WILLIAM CALOCCIA,

Grievant,

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

HARRISON COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, William Caloccia, initially filed a grievance in March 2001, alleging discrimination regarding compensation for extracurricular supervision contracts. Specifically, he asserted that teachers employed for bus duty supervision at Norwood Elementary School (NES) were paid considerably more for bus duty, an assignment similar to the lunch duty he performs. Grievant requested that he be compensated at the same rate as the NES teachers.

The grievance was denied at levels one and two, but was granted at level four by decision dated September 25, 2001. Respondent was ordered to equalize the extracurricular compensation and to provide back pay, effective fifteen days prior to the filing of the grievance. Grievant then filed an appeal in the Harrison County Circuit Court seeking additional back pay. (See footnote 1)

By Order dated March 21, 2002, Judge Thomas A. Bedell affirmed the level four decision to the extent that it determined Grievant had established discrimination, and that W. Va. Code § 18A-4-5a applies to extracurricular contracts. However, relying upon Weimer-Godwin v. Board of Education of the County of Upshur, 179 W. Va. 423, 369S.E.2d 726 (1988), the Court found that Grievant was entitled to back pay from the time of the contract disparity. The matter was remanded to the Grievance Board with direction to calculate the amount of back pay due, and prejudgment interest on the award.

A hearing was conducted on the remand on September 24, 2002. Grievant was represented by Kelly R. Reed, Esq., of Wilson, Frame, Benninger & Metheney, and HCBE was represented by Basil R. Legg, Jr., Esq. The parties scheduled responsive briefing, with HCBE's submission due on October 24, Grievant's reply due on November 25, and HCBE's response to the reply, was due on December 9, 2002. No submissions were received, and inquiry of the status of the grievance was made by the undersigned by letter of January 3, 2003. Ms. Reed advised that she had been unable

to file a response absent a submission by HCBE. Mr. Legg explained that he had erroneously recorded the briefing schedule in his calendar. By letter dated January 9, 2003, counsel were advised that the record contained all relevant information necessary to comply with the Court Order, and unless an objection was made in writing on or before January 17, 2003, a decision would be issued. No response was received, and the matter became mature on that date.

The following facts have been derived from the record in its entirety.

Findings of Fact

1. Grievant is employed by HCBE as a teacher at Liberty High School. Additionally, he has been employed for a number of years under an extracurricular contract to provide lunch supervision for thirty minutes per day, at an annual rate of $862.

2. In March 2001, Grievant learned that HCBE compensated teachers at NES for twenty-five minutes of supervisory bus duty at an annual rate of $3,600.00.

3. HCBE has compensated the teachers for the extracurricular assignments at different rates since at least December 13, 1996.

Discussion

The calculation of Grievant's back pay and interest for the 1996-97 and 2002-2003 school years have each been estimated at five months, absent an exact number of days worked, or half the contract amount. Interest has been computed at 10% per annum, as provided by W. Va. Code §56-6-31, to January 31, 2003. All amounts have been rounded to the nearest dollar.

	Salary	Interest	96-97	97-98	98-99	99-00	00-01	01-02	02-03
96-97	$1369	68	137	137	137	137	137	68	
97-98	2738	274	274	274	274	274	137		
98-99	2738	274	274	274	274	137			
99-00	2738	274	274	274	137				
00-01	2738	274	274	137					
01-02	2738	274	137						
02-03	1369	68							
Subtotals	$16,428	69	411	685	959	1233	1507	823	

Total **$22,112**

At hearing, HCBE asserted that subsequent to Judge Bedell's Order, the West Virginia Supreme Court of Appeals, in The Board of Education of the County of Wood v. Airhart, ___ W. Va. ___, 569 S.E. 2d 422 (2002), held that back pay was not appropriate in that continuing discrimination case, and should be applied herein. While it is not clear whether Airhart would apply to the present case, to review that issue is beyond the Order of the Circuit Court, and will not be considered at this time.

Finally, upon remand, Grievant requests reasonable attorney fees. This relief was not included in Grievant's Peititon For Appeal, and was not addressed at that level. Based upon the W. Va. Code § 18-29-8 provision that the parties are to bear their own costs at the first three levels, and the lack of statutory guidance regarding costs at level four, this Grievance Board has ruled that it lacks authority to grant attorney fees at level four. Long v. Kanawha County Bd. of Educ., Docket No. 00-20-308 (Mar. 29, 2001).

Conclusion of Law

Grievant is entitled to $22,112.00 back pay and interest, as of January 31, 2003. Accordingly, HCBE is Ordered to pay Grievant the amount determined within fifteen calendar days of the date of this decision.

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: January 28, 2003 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Two other HCBOE employees were part of the initial grievance, Amodio, et al. v. Harrison County Board of Education, Docket No. 01-17-341 (Sept. 25, 2001); however, only Mr. Caloccia appealed the level four decision.