ROXANE ROBERTSON, et al.

Grievants,

v. **Docket No. 97-28-547**

MINERAL COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, Roxane Robertson, Renee Weasenforth, Cynthia Ravenscroft, Penny Stickley, Ruth Ann Feaster, and Mary K. Presnell, employed by the Mineral County Board of Education (Respondent) as regular, half-time cooks, filed level one grievances in October and November 1997, alleging a violation of W. Va. Code §18A-4-8a, when Respondent pro-rated their supplemental salary. Grievant's immediate supervisor lacked authority to grant the requested relief. The grievances were consolidated for hearing at level two, held on December 3, 1997. Following the decision of Superintendent Charles Kalbaugh to deny the claim, Grievants elected to bypass consideration at level three, consistent with the provisions of W. Va. Code §18-29-4(c), and advanced the complaint to level four on December 17, 1997. An evidentiary hearing was conducted on March 18, 1998, to supplement the lower-level record. Grievants were represented by John E. Roush, Esq., of the West Virginia School Service Personnel Association; Respondent was represented by Superintendent Charles B. Kalbaugh. (See footnote 1) The grievance became mature for decision with the submission of proposed findings of fact and conclusions of law on or before April 16, 1998.

The facts of this matter are undisputed and may be set forth in the following formal findings of fact.

Findings of Fact

1. Grievants are employed by the Mineral County Board of Education as regular, half-time service personnel, and all presently hold the classification of Cook I.

2. Each of the Grievants has earned a high school diploma or GED, and has accrued twelve (12) college hours of credit or comparable credit obtained in a trade or vocational school.

3. In addition to the minimum monthly salary, service personnel are statutorily entitled to

supplemental salary of ten ($10.00) dollars per month if they hold a high school diploma or its equivalent, and an additional ten ($10.00) dollars per month when they accrue twelve (12) college hours or comparable credit obtained in a trade or vocational school approved by the state board.

4. Grievants receive five ($5.00) dollars per month for their high school diplomas or GEDs, and five ($5.00) per month for their college credits, consistent with Respondent's salary schedule, which is approved by the State Board of Education, and funding provided by the State Department of Education through the state aid formula for this expense.

Discussion

Grievants argue that they are entitled to the full ten dollar ($10.00) supplements because W. Va. Code §18A-4-8a provides only for a pro-rated base salary for service employees who are employed less than full-time, leaving the supplements intact. Grievants specifically note that paragraphs (2) and (3) of Section 8a, which establish the supplemental payments, do not make any distinction betweenfull and half-time employees. Grievants also cite W. Va. Code §18A-4-8 which provides "[i]n addition to the compensation provided for in section eight-a of this article, for service personnel, each service employee is, notwithstanding any provisions in this code to the contrary, entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to the employee's hours of employment or the methods or sources of compensation."

Respondent argues that pro-rating the salary supplements is consistent with paragraph one of Section 8a which provides for the same calculation of base salary for half-time service personnel, and is proper as evidenced by the fact that it is provided half the supplement amount by the State Department of Education through the state aid formula. Additionally, Respondent cites an Opinion of the State Superintendent of Schools, dated January 29, 1996. This Opinion was issued to Kenneth C. Legg, Executive Secretary of the West Virginia School Service Personnel Association, who had inquired whether the ten dollar ($10.00) salary supplements provided in paragraphs (2) and (3) of W. Va. Code §18A-4-8a are to be paid in full "regardless of whether or not they are employed a full day or one-half day?" Superintendent Henry Marockie noted that the statute did not address the subject of half-time employees, but he assumed that the legislative intent was to "maintain the same proportion of pay relative to the additional ten dollar per month payment. Therefore, such additional pay may be reduced by one-half for half-time employees."

That portion of W. Va. Code §18A-4-8a pertinent to this matter states:

(1) The minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amount indicated in the 'state minimum pay scale pay grade' and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the 'stateminimum pay scale pay grade' set forth in this section.

(2) An additional ten dollars per month shall be added to the minimum monthly pay of each service employee who holds a high school diploma or its equivalent.

(3) An additional ten dollars per month shall be added to the minimum monthly pay of each service employee who holds twelve college hours or comparable credit obtained in a trade or vocational school as approved by the state board.

In grievances which are not disciplinary in nature, grievants have the burden of proving each element of their complaint 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.

Although Grievants correctly argue that Code §18A-4-8a, ¶¶ (2) and (3), do not provide for pro-ration of the salary supplements for half-time employees, neither do those provisions prohibit it. That portion of Code §18A-4-8 cited by Grievants, is also not determinative of this issue. The paragraph in question clearly states that service employees are entitled to rights, benefits, and privileges, in addition to the compensation provided for in section eight-a. This section does not provide any further information regarding pro-rating the supplemental compensation. It is logical that supplemental salary would be pro-rated consistent with the employees' base salary. This is the same conclusion reached by the State Superintendent of Schools, whose opinion is entitled to great weight unless shown 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); Leach v. Greenbrier County Bd. of Educ., Docket No. 97-13-480 (Jan. 30, 1998). Grievants have failed to show that the Opinion of the State Superintendent was clearly erroneous. In addition to the foregoing findings of fact and discussion, it is appropriate to make the following conclusions of law.

Conclusions of Law

1. In a nondisciplinary grievance, the grievants have the burden of proving each element of their grievance 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. Opinions of the State Superintendent of Schools are entitled to great weight unless shown 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); Leach v. Greenbrier County Bd. of Educ., Docket No. 97-13-480 (Jan. 30, 1998).

3. Absent evidence that the Opinion of the State Superintendent was clearly erroneous, his determination that salary supplements awarded to service employees who have attained a high school diploma or GED, and twelve (12) college hours or comparable credit from an approved vocational or trade school, shall be pro-rated for half-time employees, must be upheld.

4. Grievants have failed to prove by a preponderance of the evidence that Respondent acted in violation of W. Va. Code §18A-4-8a, when it awarded them half of the statutory salary supplements for educational attainment.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mineral 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: April 30, 1998 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

The case was originally assigned for hearing in the Grievance Board's Elkins office, but was transferred for administrative reasons to the undersigned in March 1998, and the hearing conducted in the Morgantown office.