FRANK MANN,

Grievant,

v. Docket No. 01-55-613

WYOMING COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Frank Mann, an Assistant Superintendent, filed this grievance against his employer, the Wyoming County Board of Education ("WCBOE") on December 17, 2001. The full Statement of Grievance reads "WV Code § 18A-4-1 & 18A-4-2." It is of course assumed Grievant is asserting these Code Sections were violated. Relief Sought was "[t]o be granted the increments provided in state law for the past eight years or the maximum increment granted administrators for the 2001 - 2002 school year."

Since Grievant was an Assistant Superintendent, the grievance was filed directly to Level II. No hearing was held, and the parties agreed to submit this grievance on a Stipulation of Facts dated November 28, 2001. The grievance was denied at Level II on December 4, 2001. Grievant appealed to Level IV on December 17, 2001, and the parties again agreed to submit this case on the Stipulations of Fact developed below. This case became mature for decision on January 25, 2002, after receipt of the parties' proposed findings of fact and conclusions of law. (See footnote 1)

Stipulations of Fact (See footnote 2)

1. Grievant is currently employed in the position of assistant superintendent.

2. Respondent currently employs two assistant superintendents (Grievant and James McGrady).

3. Prior to an adjustment in the salary of Mr. McGrady to reflect years of experience increments for years in excess of 30, both the Grievant and Mr. McGrady were compensated at the same level.

4. Under W. Va. Code §§ 18A-4-2 and 18A-4-5, based upon degree level (Masters +45) and experience (18 years), the "state minimum" salary for Grievant, with an equity adjustment, is $39,519.00 (Schedule I + equity) and $40,519.00 (Schedule II + equity).

5. If annualized, Grievant's "state minimum" salary (2000-2001), with an equity adjustment, based upon a 261-day contract, is calculated as follows:

> **Schedule I- $34,976 . 200 = 174.88 [daily rate] x 261 = $45,643.68**
>
> **The equity adjustment for the 2000-2001 school year (MA+45 at the 17 years of experience level) was $4,009.00.**

If annualized, Mr. McGrady's state minimum salary (2000-2001), with equity adjustment, based upon a 261 day contract, is calculated as follows:

> **Schedule I- $35,906 . 200 = 179.53 [daily rate] x 261 = $46,857.33**
>
> **The equity adjustment for the 2000-2001 school year (MA+45 at the 19 years of experience level) was $4,147.00.**

6. In accordance with W. Va. Code § 18A-4-5a, Respondent supplements the state minimum salaries established under W. Va. Code § 18A-4-2 for assistant superintendents. In accordance with such supplement, Grievant and Mr. McGrady received salaries in the amount of $58,698.90 for the 2000-2001 school year. 7. The language pertinent to compensation that is included in Grievant's and the other assistant superintendent's contract for the 2000-2001 school year provides:

> **". . . at an annual salary of $58.698.90 including all increments provided by the Legislature and the Wyoming County Board of Education, for the duration of the contract."**

8. Both the Grievant's and Mr. McGrady's 2001-2002 contracts contained the same language that is quoted in the forgoing paragraph.

9. Grievant's 2001-2002 school year contract provides for a salary of $59,685.48 and includes language that is identical to the above-quoted language included in the 2000-2001 contract. Mr. McGrady's 2001-2002 contract contains identical language, except for the salary amount.

10. W. Va. Code § 18A-4-2 was amended during the 1st Extended Session of the 2001 Legislature. The amendment pertinent to the present grievance provides as follows:

> (c) Effective the first day of July, two thousand one, in addition to any amounts prescribed in the application of the applicable state minimum salary schedule, each professional educator shall be paid annually the following incremental experience increases in accordance with their years of experience. The payments shall be paid in equal monthly installments and shall be considered a part of the state minimum salaries for teachers.

Years of Experience	Increment
31	534
32	534
33	534
34	534
35	534

11. Schedules I and II, contained in W. Va. Code § 18A-4-2, contain $465.00 experience differentials beginning at 1 year of experience and continuing through 19 years of experience. The amount of equity for each such year of experience is calculated to be $69.00.

12. The experience differentials for 1 through 19 years of experience, identified in the foregoing paragraph, have never been applied to the calculation of central office administrator salaries.

13. During a meeting held on September 10, 2001, a determination was made to grant Mr. McGrady, who had 34 years of experience, additional salary increments based upon the 2001 amendment to W. Va. Code § 18A-4-2 (described in paragraph 10). Such increments were in addition to his salary in the amount of $59,685.48. Grievant, whose experience did not exceed 30 years, received no additional increment. The adjustment in Mr. McGrady's salary and in the salaries of other administrators whose experience exceeded 30 years was first reflected in paychecks received on September 14, 2001.

Issues and Arguments

Based on the very limited record which consists of only the Stipulations of Fact, it appears

Grievant is alleging Respondent violated W. Va. Code §§ 18A-4-1 & 18A-4-2 in terms of his compensation, and he believes he should receive an increase in remuneration. These violations are not spelled out in the record, but it appears the main focus of Grievant's argument is his failure to receive the yearly increments mandated by W. Va. Code § 18A-4-2. (See footnote 3) It is noted the other Assistant Superintendent received an increase incompensation based on a change in W.Va. Code § 18A-4-2 which became effective on July 1, 2001.

Respondent asserts there has been no violation of the above-cited statutes. Respondent notes WCBOE is authorized to fix special salary schedules for assistant superintendents pursuant to W. Va. Code § 18-5-33, and Grievant is paid and has been paid an amount thousands of dollars above the state's required minimum for many years. Grievant's salary does not conflict with W. Va. Code § 18A-4-2 because he is compensated at a greater rate. Respondent also notes it was within its discretion to increase the compensation paid to the other assistant superintendent based on W. Va. Code §§ 18-4- 5a & 18A-4-5a, as he had thirty-four years of experience.

After a detailed review of the record in its entirety, the undersigned Administrative Law Judge renders the following Decision.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his 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); Toney v. Lincoln County Bd. of Educ., Docket No. 99-22-046 (Apr. 23, 1999); Bowen v. Kanawha County Bd. of Educ., Docket No. 99-20-039 (Mar. 30, 1999); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997). See W. Va. Code § 18-29-6. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health andHuman Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. Id.

First, it must be noted from the record submitted, that it is unclear what violations of W. Va.

Code §§ 18A-4-1 & 18A-4-2 Grievant is alleging. It is also unclear why Grievant believes he should receive "increments provided in state law for the past eight years or the maximum increment granted administrators for the 2001-2002 school year." (See footnote 4) **(See Stipulations of Fact 7 & 9.)**

W. Va. Code §18-5-33, entitled "Board may fix special salary schedules" states:

> **The board may fix special salary schedules for the superintendent, assistant superintendents, teachers and other employees so long as the salary schedule does not conflict with the general provisions of this chapter.**

W. Va. Code § 18A-4-1 defines the following salary terms:

> **For the purpose of this article, salaries shall be defined as: (a) "Basic salaries" which shall mean the salaries paid to teachers with zero years of experience and in accordance with the classification of certification and of training of said teachers; and (b) "advanced salaries" which shall mean the basic salary plus an experience increment based on the allowable years of experience of the respective teachers in accordance with the schedule established herein for the applicable classification of certification and of training of said teachers.**

W. Va. Code § 18A-4-2 explains the "State minimum salaries for teachers" and states:

> **(a) Each teacher shall receive the amount prescribed in the "state minimum salary schedule I" as set forth in this section, specific additional amounts prescribed in this section or article, and any county supplement in effect in a county pursuant to section five-a [§§ 18A-4-5a] of this article during the contract year: Provided, That beginning on the first day of the second quarter of the teacher's employment term in the school year two thousand one-two thousand two, and thereafter, each teacher shall receivethe amount prescribed in "state minimum salary schedule II" as set forth in this section, specific additional amounts prescribed in this section or article, and any county supplement in effect in a county pursuant to section five-a [§ 18A-4-5a] of this article during the contract year.**
>
> **. . .**
>
> **(b) Six hundred dollars shall be paid annually to each classroom teacher who has at least twenty years of teaching experience. The payments: (i) Shall be in addition to any amounts prescribed in the applicable state minimum salary schedule; (ii) shall be paid in equal monthly installments; and (iii) shall be**

considered a part of the state minimum salaries for teachers.

(c) Effective the first day of July, two thousand one, in addition to any amounts prescribed in the applicable state minimum salary schedule, each professional educator shall be paid annually the following incremental increases in accordance with their years of experience. The payments shall be paid in equal monthly installments and shall be considered a part of the state minimum salaries for teachers.

Years of Experience Increment

31 534

32 534

33 534

34 534

35 534

W. Va. Code § 18A-4-5a, "County salary supplements for teachers" states, in pertinent part:

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.

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 orcompensation for all persons performing like assignments and duties within the county: . . .

As stated in W. Va. Code § 18A-4-2, the minimum salary for a M.A.+45 with seventeen years of experience is $34,967.00. When computed on a 261-day contract, the minimum required

salary becomes $45,643.68, with the equity added (as calculated by the parties), this salary would become $49,652.68. WCBOE has chosen, pursuant to W. Va. Code §§ 18-5-33 & 18A-4-5a, to pay Grievant a higher salary than would be expected by a teacher. This increase is in keeping with his increased responsibilities as an Assistant Superintendent. Grievant's salary during his seventeenth year, 2000-2001, was $58,698.90, or approximately nine thousand more dollars than is required by statute. The following year, Grievant's eighteenth year, he received an increase of more than $1,000.00, not the $456.00 required by W. Va. Code § 18-4-2.

Grievant appears to want to be paid his current salary, and then require WCBOE to add on the yearly increments. Although the increments were not used in calculating his current salary, they were clearly considered when his yearly compensation was reviewed and agreed upon. This fact is revealed by the language of Grievant's contract which states the amount he is paid "includ[es] all increments provided by the Legislature and the Wyoming County Board of Education, for the duration of the contract." Grievant's salary does not violate W. Va. Code §§ 18A-4-1 & 18A-4-2.

Grievant also alleges if WCBOE did not use the increments in calculating the salaries of the assistant superintendents prior to the change instituted in 2001, it cannot now follow that Code Section to increase the compensation of Mr. McGrady. Since all other Central Office Administrators who had greater then thirty years also received thisincrease it is assumed Grievant's argument also applies to them. As previously noted in W. Va. Code § 18A-4-5a, "[a] 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." (Emphasis Added.) WCBOE has the authority and discretion to increase the salary of long-term administrators based on experience, and WCBOE may pay Mr. McGrady a greater amount, even though Grievant and Mr. McGrady perform "like assignments and duties." Id. See Parks v. McDowell County Bd. of Educ., 186 W. Va. 141, 411 S.E.2d 466 (1991).

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of

proving his 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); Toney v. Lincoln County Bd. of Educ., Docket No. 99-22-046 (Apr. 23, 1999); Bowen v. Kanawha County Bd. of Educ., Docket No. 99-20-039 (Mar. 30, 1999); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997). See W. Va. Code § 18-29-6. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. Id. 2. Grievant has not met his burden of proof and established WCBOE violated W. Va. Code §§ 18A-4-1 & 18A-4-2, as Grievant's salary exceeded the required minimum salary and the increments were considered when Grievant's salary was agreed upon.

3. WCBOE has the discretion to increase the salary of a long-term administrator based on his experience. W. Va. Code § 18A-4-5a.

Accordingly, this grievance is DENIED.

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

JANIS I. REYNOLDS

ADMINISTRATIVE LAW JUDGE

Dated: January 31, 2002

Footnote: 1

Grievant was represented by Representative Ben Barkey from the West Virginia Education Association, and Respondent was represented by Attorney Greg Bailey of Bowles Rice McDavid Graff & Love.

Footnote: 2

While the language of the Stipulations of Fact has remained exactly the same, the style has been adjusted, a small amount, for ease of reading.

Footnote: 3

In his proposed Findings of Fact and Conclusions of Law, Grievant also argued WCBOE had a duty pursuant to W. Va. Code §§ 18A-4-2 & 18A-4-5a "to establish aseparate schedule for [paying] administrators. . .". There is no such duty expressed in these Code Sections, accordingly this argument will not be addressed further.

Footnote: 4

It may be Grievant has been an Central Office Administrator for the past eight years, but this fact is not contained in the record.