CORA COMBS, et al.,

Grievants,

v.

DOCKET NO. 03-40-020

PUTNAM COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants (See footnote 1) filed this grievance against their employer, the Putnam County Board of Education ("Board") on October 25, 2002:

> Violations of WV Code 18A-4-5b with regard to the county salary supplements for summer painters. The summer painters (listed grievants) are not paid uniform with the bus painters at pay grade H.
>
> Relief sought is to be paid uniformity and back compensation due for the difference in salary to pay grade H.

The grievance was filed directly at level two, and a level two hearing was held on December 18, 2002. The grievance was denied by Hearing Examiner Harold Hatfield on January 15, 2003, and Grievants appealed to level four on January 23, 2003. The parties agreed to submit the grievance based upon the level two record, and this matter became mature for decision on April 11, 2003, the deadline for the parties' submission of proposed findings of fact and conclusions of law. Grievants were represented by Susan E. Hubbard,West Virginia Education Association, and the Board was represented by Lisa Moye, Esq., Gritt Law Offices.

SUMMARY OF EVIDENCE

Level Two Joint Exhibit

Ex. 1 -

Grievance statement.

Level Two Grievant's Exhibits

Ex. 1 -

May 3, 2001 Putnam County Schools Vacancy Bulletin.

Ex. 2 -

May 3, 2001 Putnam County Schools Vacancy Bulletin. (MISSING)

Level Two Board Exhibits

Ex. 1 -

May 7, 2002 Putnam County Schools Vacancy Bulletin.

Ex. 2 -

May 7, 2002 Putnam County Schools Vacancy Bulletin.

Ex. 3 -

2002-2003 Service Personnel Daily Salary Schedule by Classification.

Testimony

Grievants presented the testimony of Debbie Hill and Patricia Priddy. The Board presented the testimony of Paul Callahan and William Duncan.

Based upon a review of the record in its entirety, I find the following facts have been proven by a preponderance of the evidence.

FINDINGS OF FACT

1. Grievants are employees of the Board who work as painters/general maintenance employees during the summer months.

2. Summer painters/general maintenance employees are required to clean, scrape, and paint the facilities of the Putnam County schools, inside and out. They are paid at Pay Grade E. LII G. Ex. 1; Board Ex. 1.

3. Summer bus painters are responsible for bus body repair and painting. They are paid at Pay Grade H1. LII G. Ex. 2; Board Ex. 2. 4. Experience in auto body repair is a requirement for the summer bus painter positions. Callahan Test., LII Tr., p. 37.

5. Under the State basic salary schedule for service employees, there is only one Pay Grade H. However, the County supplements two Pay Grade H classifications: the H and the H1, at different amounts, with the H1 being the higher of the two. Board Ex. 3.

6. The summer bus painter salary was based on the fair market value of what body repair technicians in the area were making at that time, which came closest to the H1 Pay Grade.

DISCUSSION

In a non-disciplinary grievance such as this, Grievants bear the burden of proving their allegations by a preponderance of the evidence. Midkiff v. Lincoln County Bd. of Educ., Docket No. 95-22-262 (Mar. 3, 1996); Perdue v. Mercer County Bd. of Educ. Docket No. 92-27-280 (Mar. 29, 1993). Grievants allege the Board violated the uniformity provisions of W. Va. Code § 18A-4-5b because it paid the summer bus painters a higher county supplement than they received as summer painters. The Board argues that summer painters and summer bus painters do not perform like duties and assignments, and thus, are not required to be paid the same salary.

W. Va. Code § 18A-4-5b states that county boards may establish salary schedules which shall be in excess of the state minimums. That Code Section provides, in pertinent part, that:

> [U]niformity 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.

In this case, the Board has established salary schedules in excess of the state minimums, as reflected in LII Board Exhibit 3.

Grievants contend that both positions in this grievance fall within the “painter” classification

category of employment, and thus, should be equally compensated. W. Va. Code § 18A-4-8i(64) defines “painter” to mean personnel employed to perform duties of painting, finishing and decorating of wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system.

The Board maintains, however, that the summer bus painters actually do much more than simply paint the buses; they are required to have the knowledge and experience to perform body repair as needed on the buses, in preparation for final painting. W. Va. Code §18A-4-8i(64) defines “mechanic” to mean personnel employed who can independently perform skilled duties in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system.” Clearly, the “mechanic” classification more aptly describes the duties performed by the summer bus painters, and Paul Callahan, Assistant Superintendent, testified the summer bus painter title was not the best fit for those employees.

The West Virginia Supreme Court of Appeals discussed W. Va. Code § 18A-4-5b in Flint v. Board of Education, 207 W. Va. 251, 531 S.E.2d 76 (1999). In Flint, the Court addressed multi-classified employees and the issue of performing “like assignments and duties.” The Court found that, even if one multi-classified employee has some classifications similar to another multi-classified employee, the employees are not performing “like assignments and duties” because they have additional duties in regard to the other classifications they hold. Id. at 257, 531 S.E.2d at 82. Similarly, the Board contends, the summer bus painters, while holding the classification of “painter,” perform the additional duty of body repair, and therefore, are not performing “like duties and assignments” with respect to the summer painters, who are not required to perform any type of body repair or vehicle painting. Indeed, even the Grievants concede they are not skilled in auto body repair and could not perform that work without training.

Clearly, even though Grievants and the summer bus painters are classified as “painters,” they do not perform like assignments and duties, and that is the criterion to be established when determining whether the uniformity provision of W. Va. Code § 18A-4-5b has been violated. It would be helpful if the Board changed the working title of the summer bus painters in the future to avoid any more confusion.

CONCLUSIONS OF LAW

1. In a non-disciplinary grievance such as this, Grievants bear the burden of proving their allegations by a preponderance of the evidence. Midkiff v. Lincoln County Bd. of Educ., Docket No. 95-22-262 (Mar. 3, 1996); Perdue v. Mercer County Bd. of Educ. Docket No. 92-27-280 (Mar. 29, 1993).

2. W. Va. Code § 18A-4-5b states that county boards may establish salary schedules which shall be in excess of the state minimums. That Code Section provides, in pertinent part, that:

> [U]niformity 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 § 18A-4-8i(64) defines “painter” to mean personnel employed to perform duties of painting, finishing and decorating of wood, metal and concretesurfaces of buildings, other structures, equipment, machinery and furnishings of a county school system.

4. Even though Grievants and the summer bus painters are classified as “painters,” they do not perform like assignments and duties, and Grievants have failed to prove a violation of W. Va. Code § 18A-4-5b.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Putnam 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.

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MARY JO SWARTZ

Administrative Law Judge

Dated: April 29, 2003

Footnote: 1

Grievants are Cora Combs, Wendy Kester, Cynthia Vance, Debbie Hill, Patricia Priddy, Carol Thornton, Walter Miller, Rick Douglas, Jack Gartin, Darrell Warner, Rickey King and Lewis Crouch.