MARCIA KOBILY, et al.,

Grievants,

v. **DOCKET NO. 97-15-453**

HANCOCK COUNTY

BOARD OF EDUCATION,

Respondent.

DECISION

Grievants, Marcia Kobily and Lois Robb, initiated this proceeding pursuant to the provisions of W. Va. Code §§ 18-29-1, et seq., alleging that the 1997-1998 pay scale for service employees of the Hancock County Board of Education ("HCBOE") violates the "uniformity provisions" of W. Va. Code § 18A-4-5b. Grievants request back pay with interest in a manner which will "restore uniformity to the pay scale." (See footnote 1)

The following findings of fact are made from a preponderance of all evidence of record.

Findings of Fact

1. Grievants are service personnel and are regularly employed by HCBOE. (See footnote 2)

2. The HCBOE 1997-1998 pay scale for service personnel provides for uniform pay increases based upon years of experience, regardless of pay grade. For example, employees in all pay grades at three years of experience receive a salary that is the cumulative result of a $28 increment for one year of experience, a $26 increment at two years, and a $40 increment at three years.

3. The pay scale does not provide an identical pay increase for each additional year of experience. At one year, four years, and twelve years of experience, all service employees receive a $28 pay increase; at three years of experience, they receive a $40 increase; and at thirteen years, employees are given a $38 pay increment. At all other experience levels, the pay increase for each increment year is $26.

Discussion

W. Va. Code § 18A-4-8a provides a schedule of the minimum monthly salaries to be paid to service employees in the various pay grades and at each level of years of employment. However, W. Va. Code § 18A-4-5b (known as the "uniformity" statute) allows county boards of education to establish salary schedules which exceed the state minimums contained in W. Va. Code § 18A-4-8a. The uniformity provision further provides that such schedules "shall be uniform throughout the county with regard to any training classification, experience, years of employment . . . ." Currently, and in the past, HCBOE has established pay scales which exceed the statutory minimums.

HCBOE's 1997-1998 pay scale, at issue in this case, was the direct result of an order issued by Judge Charles King, Kanawha County Circuit Court, dated November 8, 1996 (Civil Action No. 95-AA-259). That order was issued in the circuit court appeal of the level four Grievance Board decision in Kobily v. Hancock County Bd. of Educ., Docket No. 95-15-200 (Sept. 18, 1995)("Kobily I"). In Kobily I, the grievants had challenged HCBOE's 1994-1995 pay scale, based upon similar allegations of non-uniformity. However, the administrative law judge found that the pay scale was not illegal. In reversing the Grievance Board's decision, Judge King found that the pay scale "did not comply with the uniformity requirements of W. Va. Code § 18A-4-5b" in that it "[did] not provide for uniform increases based upon years of employment." Under that pay scale, for example, employees in pay grades A, C, D and E received a $25 increment at one year of employment, while employees in pay grade B received $27, and those in pay grade F received $26 at one year.

The 1997-1998 pay scale was the first opportunity that HCBOE had to implement a pay scale in compliance with the circuit court's order. Accordingly, HCBOE implemented a 1997-1998 pay scale which did provide salary increments which were identical regardless of pay grade. Thus, all employees in every pay grade who are at 12 years of experience, for example, receive identical increments, and they do not vary depending on pay grade.

The present grievance is based upon Grievants' belief that, not only must the salary increases at each experience level be uniform throughout the pay grades, but they must also be identical at each increment level. Therefore, according to Grievants' argument, the pay scale would have to provide for a $26 increase (for example) at each increment level, whether the employee has ten years of experience or 2 years. As set forth in the findings of fact above, the 1997-1998 scale does not do so,

because larger increases are granted at the increment years of one, two, three, four, twelve, and thirteen. Otherwise, the increment at each experience level is $26.

Grievants' argument has two bases. First, they allege that, because the minimum salary schedule set forth in W. Va. Code § 18A-4-8a provides exactly the same dollar amount of salaryincrease from year to year, a county's supplemental scale must also do so. Grievants contend that the statutory scale is meant to be a model for boards of education, who are to follow its format when implementing salary schedules which exceed it. However, Grievants have provided no legal basis for this argument, other than their opinion that it seems to be a good idea.

Grievants' second contention is that HCBOE's 1997-1998 pay scale violates the portion of W. Va. Code § 18A-4-5b which states “uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties . . . .” According to Grievants' argument, this means that employees must receive “equal pay for equal work.” Under the new pay scale, a Cook I with two years of experience receives a salary of $1253, which includes a $28 increment for one year and a $26 increment for 2 years, added to a base salary of $1199. However, a Cook I with three years of experience receives the $1199 base salary, the year one and two increments, and a $40 increment for three years of experience, for a total salary of $1293. Although Grievants acknowledge that the state minimum salary scale contemplates that employees at higher experience levels will receive greater pay, they allege that the increases each year must be identical, rather than the “irregular” incremental increases found in HCBOE's pay scale. Grievants contend that the cook with three years of experience is getting an unfair benefit, because he is receiving an increment for his third year which is $14 higher than the one given to the cook at two years of experience.

The portion of the statute cited above, which requires uniformity of salary, increments, etc., for employees performing like duties, does not mandate that the increment granted for each year of experience be the same amount. Using the Cook I example, although a Cook I with two years of experience may perform exactly the same duties as a Cook I with three years of experience, onewould not argue that they should receive exactly the same salary. On the contrary, the state minimum salary schedule itself provides for increasing salary levels based upon years of experience for employees in the same classification, which employees may very well perform “like assignments and duties,” but are paid different monthly salaries. Accordingly, the undersigned does not find that

the provisions of the uniformity statute cited by Grievants support their allegations.

The exact issue presented in this grievance was discussed in the circuit court decision regarding Kobily I. Judge King stated specifically as follows:

> The Court is of the opinion that the legislature intended that county supplemental pay increases be uniform throughout the pay grades. The board of education is not required to award a uniform pay increase for each additional year of service. For example, it may determine that employees who have been employed for three years have achieved levels of experience or longevity which entitle them to an increase that is greater than employees who have been employed for two years or five years or twenty years. But the increase must be uniform throughout the various pay grades.

(Emphasis added.) Although circuit court decisions are not considered by this Grievance Board to be mandatory precedent, such decisions "are followed in future cases only to the extent that their logic and reasoning are compelling." Townsend v. Mercer County Bd. of Educ., Docket No. 97-27- 093 (Nov. 4, 1997). The instant case is certainly one in which the circuit court's reasoning should be followed.

In accordance with the foregoing findings and discussion, the following conclusions of law are appropriate in this grievance.

Conclusions of Law

1. In a non-disciplinary matter, the grievant has the burden of proving each element ofher claim by a preponderance of the evidence. See W. Va. Code § 18-29-6; Holly v. Logan County Bd. of Educ., Docket No. 96-23-164 (Apr. 30, 1997).

2. W. Va. Code § 18A-4-5b allows boards of education to establish salary schedules which exceed the statutory minimum scale. It further provides that such "schedules shall be uniform throughout the county with regard to any training classification, experience, years of employment . . . ." and that "uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties . . . ."

3. Grievants did not prove by a preponderance of the evidence that the 1997-1998 Hancock County Board of Education pay scale for service personnel violated W. Va. Code § 18A-4- 5b or W. Va. Code § 18A-4-8a.

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: February 27, 1998 _____

V. DENISE MANNING

Administrative Law Judge

Footnote: 1

The record does not reflect on what date this grievance was addressed at level one. A level two hearing was held on August 25, 1997, and a written decision denying the grievance was rendered on October 3, 1997. Level three consideration was waived, and Grievants appealed to level four on October 15, 1997. A hearing was scheduled in this Grievance Board's office in Wheeling, West Virginia, on December 18, 1997, at which time the parties agreed to submit this matter on the record developed below. Proposed findings of fact and conclusions of law were submitted by Grievants on January 12, 1998, at which time this matter became mature for decision.

Footnote: 2

This case proceeded through the lower levels and was appealed to level four with only Marcia Kobily and Lois Robb as named grievants. However, after the level four appeal was filed and a hearing scheduled, numerous (over 160) service employees submitted signature sheets indicating their desire to "sign on" to the grievance. Respondent has filed no written objection or challenge to this request. However, due to the outcome of this grievance, it is not necessary to determine whether or not it would be proper at level four to allow these employees to join.