DAVID HYPES,

Grievant,

v. **Docket No. 02-34-105**

NICHOLAS COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, David Hypes, filed this grievance against his employer, the Nicholas County Board of Education ("NBOE"), on January 15, 2002. The statement of grievance reads:

> I have been serving as vocational director for Nicholas County Schools since August, 2000. I have not received since that date and am not currently receiving the $400.00 per month director supplement provided by Nicholas County Board of Education policy. Since shortly after my hiring, I have tried to resolve this matter informally with the school system. On December 6, 2001 I received an unequivocal negative response to my request for pay and on December 6, 2001 I initiated the informal conference step of the grievance procedure.

As relief Grievant seeks:

> Payment of the director's salary supplement of $400.00 per month effective August, 2000 with 10% interest to the date back pay is paid and payment of the director's salary supplement of $400.00 per month for each month that I continue to be employed as vocational director.

The following Findings of Fact are made based upon the evidence presented at Level II. (See footnote 1)

FINDINGS OF FACT

1. Grievant has been employed by NBOE since 1985. He is currently employed as the Nicholas County Vocational Director, and as the Principal at the Nicholas County Career/Technical Center. He was awarded that position in mid-June of 2000, after bidding on the posted position. He

has a 220-day contract.

2. Grievant's salary includes a $4,000.00 annual county secondary principal's supplement, and a $1,878.00 annual state supplement, which is based upon the salary schedule for secondary principals. This supplement has not been reduced to reflect that Grievant's position as a principal is not a full-time position.

3. The posting for Grievant's position listed the salary as “per Nicholas County Pay scale.”

4. The county supplement for Directors is $400.00 per month. The salary schedule which lists this supplement is entitled “Central Office Administrators - Professional.” Grievant is not a Central Office Administrator.

5. Four NBOE Directors receive the county supplement. They are the Personnel Director, the Director of Curriculum and Instruction, the Food Service Director, and the Director of Special Education. All are employed as professional personnel in NBOE's Central Office, and serve as Directors on a full-time basis. NBOE's Attendance Director does not receive the supplement. 6. All the Directors receiving the county supplement oversee some facet of the school system countywide, and have some responsibility for providing services to all county schools. They have varying contract employment terms.

7. In addition to his responsibility for the Nicholas County Career/Technical Center, Grievant has some responsibility for vocational programs offered at four schools in Nicholas County: Richwood Junior High, Summersville Junior High, Richwood High School, and Nicholas County High School.

8. Some of Grievant's duties are Director duties, some are principal duties, and some are both.

DISCUSSION

Grievant bears the burden of proving each element of his grievance by a preponderance of the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95-29- 476 (Mar. 28, 1996). Grievant argued first, that Respondent had a responsibility to assure the posting was accurate, and to provide salary information to Grievant when he was hired into the position. He argued that since the posting said the salary would be “per Nicholas County Pay scale,” an applicant would conclude that the salary would be the salary for the positions. Grievant cited several cases for the proposition that a posting must be accurate, none of which dealt with salary issues.

Certainly, the posting was not accurate, as there were no other positions such as Grievant's, which were part Director and part principal, so that the pay scale could not be applied to the position. The record does not reflect Grievant's salary, although it appears from the testimony that Grievant is paid the higher salary of the two positions, as a secondary principal; and the undersigned would be surprised to learn that Grievant received both a full principal's salary and a full Director's salary. Further, nothing prevented Grievant from inquiring about the salary before he accepted the position. Grievant's second argument was that, since NBOE has decided to pay all Directors the same $400 monthly supplement, regardless of their duties and employment terms, it is bound by that procedure, and must pay Grievant the same amount it pays other Directors. He asserted that his position was not specifically excluded from the Director supplement. Finally, Grievant argued NBOE's refusal to pay him the $400.00 supplement paid to other directors is a violation of the salary uniformity requirements of W. Va. Code § 18A-4-5a. These two arguments will be considered together, however, it will be noted at this point that the salary schedule which lists this supplement is entitled “Central Office Administrators - Professional.” As Grievant is not a Central Office Administrator, and no explanation of the schedule was provided, the undersigned would have to conclude that the salary schedule does specifically exclude him.

Respondent did not contest the timeliness of the filing. It pointed out that Grievant is not like the other Directors. First, and most significantly, Grievant is not a full-time Director, as are the Directors who receive a supplement. Second, in addition to serving as a Director, Grievant is also a principal, and he is paid a principal's supplement in the amount of $5,878.00 annually, unlike the other Directors. In fact, the supplement, which includes a state supplement, is more than the supplement received by any Director. The maximum supplement received by any Director would be $4,800.00.

Respondent further noted that Grievant's area of responsibility is limited to the vocational school in the county and the vocational programs offered at four other schools, whereas the other Directors' areas of responsibility cover either all the schools or all personnel in the county, and the Directors who receive the supplement are Central Office Administrators. Finally, Respondent pointed to the fact that Grievant does receive the benefit of the secondary principal's supplement, even though his duties as a principal are not as broad as those of other secondary principals; for example, there are no extracurricular activities at the vocational school, students do not report to the school earlyin the morning, the school does not have a breakfast or lunch program, and student scheduling is not

handled by the vocational school. James Marsh, who, prior to his retirement, was NBOE's Associate Superintendent of Schools, testified there is a two-tier principal's supplement schedule, with secondary principals receiving a higher supplement than elementary principals due to the greater responsibilities at the secondary level, such as duties related to extracurricular activities.

W. Va. Code § 18A-4-5a provides as follows:

> 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 fixed 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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> Counties may fix higher salaries for teachers placed in special instructional assignments, for those assigned to or employed for duties other than regular instructional duties, and for teachers of one-teacher schools, and they may provide additional compensation for any teacher assigned duties in addition to the teacher's regular instructional duties wherein such noninstructional duties are not a part of the scheduled hours of the regular school day. 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 over which it has no control and for which the county board has received approval from the state board prior to making such reduction.
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> Counties may provide, in a uniform manner, benefits for teachers which require an appropriation from local funds including, but not limited to, dental, optical, health and income protection insurance, vacation time and retirement plans excluding the state teachers retirement system. Nothing herein shall prohibit the maintenance nor result in the reduction of any benefits in effect on the first day of January, one thousand nine hundred eighty-four, by any county board of education.

A grievant seeking to enforce the uniformity provisions must establish that his duties and assignments are like those of the employees to whom he is attempting to compare himself. Locket v. Fayette County Bd. of Educ., Docket No. 01-10-477 (Dec. 28, 2001). Grievant has not demonstrated he is entitled to the Director's supplement, as he does notserve as a Director on a full-time basis like the Directors who receive the supplement, and in fact, has principal duties which the other Directors do not have. Thus, as this Grievance Board has previously stated, his duties are not like those of other Directors.

> Grievants [Directors] seek to compare themselves to the Director of Vocational Education. The evidence shows that the individual serving in that position has served as a Principal in the past. He currently shares duties and responsibilities with the Principal at the vocational school, and from time to time, acts as Principal at the school. Thus, that individual is a “professional educator”, does not perform like duties and responsibilities as Grievants, and is not similarly situated to Grievants, who are “professional personnel”, for purposes of their uniformity argument.

Adkins v. Lincoln County Bd. of Educ., Docket No. 97-22-165 (Sept. 24, 1997).

The following Conclusions of Law support the Decision reached.

CONCLUSIONS OF LAW

1. Grievant bears the burden of proving each element of his grievance by a preponderance of the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95-29- 476 (Mar. 28, 1996).

2. W. Va. Code § 18-4-15(a) requires boards of education to compensate employees uniformly in paying "additional salary increments or compensation for all persons performing like assignments and duties within the county. . . . " Locket v. Fayette County Bd. of Educ., Docket No. 01-10-477 (Dec. 28, 2001).

3. Grievant does not serve as a Director on a full-time basis like the Directors who receive the supplement, and in fact, has principal duties which the other Directors do not have. Thus, his duties are not like those of other Directors. Adkins v. Lincoln County Bd. of Educ., Docket No. 97-22-165 (Sept. 24, 1997).

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Nicholas County. Any 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

BRENDA L. GOULD

Administrative Law Judge

Dated: June 11, 2002

Footnote: 1

Grievant's supervisor responded on January 24, 2002, that he was without authority to resolve the grievance. Grievant appealed to Level II, where a hearing was held on February 14, 2002. A Level II decision denying the grievance was issued on April 8, 2002. Grievant bypassed Level III, appealing to Level IV on April 17, 2002. The parties agreed to submit this grievance for decision based upon the Level II record. Grievant was represented by Kathleen Smith, and Respondent was represented by Erwin L. Conrad, Esquire. This grievance became mature for decision on May 15, 2002, upon receipt of the parties' written arguments.