

STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14EDC09883

Danny Lorenzo Scott Petitioner v. Public Schools of North Carolina, Department Of Public Instruction Respondent	FINAL DECISION
--	-----------------------

THIS MATTER came on for hearing before the Hon. J. Randolph Ward on April 7, 2015 in Morganton, North Carolina. Following preparation of a transcript and expiration of the time allowed for the Parties to submit proposed Decisions, this Final Decision was prepared.

APPEARANCES

For Petitioner: *Pro Se*

For Respondent: Ms. Tiffany Y. Lucas, Assistant Attorney General
North Carolina Department of Justice
Raleigh, N.C.

ISSUE

Whether Respondent erroneously denied Petitioner's request for additional salary due to his attainment of a master's degree in Human Resource Management, substantially prejudicing his rights.

APPLICABLE STATUTES AND POLICIES

N.C. Gen. Stat. §§ 150B-23(a) & (f), 150B-34(a), 115C-12(9)a & 115C-296(a)
State Board of Education Policy TCP-A-006

WITNESSES

For Petitioner: Mr. Danny Lorenzo Scott, Petitioner

For Respondent: Mr. David Fairall
Ms. Toya Kimbrough

EXHIBITS

Petitioner's Exhibits ("P. Exs.") A-F, H, and I were admitted into evidence.

Respondent's Exhibits ("R. Exs.") A-H were admitted into evidence.

UPON DUE CONSIDERATION of the arguments of the parties, the documents and other exhibits admitted, and the sworn testimony of each of the witnesses in light of their opportunity to see, hear, know, and recall relevant facts and occurrences; any interests they may have in the outcome of the case; and whether their testimony is reasonable and consistent with other credible evidence; and upon assessing the preponderance of the competent evidence of the record as a whole in accordance with the applicable law, the undersigned Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Respondent State Board of Education is empowered by statute to "determine and fix the salary for each grade and type of license which it authorizes." N.C. Gen. Stat. 115C-296(a). Respondent has adopted a policy (TCP-A-006) to reward teachers with additional salary ("graduate pay") if they attain a postgraduate degree at the master's level or higher. This policy applies even if the postgraduate degree is in an academic field other than education, but only when: it is awarded by a regionally accredited institution of higher education; and is "directly related" to the teacher's existing area of licensure and current teaching assignment or instructional support responsibilities; and when the postgraduate degree applies to the assigned area to which the teacher devotes 50% or more of the school day. (See R. Ex. A, p. 3)
2. Petitioner Danny Lorenzo Scott is currently employed as a high school Navy Junior ROTC ("JROTC") instructor with the Newton Conover Public Schools System. He holds a bachelor's degree in liberal arts and obtained a master's degree in human resources management from Troy State University in 2004. Effective February 24, 2014, Petitioner was licensed to teach JROTC in North Carolina, subject to earning three (3) semester hours of educational or adolescent psychology and three (3) semester hours of methods and materials of teaching in the secondary schools before the beginning of the 2015-16 school year, as well as completion of a three-year Initial Licensure Program.
3. Petitioner was honorably discharged from the Navy in 1998 after 10 years of service. He taught Navy JROTC in Arizona before coming to North Carolina. He was induced to come to the Newton Conover schools to teach the same subject matter, in part with the expectation that he would receive additional funds due to his master's degree. He actually received graduate pay for the first four or five months he taught in North Carolina, but was then told Respondent had to approve it for him to continue to receive it.
4. The Newton Conover School District applied to Respondent for approval of graduate pay for Petitioner. The agency's staff denied the request because, "The master's degree in Human

Resource Management is not directly related to JROTC.” Petitioner appealed the initial denial, using application materials he prepared concerning his education and, particularly, how his master’s degree program prepared him to teach Naval JROTC.

5. Respondent has created an Appeals Panel to consider appeals of denials of requests for certification based on non-teaching work experience, military career experience, and experience in military leadership roles, as well as the additional salary for graduate degrees. The committee is composed of persons closely involved with traditional education organizations, including school district employees, administrators and professors from institutions of higher learning, and representatives of teacher advocacy organizations (such as NCAE and PENC).
6. Petitioner submitted documentation to the Appeals Panel, including official transcripts from the institution at which Petitioner earned his advanced degree, course descriptions, and his explanations of how specific course content related to and enhanced his ability to present pertinent material in the JROTC training he conducted. All of the information submitted by Petitioner in support of his request was provided to the Appeals Panel for consideration at its October 21, 2014 meeting. The Panel reviewed the material and compared Petitioner's area of licensure and teaching assignment with the coursework that led to his master's degree.
7. Mr. David Fairall, a member of the Appeals Panel since its creation, testified about the evaluation of Petitioner’s master’s degree. Mr. Fairall attended college on an ROTC scholarship and spent 9 ½ years in active duty with the Army. Following his honorable discharge, he worked as a human resources manager in private industry and has served consecutively as Director of Human Resources for the Winston-Salem/Forsyth and the Lexington school systems since 1997. Mr. Fairall testified that because of his military background, the panel “typically looks to me” when dealing with military experience and JROTC issues.
8. When asked for the “overriding guiding principle that you abide by when considering” cases like Petitioner’s, Mr. Fairall responded that “we’re really guided by that phrase ... ‘directly related.’” He described the Panel, at one of its first meetings, seeking a definition for the phrase, and “the representatives from the Ed[ucation] schools offered that in general” the required coursework for a master’s degree programs included “18 semester hours of content-relevant material.” Eighteen (18) hours would be approximately 55% - 60% of the total coursework required for a master’s degree in education. Mr. Fairall testified that, as a consequence, “that’s the guideline we adopted as a panel to determine whether not a particular master’s program was considered directly related to a particular content area,” and that it had been consistently applied over the intervening years.
9. In addition to an official transcript of his postgraduate courses and the syllabus for each of the JROTC courses he taught, Petitioner provided the Appeals Panel with a compilation of the course objectives for his students, matched with detailed descriptions of the graduate school courses he testified he drew on in teaching the course. Mr. Fairall testified that he reviewed these materials and concluded that the courses Petitioner took titled Organization Behavior, Training and Human Resource Development, and Business Research were “directly related”

to the courses that Petitioner taught. These courses constituted nine (9) hours of the thirty (30) hours of coursework required for Petitioner's course of study for his master's degree, or 30% of the total. As the nine (9) semester hours Mr. Fairall perceived were directly related were "well short of the 18 semester hours we typically are looking for," he offered a motion to deny Petitioner's request. The Appeals Panel voted unanimously for that motion.

10. Petitioner testified about the growing prominence of human resources management personnel in the Navy and introduced a Navy pamphlet concerning the Navy Human Resources Officer Program. There are currently over 800 Navy human resources positions "in the fields of education and training, information systems, recruitment, financial management, policy, manpower and personnel, research and analysis, and strategic planning." (P. Ex. E)
11. Respondent, which is subject to the N.C. Administrative Procedures Act, has adopted no rules¹ implementing its authority to provide additional salary to encourage or reward teachers for postgraduate degrees or governing the work of its staff or Appeals Panel. It has created the nonbinding policy² referenced above to interpret the enabling statute and guide the work of its staff and the Appeals Panel. There is no evidence that this policy has been scrutinized pursuant to N.C. Gen. Stat. §150B-4 or 150B-20. The Appeals Panel had broad authority to interpret and apply the "directly related" concept, within the concrete parameters that the degree be granted by a regionally accredited institution and relate to the work done by the teacher during most of the school day.
12. While the Appeals Panel might reasonably have chosen to evaluate how the benefits of Petitioner's knowledge gained in the course of earning his master's degree directly related to his classroom instruction, without reference to the specific number of hours credit earned while gaining that knowledge, it was not irrational or unreasonable to consider that as a means of promoting the quality and consistency of their decisions.
13. Respondent's decision was not arbitrary or capricious.
14. Petitioner timely appealed Respondent's adverse decision by filing a Petition for a contested case hearing within 60 days after notice of the agency decision was given.
15. To the extent that portions of the following Conclusions of Law include Findings of Fact, such are incorporated by reference into these Findings of Fact.

¹ "'Rule' means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency." N.C. Gen. Stat. § 150B-2(8a).

² "Policy" means any nonbinding interpretive statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. N.C. Gen. Stat. § 150B-2(7a).

Based upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. To the extent that portions of the foregoing Findings of Fact include Conclusions of Law, such are incorporated by reference into these Conclusions of Law.
2. The parties and the subject matter of this contested case hearing are properly before the Office of Administrative Hearings. N.C. Gen. Stat. §§ 150B-1(e) and 150B-23(f).
3. The State Board of Education has the duty and authority “to certify and regulate the grade and salary of teachers and other school employees,” and to “determine and fix the salary for each grade and type of license which it authorizes....” N.C. Gen. Stat. §§ 115C-12(9)a.; 115C-296(a).
4. Petitioner bears the burden of showing that the Agency has substantially prejudiced his rights and that the agency's decision was erroneous in one or more of the ways enumerated in N.C. Gen. Stat. § 150B-23. *Surgical Care Affiliates, LLC v. N.C. Dep't of Health & Human Servs., Div. of Health Serv. Regulation, Certificate of Need Section*, 762 S.E.2d 468, 474-75 (N.C. Ct. App. 2014), *review denied*, 768 S.E.2d 564 (N.C. 2015).
5. An administrative law judge shall decide a contested case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency. N.C. Gen. Stat. § 150B-34(a).
6. “[A]gency action is considered ‘arbitrary and capricious’ only if it indicates ‘a lack of fair and careful consideration’ and fails ‘to indicate ‘any course of reasoning and the exercise of judgment.’” *Watson v. N.C. Real Estate Com'n*, 87 N.C. App. 637, 649, 362 S.E.2d 294, 301 (1987), quoting *State ex rel. Comm'r of Insurance v. North Carolina Rate Bureau*, 300 N.C. 381, 420, 269 S.E.2d 547, 573 (1980).
7. Respondent did not act erroneously, exceed its authority or jurisdiction, fail to use proper procedure, or fail to act as required by law or rule.

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned enters the following:

FINAL DECISION

As Respondent exercised its authority lawfully and with due deliberation, its decision to deny Petitioner’s request for additional salary for his master’s degree, must be, and hereby is, **AFFIRMED**.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 10th day of July, 2015.

J. Randolph Ward
Administrative Law Judge