PETE AMODIO, et al.,

Grievants,

v. **Docket No. 01-17-341**

HARRISON COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, Pete Amodio, Jim Carr, and Bill Caloccia, employed by the Harrison County Board of Education (HCBE) as teachers, filed individual level one grievances on or about March 19, 2001, in which they alleged discrimination regarding their compensation for extracurricular supervision contracts. For relief, Grievants requested compensation at the same rate of pay received by others. After the grievance was denied at levels one and two, Grievants made appeal to level four on May 14, 2001. Grievants' request that the grievances be consolidated at level four was granted. Grievants, represented by Bob Brown of the American Federation of Teachers, and HCBE representative Basil Legg, Jr., Esq., agreed to submit the matter for decision based upon the lower-level record. The grievance became mature for decision upon receipt of proposed findings of fact and conclusions of law filed by the parties on September 14, 2001.

The following facts are derived from the record in its entirety.

Findings of Fact

1. Grievants are employed by HCBE as teachers assigned to Liberty High School.

2. In addition to their regular teaching duties, Grievants are employed by HCBE under extracurricular contracts to perform lunch duty supervision. Grievants arecompensated at a rate of $862.00 per school year for 30 minutes of duty each day.

3. HCBE employs other individuals under extracurricular contracts to perform bus duty supervision at Norwood Elementary School (NES). These teachers are compensated $3,600.00 per school year for 25 minutes of duty each day.

4. Both the lunch duty supervision and bus duty supervision assignments require a professional teaching certificate. No other specialized training is required.

5. The primary function for both positions is to set and maintain acceptable standards of student behavior.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving the grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.21 (2000); 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.

Grievants argue that HCBE has not only engaged in discrimination, but is required by the uniformity provision of W. Va. Code § 18A-4-5a to compensate them at the same rate as the teachers at NES. Additionally, they rely upon Weimer-Godwin v. Bd. of Educ. of the County of Upshur, 179 W. Va. 423, 369 S.E.2d 726 (1988), in which it was held that a board of education must pay the same amount of additional compensation to all teachers performing like assignments and duties. HCBE presented no testimony or other evidence; however, counsel argues that Grievants' positions are not substantially similar to those at NES, in that the bus duty supervisors are responsible for students from other schools who are transferring to another vehicle. Although the record does not include a job description for lunch duty supervisor, the evidence establishes that Grievants' functions and duties are virtually identical to those of the bus duty supervisors, i.e., set and maintain acceptable standards of student behavior. (See footnote 1) HCBE is required to compensate Grievants at the same rate as bus duty supervisors under the provisions of W. Va. Code §18A-4-5b, which provides that boards of education may provide salaries in excess of the state minimums so long as they are uniform "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."

HCBE has also engaged in discrimination, defined by W. Va. Code §18-29-2(m) as "any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees." In order to establish a prima facie case of discrimination, Grievants must establish the following:

(a) that they are similarly situated, in a pertinent way, to one or more other employee(s);

(b) that they have, to their detriment, been treated by their employer in a manner that the other employee(s) has/have not, in a significant particular; and,

(c) that such differences were unrelated to actual job responsibilities of the grievants and/or the other employee(s) and were not agreed to by the grievant in writing.

Steele v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989).

Once the grievants establish a prima facie case of discrimination, the burden shifts to the employer to demonstrate a legitimate, nondiscriminatory reason to substantiate its actions. Thereafter, grievants may show that the offered reasons are pretextual. Deal v. Mason County Bd. of Educ., Docket No. 96-26-106 (Aug. 30, 1996). See Tex. Dep't of Community Affairs v. Burdine, 450 U.S. 248 (1981); Frank's Shoe Store v. W. Va. Human Rights Comm'n, 179 W. Va. 53, 365 S.E.2d 251 (1986); Conner v. Barbour County Bd. of Educ., Docket Nos. 93-01-543/544 (Jan. 31, 1995).

Grievants have established a prima facie case of discrimination, and HCBE has failed to demonstrate a legitimate, nondiscriminatory reason to substantiate its action.

Finally, in the matter of Weimer-Godwin v. Bd. of Educ. of Upshur County, supra, the West Virginia Supreme Court of Appeals determined that it was not necessary for employees to perform identical duties to meet the "like assignments and duties" requirement in W. Va. Code §18A-4-5b, but rather, found that when the assignments and duties are "substantially similar" the uniformity requirement applies. Covert v. Putnam County Bd. of Educ., Docket No. 99-40-463 (Feb. 29, 2000). Unquestionably, Grievants perform “like assignments and duties” as the bus duty supervisors, and are entitled to the same compensation.

In addition to the foregoing findings of fact and discussion, it is appropriate to make the following conclusions of law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving the grievance by a preponderance of the evidence. Procedural Rulesof the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.21 (2000); 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. W. Va. Code §18A-4-5b, which provides that boards of education may provide salaries in excess of the state minimums so long as they are uniform "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."

3. W. Va. Code §18-29-2(m) defines discrimination as "any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees."

4. In order to establish a prima facie case of discrimination, Grievants must establish the following:

(a)that they are similarly situated, in a pertinent way, to one or more other employee(s);

(b)that they have, to their detriment, been treated by their employer in a manner that the other employee(s) has/have not, in a significant particular; and,

(c)that such differences were unrelated to actual job responsibilities of the grievants and/or the other employee(s) and were not agreed to by the grievant in writing.

Steele v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989).

5. Once the grievants establish a prima facie case of discrimination, the burdenshifts to the employer to demonstrate a legitimate, nondiscriminatory reason to substantiate its actions. Thereafter, grievants may show that the offered reasons are pretextual. Deal v. Mason County Bd. of Educ., Docket No. 96-26-106 (Aug. 30, 1996). See Tex. Dep't of Community Affairs v. Burdine, 450 U.S. 248 (1981); Frank's Shoe Store v. W. Va. Human Rights Comm'n, 179 W. Va. 53, 365 S.E.2d 251 (1986); Conner v. Barbour County Bd. of Educ., Docket Nos. 93-01-543/544 (Jan. 31, 1995).

6. Grievants have established a prima facie case of discrimination, and HCBE failed to demonstrate a legitimate, nondiscrimintory reason to substantiate its actions.

7. It is not necessary for employees to perform identical duties to meet the "like assignments and duties" requirement in W. Va. Code §18A-4-5b, but rather, when the assignments and duties are "substantially similar" the uniformity requirement applies. Weimer-Godwin v. Bd. of Educ. of Upshur County, 179 W. Va. 423, 369 S.E.2d 726 (1988); Covert v. Putnam County Bd. of Educ., Docket No.

99-40-463 (Feb. 29, 2000).

8. Grievants perform “like assignments and duties” as the bus duty supervisors, and are entitled to the same compensation.

Accordingly, the grievance is **GRANTED**, and HCBE Ordered to equalize the extracurricular compensation of bus duty supervisors and lunch duty supervisors, effective fifteen days prior to the filing of this grievance.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Harrison 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. However, the appealing party is required by W. Va. Code §29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: September 25, 2001 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Interestingly, the job description for Bus Duty Supervisor states under functions ad duties, that the incumbent will maintain acceptable student behavior in the cafeteria.