 1, 1984, amended August 29, 1989.

Ex. 6 -

Wood County Board of Education Administrative Staff Indexes, November 16, 1988 (Revised).

Ex. 7 -

Administrator Compensation Transition from Index to Daily Rate.

Ex. 8 -

April 30, 1996 Board Minutes.

Ex. 9 -

Vacation Policy.

Ex. 10 -

August 4, 1995 Wood County Schools Job Posting.

Ex. 10A -

August 21, 1995 Board Minutes.

Ex. 11 -

May 24, 1996 Wood County Schools Job Posting.

Ex. 11A -

July 9, 199 Board Minutes.

Ex. 11B -

June 25, 1996 Board Minutes.

Ex. 12 -

July 12, 1996 Wood County Schools Job Posting.

Ex. 12A -

August 6, 1996 Board Minutes.

Ex. 13 -

July 19, 1996 Wood County Schools Job Posting.

Ex. 13A -

August 6, 1996 Board Minutes.

Ex. 14 -

August 2, 1996 Wood County Schools Job Posting.

Ex. 14A -

August 20, 1996 Board Minutes.

Ex. 15 -

August 7, 1996 Wood County Schools Job Posting.

Ex. 15A -

August 30, 1996 Wood County Schools Job Posting.

Ex. 15B -

November 15, 1996 Wood County Schools Job Posting.

Ex. 15C -

December 10, 1996 Board Minutes.

Ex. 16 -

November 22, 1996 Wood County Schools Job Posting.

Ex. 16A -

December 17, 1996 Board Minutes.

Ex. 17 -

April 25, 1997 Wood County Schools Job Posting.

Ex. 17A -

May 13, 1997 Board Minutes.

Ex. 18 -

April 3, 1996 Wood County Schools Job Posting.

Ex. 18A -

May 23, 1996 Board Minutes.

Ex. 19 -

May 2, 1997 Wood County Schools Job Posting.

Ex. 19A -

May 27, 1997 Board Minutes.

Ex. 20 -

Reductions in Administrative Costs, updated June 2, 1997.

Level Four Employer's Exhibits

Ex. 1 -

Wood County Schools Job Postings and corresponding Board Minutes, June through September 1997.

April 15, 1998 Stipulation in Lieu of Additional Hearing

Testimony

Grievant presented the testimony of Richard Kiser, Charles Boggess, Paul Armstrong, Frank Bono, Monzell Stoops, Thomas Little, and Daniel Curry. The Board presented the testimony of Thomas Little and Daniel Curry.

FINDINGS OF FACT

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

1. In the Fall of 1995, the Board, the Superintendent, and other administrative officials met to develop a long-range plan for Wood County Schools. Included in that plan was a proposal to reduce administrative costs, and a direction to the Superintendent to implement the plan.

2. Principal and Assistant Principal salaries are determined as follows: the state minimum salary is based upon a teacher's 200-day employment term, plus a county supplement for administrative responsibility, and a county supplement which pays the individual a 200-day daily rate for every day employed above a 200-day employment term. The State pays the 200-day salary and the county pays the additional supplements from funds received from excess levies.

3. Superintendent Daniel Curry prepared a chart depicting Wood County administrative costs in comparison with the state-wide average administrative costs, and determined that Wood County ranked second highest in the state for administrative salaries. R Ex. 2.

4. Wood County was one of only two counties in the state that retained 261-day contract terms for administrators. Superintendent Curry attributed the high average described in Finding of Fact 2, in part, to the 261-day contract terms.

5. Superintendent Curry submitted a proposal to the Board on January 18, 1996, which included a recommendation to change the method for determining salary increments from an index to flat rate method, and a phase-in plan for reducing contract lengths of administrators through attrition. R Ex. 3. 6. The Board accepted the recommendation to change the method for calculating salary increments from an index to flat rate method. Existing employees were given the option to change the method of calculation for their salaries. Any vacancies resulting in posting new positions would be calculated under the flat rate method. There was no objection by employees to this change. R Ex. 7.

7. The Board has acted on the proposal to reduce contract terms through its approval of reduced contract terms as positions became vacant.

8. Despite this attempt to reduce contract terms through attrition, if an administrator who previously held a 261-day contract applied for one of the administrative vacancies posted at a lesser contract rate, that employee was permitted to retain the 261- day contract term.

9. The result of these changes is that now some principals, assistant principals, and directors hold 261-day contracts, while others hold shorter contract terms.

10. The Wood County Association of School Administrators is not an employee of the Board.

11. Richard Kiser is the President of the Wood County Association of School Administrators, and is the only individual who signed the level one grievance form, on behalf of the Association.

12. Richard Kiser is also the Principal of Worthington Elementary School, and is currently employed under a 261-day contract.

13. William Boggess, Francis Bono, and Monzell ("Monty") Stoops signed an agreement permitting the Association to represent them in this grievance, which wasproduced at the beginning of the level four hearing. Mr. Stoops did not belong to the Association at the time of the level two hearing.

14. Mr. Boggess is the Principal of Emerson Elementary School, and is currently employed under a 230-day contract. Mr. Boggess applied for and received this position on May 23, 1997. He previously was employed as Assistant Principal under a 210-day contract. His predecessor at Emerson Elementary School was employed under 261-day contract.

15. Mr. Bono is the Director of Title I and other selected federal programs, a position whose closest previous counterpart had a 261-day contract. The position was posted with the possibility of either a 240- or 261-day term. (See footnote 2) It was filled by Mr. Bono on September 10, 1997, who, in his prior job as Assistant Principal, held a 210-day employment term. Thus, Mr. Bono currently holds a 240-day contract term.

16. Mr. Stoops is the Principal of Criss Elementary School, and holds a 220-day contract. He bid on and received that position on May 13, 1997. Mr. Stoops was an Assistant Principal in his prior job, with a contract term of 210 days. His predecessor at Criss Elementary had a 261-day contract.

17. The Principals of Worthington Elementary and Greenmont Elementary Schools currently hold 261-day contracts. Their respective schools are similar in size and administrative responsibility to Mr. Stoops' school, Criss Elementary. 18. In addition to those described above, the following positions were posted and filled consistent with the new proposal, prior to the date of the level two hearing in this case:

a. An assistant principalship at Parkersburg South High School, which previously had a 261-day employment term, was posted with a 240-day term. It was filled on August 21, 1995, by Tom Eschbacher who, in his prior job as an instrumental music teacher, held a 240-day employment term. L II Trans. at 106-107; L II R Exs. 10, 10A.

b. An assistant principalship at Franklin Elementary Center, which previously had a 210-day employment term, was posted with a 210-day term. It was filled on June 25,

1996, by Mary Hennen who, in her prior job as a third grade teacher, held a 200-day employment term. LII Trans. at 108-111; LII R. Exs. 11, 11B.

c. An assistant principalship at Parkersburg South High School, which previously had a 261-day employment term, was posted with a 220-day term. It was filled on July 9, 1996, by Betsy Bolen who, in her prior job as a physical education and math enrichment teacher, held a 200-day employment term. LII Tr. at 108-110; LII R Exs. 11, 11A.

d. An assistant principalship at Williamstown High School, which previously had a 261-day employment term, was posted with a 240-day term. It was filled on August 6, 1996, by Ralph Board, who, in his prior job as an assistant principal, held a 210-day employment term. LII Tr. at 110-112; LII R Exs. 12, 12A.

e. An assistant principalship at Parkersburg High School, which previously had a 261-day employment term, was posted with a 220-day term. It was filled on August 6, 1996, by David Burton who, in his prior job as an instrumental music teacher, held a 240-day employment term. LII Tr. at 112- 113; LII R Exs. 13, 13A.

f. An assistant principalship at Hamilton Junior High School, which previously had a 210-day employment term, was posted with a 210-day term. It was filled on August 20, 1996, by Rosemary Stull, who, in her prior job as a teacher, held a 210-day employment term. LII Tr. at 113-114; LII R Exs. 14, 14A.

g. The position of Director of Technology & Media Services, which was a newly created position replacing several prior assignments which were held by people with 261-day contracts. It was posted with a 240-day term. It was filled on December 10, 1996, by Robert Matthews who, in his prior job as an assistant principal, held a 240-day employment term. LII Tr. at 114- 116; LII R Exs. 15, 15A, 15B, 15C.

h. The position of Special Education Director, which previously had a 261-day employment term, was posted with a 240-day term. It was filled on December 17, 1996, by Yvonne Santin who, in her prior job as an assistant principal, held a 210-day employment term. LII Tr. at 116-117; LII R Exs. 16, 16A.

i. The principalship at McKinley Elementary School, which previously had a 261-day employment term, was posted with a 230-day term. It was filled on May 27, 1997, by Fred Shreve who, in his prior job as an assistant principal, held a 210-day employment term. LII Tr. at 120-121; LII R Exs. 19, 19A.

19. Consistent with the new proposal, these positions were posted and filled after the level two hearing in this case, but prior to the level four hearing:

a. The assistant superintendent for pupil/personnel services, which previously had a 261-day employment term, was posted with a 261-day term. It was filled by Gale Hammett who, in his prior job as director of special projects, also held a 261-day employment term. LIV R Ex. 1.

b. The principalship at Jackson Junior High School, which previously had a 261-day employment term, was posted with a 240-day term. It was filled by Richard Board who, in his prior job as an assistant principal, held a 210-day employment term. LIV R Ex. 1.

c. The director of curriculum and instruction for secondary schools, which previously had a 261-day employment term, was posted with the possibility of either a 240- or 261-day term. (See n. 2, and Finding of Fact 7, above.) It was filled with a 261-day employment term by Tim Swarr who, in his prior job as Title I supervisor, held a 261-day employment term. LIV R Ex. 1.

d. An assistant principalship at Jackson Junior High, which previously had a 210-day employment term, was posted with a 210-day term. It was filled by Karen Campbell who, in her prior job as teacher, held a 200-day employment term. LIV R Ex. 1.

e. The director of attendance and accreditation, which previously had a 261-day employment term, was posted with a 240-day term. It was filledby John Coe who, in his prior job as a teacher, held a 200-day employment term. LIV R Ex. 1.

f. The director of public relations/school improvement, a new position whose closest previous counterpart had a 261-day employment term, was posted with the possibility of either a 240- or 261-day term. (See n. 2, and Finding of Fact 7, above.) It was filled with a 261-day employment term by Bob Harris who, in his prior job as a principal, held a 261-day employment term.

20. No principal's or other administrator's employment term was reduced by reduction in force or other unrelated action of the Board. All the changes were accomplished through attrition, i.e, by posting vacant positions with shorter contract terms than the last occupants of those positions held.

21. By the Superintendent's rough calculation, the changes, through attrition, in the employment terms of principals, assistant principals, and two directors had, at the time of the level two hearing, saved the Board approximately $59,700. LII Tr. at 121-125; LII R Ex. 20.

22. The total local increments which the Board pays from its own funds to its principals and assistant principals increased between 1995-96 and 1996-97 from $14,253.56 to $15,466.38. It did not decrease in 1996-97 from the January 1, 1996 level. LII Tr. at 72-86; LII R Ex. 1.

ARGUMENTS OF THE PARTIES

Grievant alleges the Board has violated pertinent provisions of W. Va. Code §§ 18A- 4-3 and 18A-4-5a by its plan to reduce administrative costs through reduction of contract terms through attrition. The Board denies it has violated any statute, law, policy, or procedure in attempting to reduce its administrative costs in the manner it has chosen. The Board has raised several affirmative defenses to this grievance. First, it alleges Grievant has no standing to bring this grievance, as an association is not an employee of the Board. Second, it alleges that no one besides Richard Kiser signed the complaint and so anyone else is not a proper party to this grievance. Also, as Mr. Kiser signed the complaint on behalf of the Association, he is also not a proper party to the grievance. Third, the Board alleges that, even if Mr. Kiser is determined to be a proper party to the grievance, he has not been harmed, because he still retains a 261-day contract, and he cannot seek speculative or premature relief. Fourth, most of the Association members have not been harmed by the action of the Board, and have no standing to assert the rights of others. Fifth, those who have been affected applied for the posted positions with full knowledge of the contract terms. Sixth, the grievance is untimely or premature as to those who were harmed. And finally, Grievant is not entitled to any relief as it has proven no wrongdoing on the part of the Board, or that the Board's actions are arbitrary or capricious.

DISCUSSION

The issue of standing could be dispositive, and thus, must be addressed first. The Board alleges the Association has no standing to bring this grievance, and thus it must be denied. An organization may not file a grievance under the provisions of W. Va. Code §§ 18-29-1, et seq.,which provide that actions may be brought by aggrieved employees specifically affected by actions of their employer.

The Association is not an “employee” within the meaning of W. Va. Code § 18-29-2(c). Other than Messrs. Kiser, Boggess, Bono, and Stoops, no individuals have signed onto the grievance,and there is no indication that each and every member of the Association has suffered a specific harm or that they wish to participate in the grievance action. Whipkey v. W. Va. Board of Trustees/W. Va. Univ., Docket No. 90-BOT-206 (July 2, 1991). Cf. Gillman v. Logan County Bd. of Educ., Docket No. 91-23-196 (Nov. 7, 1991)(unions are not proper grievants); State Superintendent's April 22, 1991, interpretation to Dr. Jack C. Dulaney (faculty senate not a proper grievant). The present matter does not fall within W. Va. Code §§ 18-29-1, et seq, because it has been filed, in effect, by the Association on behalf of its membership. Thus, the Board has established that the Association, by itself, has no standing to bring this grievance on behalf of its members.

However, Richard Kiser, Principal and President of the Association, signed the initial grievance form, and William Boggess, Francis Bono, and Monzell Stoops later agreed to permit Mr. Kiser to represent their interests in this grievance. The Board argues that Mr. Kiser, as President of the Association, has no standing, and that as Principal, he has not suffered any harm from the actions of the Board, as his employment term has not been reduced. A grievant, as any plaintiff or petitioner, in order to sue, must have been harmed or suffered damages. "In order to have standing to sue, a party must allege an injury in fact, either economic or otherwise, which is the result of the challenged action and show that the interest he seeks to protect by way of the institution of legal proceedings is arguably within the zone of interests protected by the statute, regulation or constitutional guarantee which is the basis for the lawsuit." Shobe v. Latimer, 162 W. Va. 779, 253 S.E.2d 54 (1979). While it is true that Mr. Kiser's contract term has not been reduced, he still argues that the Board improperly reduced local funds available for administrative salaries, and that the monies saved by reducing contract terms should have been reallocated to existing personnel salaries, rather than placed into the general fund or used for supplies, materials, facilities, or the like. If Grievant's assertion is correct, then Mr. Kiserhas been affected by the Board's action in not receiving any additional monies from the savings realized through contract reductions.

Mr. Boggess, Mr. Bono, and Mr. Stoops, in their individual capacities, have allegedly directly suffered harm from the actions of the Board. The employment terms they hold in their respective capacities with the Board have been shortened from those of their predecessors in the same positions. Additionally, they have shorter employment terms than some of their peers in similar

positions. The legislative intent expressed in W. Va. Code §§ 18-29-1, et seq, is to provide a simple, expeditious and fair process for resolving problems. The grievance process is not intended to be a procedural quagmire where the merits of the cases are forgotten. Spahr v. Preston County Bd. of Educ., 182 W. Va. 726, 393 S.E.2d 739 (1990); Duruttya v. Bd. of Educ., 181 W. Va. 203, 382 S.E.2d 40 (1989). It is clear that Mr. Kiser intended for the Association to represent his interests. Mr. Boggess, Mr. Bono, and Mr. Stoops later signed their names to the grievance. Others who are potentially affected by the Board's actions did not. Thus, this grievance is limited to awarding relief, if any, to only Messrs. Kiser, Boggess, Bono and Stoops, hereinafter referred to as Grievants. It will not apply directly to any other individuals affected by the Board's action of reducing employment terms through attrition.

The Board also alleges the grievance is premature and speculative with regard to Messrs. Kiser, Boggess, Bono and Stoops. (See footnote 3) Mr. Kiser has not suffered any harm with regard to the actions of the Board, and Messrs. Boggess, Bono, and Stoops were hired fortheir respective affected positions after the filing of the grievance. They did not sign onto the grievance until the level four hearing. This Grievance Board has continuously refused to deal with issues when the relief sought is "speculative or premature, or otherwise legally insufficient." Dooley v. Dept. of Transp./Div. of Highways, Docket No. 94-DOH-255 (Nov. 30, 1994); Pascoli & Kriner v. Ohio County Bd. of Educ., Docket No. 91-35-229/239 (Nov. 27, 1991). Typically, a Grievant must show "an injury-in-fact, economic or otherwise" to have what "constitutes a matter cognizable under the grievance statute." Lyons v. Wood County Bd. of Educ., Docket No. 89-54-601 (Feb. 28, 1990); Dunleavy v. Kanawha County Bd. of Educ., Docket No. 20-87-102-1 (June 30, 1987); see also Shobe, supra. Again, however, as the undersigned has permitted those gentlemen to join in the grievance, their complaints ceased to be premature when they joined the grievance at level four. Further, since the Board's action of reducing employment terms of administrative personnel, through attrition, will undoubtedly continue, it is not premature to issue a ruling on this matter at this time.

The merits of the grievance will now be discussed.

W. Va. Code § 18A-4-3 (1996), "State minimum annual salary increments for principals and assistant principals," provides, in pertinent part:

> In addition to any salary increments for principals and assistant principals, in effect on the first day of January, one thousand nine hundred ninety-six, and paid from local funds, and in addition to the county schedule in effect for teachers, the county board shall pay each principal, a principal's salary increment and each assistant principal an

assistant principal's salary increment as prescribed by this section commencing on the first day of July, one thousand nine hundred ninety-six, from state funds appropriated for the salary increments.

State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with . . . § 18-9A-1 et seq. . . of this code.

The salary increment in this section for each principal shall be determined by multiplying the basic salary for teachers in accordance with the classification of certification and of training of the principal as prescribed in this article, by the appropriate percentage rate prescribed in this section according to the number of teachers supervised.

STATE MINIMUM SALARY

INCREMENT

RATES FOR PRINCIPALS

No. of Teachers Supervised	Rates
1-7	6.0%
8-14	6.5%
15-24	7.0%
25-38	7.5%
39-57	8.0%
58 and up	

8.5%

The salary increment in this section for each assistant principal shall be determined in the same manner as that for principals, utilizing the number of teachers supervised by the principal under whose direction the assistant principal works, except that the percentage rate shall be fifty percent of the rate prescribed for the principal.

Salaries for employment beyond the minimum employment term shall be at the same daily rate as the salaries for the minimum employment terms.

For the purpose of determining the number of teachers supervised by a principal, the county board shall use data for the second school month of the prior school term and the number of teachers shall be interpreted to mean the total number of professional educators assigned to each school on a full-time equivalency basis. Provided, That if there is a change in circumstances because of consolidation or catastrophe, the county board shall determine what is a reasonable number of supervised teachers in order to establish the appropriate increment percentage rate.

No county may reduce local funds allocated for salary increments for principals and assistant principals in effect on the first day of January, one thousand nine hundred ninety-six, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making the reduction.

Nothing in this section prevents a county board from providing, in a uniform manner, salary increments greater than those required by this section.

Grievants do not allege that they are not paid the increments from state funds mandated by Code § 18A-4-3, and it is clear that they are so paid. Likewise, it is clear from the evidence that Grievants are also paid an additional county supplement under this Section. What Grievants argue is that the Board, by reducing employment terms, has “reduced local funds allocated for salary increments for principals and assistant principals”, in violation of this Code Section. Grievants interpret this Section to mean that a county board cannot reduce local funds allocated in total for salary increments for principals and assistant principals. Thus, Grievants' interpretation of this Section means that a county board can never cut costs and expenditures in an attempt to save money. Rather, any monies saved by reducing the employment terms of existing employees, or declining to fill vacancies left by employees who have left the employ of the school system, must be divided among the remaining principals and assistant principals, and attributed to their salaries. Clearly, no such meaning was intended by the legislature with respect to this Code Section.

The pertinent provision of Code § 18A-4-3 refers specifically to the increment, the additional money paid to a principal for supervising teachers. It is added on to their daily rate and will vary from

principal to principal depending upon degree, years of experience, number of teachers and length of contract. A review of that Section's history indicates that the purpose of the 1996 amendment was to increase the state increment rates for principals, in order to provide them increased salaries. With that in mind, the statute then provides that the counties may not reduce the local funds which had already been allotted for principal and assistant principal increments, in order to ensure that the salary increases desired by the amended Code Section would in fact happen. It is simply anacknowledgment that the counties could defeat the intent of the amendment if they could reduce the amount of funds which had been allocated to principals and assistant principals for county increments once the State had increased its allotment.

As evidenced by the material introduced in this case, the county has not reduced the funds allocated for principal and assistant principal increments. In fact, the total amount of funds allocated for salary increments has increased from a total expenditure of $14,253.56 in 1996-1997, to $15,466.38 in 1997-98. LII R Ex. 1. There is no evidence that Messrs. Kiser, Boggess, Bono, and Monzell have suffered from a reduced increment rate. In actuality, what we are talking about here is not a reduction in monies allocated to increments per Code § 18A-4-3, but a reduction in monies allocated to salaries per Code § 18A-4-2. None of the Grievants has alleged he is not receiving the state minimum salary mandated by that Section, and there is nothing in that Section which prohibits a county from reducing employment terms or personnel in order to save money.

W. Va. Code § 18A-4-5a provides, in pertinent part:

> County boards of education in fixing the salaries of teachers shall use at least the state minimum salaries established under the provisions of this article. The board may establish salary schedules which shall be in excess of the state minimums fix by this article, such county schedules to be uniform throughout the county as to the classification of training, experience, responsibility and other requirements.
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> . . .
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> . . . Uniformity also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county: Provided, That in establishing such local salary schedules, no county shall reduce local funds allocated for salaries in effect on the first day of January, one thousand nine hundred ninety, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events overwhich it has no control and for which the county board has received approval from the state board prior to making such reduction.

This Section provides that any additional salary supplements or compensation shall be uniform for all persons performing “like assignments and duties.” Weimer-Godwin v. Bd. of Educ., 179 W. Va. 423, 369 S.E.2d 726 (1988). Grievants allege that the Board has violated this Section by reducing employment terms for some principals and assistant principals, while others still retain a 261-day employment term.

The result of the Board's implementation of its plan to reduce administrative salaries through attrition is that the total funds spent on administration is less than it was the previous year. However, no individual has suffered a reduction in pay. No group has had their contracts reduced through the reduction-in-force process. Rather, as administrative positions become vacant, those positions are posted with lower employment terms than before. Individual applicants are free to apply or not apply, as they see fit. There is nothing which prohibits the Board from this plan of action.

In Lucion v. McDowell County Bd. of Educ., 191 W. Va. 399, 446 S.E.2d 487 (1994), a case involving service personnel but relevant to this complaint, the West Virginia Supreme Court of Appeals stated clearly:

> A board of education has the discretion to determine the number of jobs and the employment terms of a board's . . . personnel . . . When a board of education seeks to reduce employment costs, the board may decide that the schools' best interests require either the elimination of some . . . jobs or the retention of all . . . jobs but with reduced employment terms.

Thus, the Board's action in seeking to reduce administrative costs through reduced employment terms, through attrition, is supported by the language of the Supreme Court in Lucion, supra. This is not a case in which the Board reduced the annual employment term, the compensation, or the principals' increment of anyone unilaterally and without consent. Moreover, if any principal, assistant principal, or administrator received a position with a shorter employment term than his or her predecessor, and if he or she therefore received less compensation than the predecessor, it was because he or she willingly applied for and was selected to fill such a position with such an employment term. Cf. Nutter v. Harrison County Bd. of Educ., Docket No. 91-17-081 (Dec. 12, 1991)(an employee waives the protection of benefits provided by the uniformity statute when he or she voluntarily engaged in the bidding process and accepted a position with the understanding that such acceptance entailed the loss of an extended employment term).

Further, although a reduced employment term may result in less annual income for the occupant of a given position than his or her predecessor enjoyed, the lower compensation reflects fewer work days and is not a reduction of a local increment prohibited by statute.

Finally, that some principals, assistant principals, and administrators hold shorter employment terms and thus receive less compensation than other principals, assistant principals, or administrators does not establish a violation of the uniformity provisions of the teacher supplement statute, W. Va. Code § 18A-4-5a, or discrimination under W. Va. Code § 18-29-2(m). The Board has the authority to establish different annual employment terms for different positions, even though they have similar job descriptions. See Owens v. Marshall County Bd. of Educ., Docket No. 91-25-322 (Nov. 27, 1991). See also Copley v. Nicholas County Bd. of Educ., Docket No. 97-34-027 (Aug. 18, 1997); Ricca v. Hancock County Bd. of Educ., Docket No. 95-15-101 (June 8, 1995); Hissom v. Hancock County Bd.of Educ., Docket No. 94-15-568 (Jan. 31, 1995). The Board also has the authority to implement changes in annual employment terms for classes of positions gradually, reducing the employment terms of positions as they fall vacant and are posted. Cf. Lucion, supra.

The changes in Wood County Schools of which Grievants complain are justified by legitimate efforts to contain the expense of administrative salaries. They are reasonable and in the best interests of the schools, and are not arbitrary and capricious. See Syllabus Pt. 3, Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986).

CONCLUSIONS OF LAW

1. An organization may not file a grievance under the provision of W. Va. Code §§ 18-29-1, et seq. Whipkey v. W. Va. Board of Trustees/W. Va. Univ., Docket No. 90- BOT-206 (July 2, 1991). Cf. Gillman v. Logan County Bd. of Educ., Docket No. 91-23-196 (Nov. 7, 1991).

2. “In order to have standing to sue, a party must allege an injury in fact, either economic or otherwise, which is the result of the challenged action and show that the interest he seeks to protect by way of the institution of legal proceedings is arguably within the zone of interests protected by the statute, regulation or constitutional guarantee which is the basis for the lawsuit.” Shobe v. Latimer, 162 W. Va. 779, 253 S.E.2d 54 (1979).

3. The legislative intent expressed in W. Va. Code §§ 18-29-1, et seq., is to provide a simple, expeditious, and fair process for resolving problems. The grievance process is not intended to be a

procedural quagmire where the merits of the cases are forgotten. Spahr v. Preston County Bd. of Educ., 182 W. Va 726, 393 S.E. 2d 739 (1990); Duruttya v. Bd. of Educ., 181 W. Va. 203, 382 S.E.2d 40 (1989). 4. The Board has demonstrated that the Wood County Association of School Administrators, as an organization, has no standing to bring this grievance. However, Richard Kiser, William Boggess, Francis Bono, and Monzell Stoops signed onto the grievance in their capacities as employees of the Board, and in the spirit of Spahr, supra, they will be permitted to pursue this grievance.

5. Grievants have not proven by a preponderance of the evidence that they have been denied county supplements in accordance with W. Va. Code § 18A-4-3.

6. W. Va. Code § 18A-4-5a provides that any additional salary supplements or compensation paid to employees shall be uniform for all persons performing like assignments and duties. Weimer-Godwin v. Bd. of Educ., 179 W. Va. 428, 369 S.E.2d 726 (1988).

7. The Board has the authority to establish different annual employment terms for different positions, even though they have similar job descriptions. See Owens v. Marshall County Bd. of Educ., Docket No. 91-25-322 (Nov. 27, 1991). See also Copley v. Nicholas County Bd. of Educ., Docket No. 97-34-027 (Aug. 18, 1997); Ricca v. Hancock County Bd. of Educ., Docket No. 95-15-101 (June 8, 1995); Hissom v. Hancock County Bd. of Educ., Docket No. 94-15-568 (Jan. 31, 1995).

8. The Board has the authority to implement changes in annual employment terms for classes of positions gradually, reducing the employment terms of positions as they fall vacant and are posted. Cf. Lucion v. McDowell County Bd. of Educ., 191 W. Va. 399, 446 S.E.2d 487 (1994); see also Nutter v. Harrison County Bd. of Educ., Docket No. 91-17-081 (Dec. 12, 1991). 9. An employee waives the protection of benefits provided by the uniformity statute when he or she voluntarily engages in the bidding process and accepts a position with the understanding that such acceptance entails the loss of an extended employment term. Nutter, supra.

10. Grievants have not proven by a preponderance of the evidence that the Board violated the uniformity provisions of W. Va. Code § 18A-4-5, by reducing the employment terms of principals, assistant principals, and directors, through attrition and posting of vacancies.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wood 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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MARY JO SWARTZ

Administrative Law Judge

Dated: July 8, 1998

Footnote: 1

Grievant was represented by William B. Richardson, Jr., Esq., Richardson and Richardson. The Board was represented by Howard E. Seufer, Jr., Esq., Bowles, Rice, McDavid, Graff & Love, PLLC.

Footnote: 2

The possibility of either a 240- or 261-day term was due to the Superintendent's proposal that administrators who then held 261-day employment terms be allowed to retain those terms if they later move into any of the administrative positions, including principalships or assistant principalships, targeted to have 240-day employment terms. See Finding of Fact 7, above.

Footnote: 3

The Board also alleges the grievance is untimely as any of the individuals who have been affected by the changes wrought by the Board received their positions well before the fifteen day filing period provided in W. Va. Code § 18-29-4. Since none of those individuals is considered part of this grievance, this argument need not be addressed.