EDWARD CHAMBERLAIN, ET AL.,

Grievants,

v.

DOCKET NO. 98-15-351

HANCOCK COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievants are numerous service employees who are employed in various classifications by the Hancock County Board of Education ("HCBOE"). They challenge HCBOE's decision to "freeze" their salaries, beginning with the 1998-1999 school year, in order to achieve salary uniformity for its employees. This grievance was initially filed as two separate grievances, one being filed on April 5, 1998, and the other being filed on April 8, 1998. They were both denied by Grievants' immediate supervisors on April 17, 1998, and April 8, 1998, respectively. Both grievances were appealed to level two, where a hearing was held before Mary Ann Bucci, Assistant Superintendent, on May 21, 1998, at which time the grievances were consolidated. Ms. Bucci subsequently denied the grievance in a written, undated decision. Consideration at level three was waived, and Grievants appealed to level four on September 10, 1998. A hearing was held in the Grievance Board's office in Wheeling, West Virginia, on October 19, 1998. This matter became mature for decision on November 17, 1998, upon receipt of the parties' written submissions.

Findings of Fact

1. Grievants are employed in various service personnel classifications withHCBOE.

2. All grievants have been employed by HCBOE since at least 1993.

3. On June 28, 1993, in order to comply with state law requiring uniformity in salaries, HCBOE passed a resolution which implemented a supplemental pay scale providing the same salary be paid to all employees in each pay grade with the same level of experience. (See footnote 1)

4. Because the new pay scale adopted in 1993 provided for lower salaries than many employees were receiving at that time, HCBOE “red circled” those employees. This meant that these employees' salaries would remain the same, and would not be lowered in order to conform to the newly adopted pay scale. This has effectively resulted in the red circle employees receiving a “supplement” to their salaries that employees hired since 1993 have not received.

5. Since 1993, the red circle employees have received the same salary increases as newer employees, along with the red circle “supplement”, so they are being paid higher salaries than others in their pay grades with the same level of experience and who perform the same duties. Their salaries do not conform to HCBOE's supplemental salary schedule.

6. All Grievants are red circle employees.

7. Upon discovering that red circle employees were not being paid in accordance with the county's salary schedule, Superintendent Charles Chandler requestedguidance from the State Superintendent of Schools. (See footnote 2)

8. In a letter dated January 22, 1998, Dr. Henry Marockie, State Superintendent, advised Dr. Chandler that “freezing” the salaries of the red circle employees until the county's pay scale “catches up” to them would be an appropriate method for bringing HCBOE's salary schedule into uniformity compliance.

9. In accordance with Superintendent Marockie's recommendation, HCBOE decided to freeze the salaries of all red circle employees.

10. Grievants are performing the same duties as others in their classifications who are paid lower salaries under the new pay scale.

Discussion

As this grievance does not involve a disciplinary matter, Grievants must prove their claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30,

1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

County boards of education are allowed, by statute, to adopt salary schedules for service personnel in excess of the minimum salaries established in W. Va. Code § 18A-4- 8a. However, such salary schedules must be "uniform" as mandated by W. Va. Code § 18A-4-5b, which provides, in pertinent part, as follows:

> 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[.]

Grievants do not contend that they possess any special skills or qualifications, and they admit that they receive higher compensation than other employees in their classifications with the same level of experience and similar duties. They also do not dispute that HCBOE's present compensation system violates W. Va. Code § 18A-4-5b. Clearly, the red circle salaries violate the uniformity statute. See Weimer-Godwin v. Bd. of Educ., 179 W. Va. 423, 369 S.E.2d 726 (1988); Thacker v. Lincoln County Bd. of Educ., Docket No. 97_22-104 (Dec. 1, 1997). The question, then, is whether HCBOE's solution for bringing its salaries into statutory compliance is proper.

Grievants argue that the freezing of their salaries violates the "non-relegation" clause of W. Va. Code § 18A-4-8, which states:

> No service employee, without his written consent, may be reclassified by class title, nor may a service employee, without his written consent, be relegated to any condition of employment which would result in a reduction of his salary, rate of pay, compensation or benefits earned during the current fiscal year or which would result in a reduction of his salary, rate of pay, compensation or benefits for which he would qualify by continuing in the same job position and classification held during said fiscal year and subsequent years.

Grievants contend that, no matter what method is used to equalize the pay scale, the red circle employees must give their written consent to any reduction in their future salaries. Respondent counters that the relegation clause is not implicated here, because Grievants are not legally entitled to the salary supplements they have been receiving since1993. The undersigned agrees. Although

W. Va. Code § 18A-4-8 does prohibit any reduction in the salary or compensation for which an employee would qualify in subsequent years, this does not mean that an employee should be allowed to indefinitely receive a salary which violates the uniformity requirements. A board of education should not be required to obtain the written consent of its employees in order to correct an illegality. The red circle employees are not legally "qualified," pursuant to W. Va. Code § 18A-4-8, to receive these illegal supplements; therefore, HCBOE need not obtain their written consent in this situation.

Superintendent Chandler testified that his initial solution to remedying the salary inequities was to terminate red circle employees' contracts and rehire them under the county's adopted salary schedule. However, out of concern for fairness to the employees, he determined that a freeze on their salaries was a better solution. Using this method, the red circle employees would be allowed to continue to enjoy their present salary supplements for a longer time, until the state minimum pay raises and county supplements caught up to them. Although termination of their contracts would be proper, Grievants' positions would be subject to the posting and filling requirements of W. Va. Code § 18A-4- 8b. See Lucion v. McDowell County Bd. of Educ., 191 W. Va. 399, 446 S.E.2d 487 (1994). In addition, they would immediately lose their illegal salary supplements. Surely Grievants would not prefer this solution, by which they would be much worse off then they are now.

Moreover, Superintendent Chandler recommended the salary freeze pursuant to an opinion from State Superintendent Marockie, which is to be given great weight unless determined to be 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). Grievants have failed to establish any basis for finding that the superintendent's opinion in this instance was clearly wrong. In fact, it is surprising that Grievants have even challenged this decision, which enables them to continue to receive, for a limited time, a salary supplement to which they have no legal entitlement.

Grievants have failed to prove by a preponderance of the evidence that HCBOE's decision to freeze their salaries was in violation of the non-relegation clause of W. Va. Code § 18A-4-8 or any other provision. Consistent with the foregoing findings and discussion, the following conclusions of law are appropriate.

Conclusions of Law

1. In non-disciplinary matters, Grievants must prove their claims by a preponderance of the

evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

2. "No service employee, without his written consent . . . may . . . be relegated to any condition of employment which would result in a reduction of his salary, rate of pay, compensation or benefits earned during the current fiscal year or which would result in a reduction of his salary, rate of pay, compensation or benefits for which he would qualify by continuing in the same job position and classification held during said fiscal year and subsequent years." W. Va. Code § 18A-4-8.

3. W. Va. Code § 18A-4-5b requires that supplemental salary schedules be uniform with regard to classification, experience, years of employment, responsibility and duties. 4. The "red circle" salaries of Grievants and other employees of HCBOE violated the uniformity requirements of W. Va. Code § 18A-4-5b.

5. The freezing of Grievants' salaries did not violate the non-relegation clause of W. Va. Code § 18A-4-8.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Hancock 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.

Date: December 18, 1998 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Throughout this Decision, the pay scales discussed are supplemental pay scales, which provide for salaries in excess of the state minimum pay scale set forth in W. Va. Code § 18A-4-8a.

Footnote: 2

Superintendent Chandler has been superintendent for Hancock County Schools for less than two years.