GRETCHEN DONAHUE, .

.

Grievant, .

.

.

v. . Docket No. 93-23-452

.

.

.

LOGAN COUNTY BOARD OF EDUCATION, .

.

Employer. .

D E C I S I O N

Grievant, Gretchen Donahue, is employed by the Logan County Board of Education (hereinafter Board). Apart from her regular contractual duties with the Board, she is also a head cheerleading coach and has executed an extracurricular contract of employment with the Board pursuant to W.Va. Code §18A-4-16. She has filed this appeal to level four from an adverse level three decision which held that the Board has not violated W.Va. Code §18A-4-5a by paying cheerleading coaches a lesser salary in comparison with the salaries paid coaches of other sports within the County. (See footnote 1) Grievantrequests that the undersigned require the Board to reevaluate and change its coaches' salary scale to reflect a more equitable means of compensating cheerleading coaches who perform like assignments and duties compared to other head coaches of other sports. The following findings of fact are derived from the level three and level four records.

Findings of Fact

1. Grievant has executed an extracurricular contract of employment with the Board to be a head cheerleading coach.

2. The Board has adopted a coaching pay scale establishing the salary to be paid for various coaching positions.

3. Grievant's salary has been set by the Board at $600.00; $300.00 dollars for coaching cheerleading during football seasonand $300.00 dollars for coaching during the basketball season. This $600.00 figure is classified as a salary supplement.

4. Most all other coaches hired under an extracurricular contract of employment by the Board are also paid a set salary supplement which varies from $200.00 to $800.00, depending upon the sport, plus an additional amount of money which is calculated based upon the respective teachers' daily salary rate. For example, a head coach of high school football receives a salary equal to $800.00 plus the product of twenty times that coach's daily teacher salary, (($800.00 + (20 x X)). Only cheerleading, track and weightlifting coaches are paid solely on the basis of a predetermined salary supplement alone.

5. Cheerleading has been recognized as a sport as opposed to an activity by the West Virginia Secondary School Athletic Commission since the 1986-1987 school year. Grievant is now recognized as a salaried headcoach as opposed to a volunteer sponsor as in the past.

6. Grievant's cheerleading season lasts from approximately the beginning of August when football season starts to the end of the school year when basketball season ends.

7. Coaching cheerleading is inherently different than coaching other sports teams due to the nature of the activity.

Discussion

W.Va. Code §18A-4-5a, states, in pertinent part,

> 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 theymay 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 shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county . . . (Emphasis added).

Grievant contends that she performs "like assignments and duties" when compared to the duties performed by other coaches of sports teams within the county. She provided extensive testimony

regarding the demanding requirements of being a cheerleading coach and attempted to compare and contrast the types of duties she is required to perform to those other coaches perform. She also established that the cheerleading season is longer than any other sports season. The Board simply denied Grievant's allegation. It also contends that Grievant knew what the cheerleading coach's salary was before she accepted the position, therefore, she should not be able to challenge the salary amount as inappropriate afterwards.

The exact issue raised in this case was previously addressed by this Grievance Board in Eastham, et al. v. Brooke Co. Bd. of Educ., Docket No. 91-05-215 (Nov. 11, 1991). The grievants in Eastham made the same arguments that Grievant does in this case. They attempted to prove their case by providing testimony regarding the nature of the duties they perform as cheerleading coaches in relation to other sports coaches and by establishing that the cheerleading season was longer than other sports seasons. The Administrative Law Judge in Eastham found no violation of Code §18A-4-5a and recognized that the nature of coaching duties fordifferent sports prohibits one from concluding that the coaches of those sports perform "like assignments and duties." This conclusion is further supported by similiar holdings in other cases from this Grievance Board. In Wray v. Mercer Co. Bd. of Educ., Docket No. 27-87-285-4 (Jan. 19, 1988), the Administrative Law Judge held that "The nature of the sport of football is inherently and substantially different from that of basketball and while coaches of both sports adhere to some common goals and practices, the two do not perform like assignments and duties." Id. p. 7, citing Markham, et al. v. Mason Co. Bd. of Educ., Docket No. 26-87-101 (Nov. 30, 1987). See also, Weimer-Goodwin v. Bd. of Ed. of Upshur Cty., 369 S.E.2d 726 (W.Va. 1988). The holding in Eastham is controlling in this case.

The foregoing discussion of the facts of the case and of the law applicable to those facts is hereby supplemented by the following appropriate conclusions of law.

Conclusions of Law

1. Cheerleading coaches do not perform "like assignments and duties" when compared to other sports coaches as the phase is meant to be interpreted under W.Va. Code §18A-4-5a. Eastham.

2. Grievant has failed to prove her claim by a preponderance of the evidence. See, Black v. Cabell Co. Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989).

Accordingly, this grievance is hereby **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of logan 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. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

_____

ALBERT C. DUNN, JR.

Administrative Law Judge

April 4, 1994

Footnote: 1 The level three appeal form contains the names of four other cheerleading coaches who wished to participate in the grievance along with Ms. Donahue. Ms. Donahue was apparently chosen to be the spokesperson for the group. However, the level four appeal form only contains Ms. Donahue's name at the top of the form andonly her signature at the bottom. At the level four hearing in this matter, Ms. Donahue stated that she represented the other coaches who were not present. However, the statement of grievance on the appeal states "I am one of five cheerleading coaches who filed a group grievance. . .;" an inference can be drawn from this that Ms. Donahue wished to disassociate herself from the other grievants and appeal to level four alone. The opposite conclusion may also be drawn from the fact that the appeal form seems to have been prepared by the Grievants' representative and hand delivered to the Grievance Board by the representative himself or his agent. It is possible that the other grievants were not given the ability to sign the form; therefore, under the Supreme Court's rulings in Duruttya v. Board of Education of County of Mingo, 382 S.E.2d 40 (W.Va. 1989), it could be argued that the grievants substantially complied with the appeal requirements. The undersigned believes that there is a legitimate question as to whether all five of the grievants at the lower level have perfected an appeal to level four on the basis of the pleading filed with this Grievance Board. Because of the outcome of this Decision however, there is no need to decide this jurisdictional issue. Therefore, the case will continue to be styled as if only Ms. Donahue had perfected an appeal of the level three decision.