JOHN H. MILLER, ET AL.,

Grievants,

v. DOCKET NO. 94-20-409

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants (See footnote 1) instituted this grievance on June 8, 1994 alleging Respondent had violated W. Va. Code § 18A-4-14(2) in the scheduling of their planning periods for the 1994-95 school year. The grievance was denied at the lower levels and waived to Level IV on August 12, 1994. The parties agreed that the matter could be submitted on the record, which consists of the transcript and decision from a Level II hearing conducted on July 21, 1994. Grievants submitted proposed findings of fact and conclusions of law on September 8, 1994. Respondent relies on the record below.

The facts are not in dispute. Grievants are all employed by Respondent as classroom teachers at St. Albans High School. During the 1993-94 school year, St. Albans High School had seveninstructional periods per day. Each period was 50 minutes in length and all teachers were required to arrive at work 15 minutes before the first period began and remain for 15 minutes after the seventh period. Planning periods were 50 minutes long every day.

Discussions were held during the school year among the faculty, department heads and school administrators about switching to a "block" schedule for the 1994-95 school year. The issue was voted upon by the faculty and approved with four dissenting votes. The 1994-95 schedule requires teachers to arrive only 5 minutes before the first period and remain 25 minutes after the final period.

The schedule also provides that on three days a week the seven period, 50-minute per period schedule will continue. Teachers have a 50-minute planning period on those days. The other two days will consist of three longer instructional "blocks" of 95 minutes and a seventh period of 50 minutes. On one of these days teachers have a 95-minute planning period. On the other day,

teachers have a 50-minute planning period. Joint Exh. 1.

Grievants allege that failure to provide a 95-minute planning period on every "block" day violates W. Va. Code § 18A-4-14(2), as amended, which provides:

> (2) Every teacher who is regularly employed for a period of time more than one half the class periods of the regular school day shall be provided at least one planning period within each school instructional day to be used to complete necessary preparations for the instruction of pupils. Such planning period shall be the length of the usual class period in the school to which such teacher is assigned, and shall be not less than thirty minutes. No teacher shall be assigned any responsibilities during this period, and no county shallincrease the number of hours to be worked by a teacher as a result of such teacher being granted a planning period subsequent to the adoption of this section. (Emphasis added).

Grievants contend that "usual class period" refers to the usual class period on any given day, thus on the two days consisting of three 95-minute block periods and one 50-minute period, the 95-minute block would be the "usual" class period.

Respondent argues that the weekly schedule of classes provides for 23 total 50-minute class periods and 6 total 95-minute block periods, thus the 50-minute period is the "usual" class period in the school for purposes of establishing planning periods. Respondent also notes that the new schedule actually provides teachers with 290 minutes total planning time, while the old schedule gave them only 250 minutes total planning time.

Grievants ask that the Grievance Board interpret what is meant by "usual class period" in W. Va. Code § 18A-4-14(2) for purposes of determining the proper length of their planning periods. Code § 18A-4-14(2) and the subject of planning periods has been litigated extensively before this Board and in the courts. Indeed, Code § 18A-4-14(2) was recently amended in 1993 as a result of litigation regarding the meaning of "regular school day" versus "instructional day". Cf. Lincoln County Bd. of Educ. v. Adkins, 424 S.E.2d 775 (W. Va. 1992). The length of planning periods has also been litigated previously and the undersigned looks to that precedent for guidance in this matter.

In Gant v. Waggy, 377 S.E.2d 473 (W. Va. 1988), the appellants were elementary teachers at Franklin Elementary School in PendletonCounty, West Virginia. Teachers of upper grade classes received approximately 56 consecutive-minute planning periods. Teachers of lower grade classes taught shorter class periods and were entitled to receive at least 45 minute planning periods, but were required to split the planning period into different segments. The teachers grieved, arguing that

they were entitled to uninterrupted planning periods at least as long as their usual class periods. The hearing examiner at Level IV held that the average class period at the school was 43 minutes. The upper grade teachers were already receiving that planning period, and the lower grade teachers were entitled to receive the same. The hearing examiner ordered the Board of Education to make the necessary accommodations to provide the teachers with the necessary planning periods.

The Circuit Court of Pendleton County reversed the hearing examiner, holding that planning periods did not need to be consecutive as long as none of the periods were less than 30 minutes long as prescribed by the statute.

The West Virginia Supreme Court of Appeals disagreed and held that the plain meaning of the language, "such planning period shall be the length of the usual class period in the school to which the teacher is assigned", was inescapable. Each teacher must be provided with at least one uninterrupted planning period the length of the usual class period in the school. Gant, 377 S.E.2d at 475.

The Court went on to say that:

> it seems obvious there is some correlation between the amount of planning required and length of time a teacher will teach. The longer a teaching period, the more preparation required. In tying the length of theplanning period to the length of the teaching period, it appears that the Legislature considered that correlation and intended that teachers who taught for longer periods be provided with more planning time.

Gant, 377 S.E.2d at 475.

The Court also held that the upper grade teachers be given planning periods the length of their classes, and the lower grade teachers be given planning periods the length of their classes. Thus, the Court apparently rejected the hearing examiner's method of averaging the total amount of class time taught to determine the length of the planning period.

The holding and dicta of Gant support Grievants' argument that on the days they teach three 95-minute block periods, they are entitled to a 95-minute planning period. If indeed the Legislature considered that teachers who taught for longer periods needed more planning time, then it follows that teaching 95-minute class periods requires more planning time to prepare for those classes than teaching 50-minute class periods.

Finally, "usual" is defined as follows:

> such as is commonly or frequently encountered, experienced, observed, or used. Habitual or customary; particular. . . adjectives apply to what is frequent in occurrence and consequently considered regular or expected. Usual refers to what accords with normal or ordinary practice or procedure and is therefore common and familiar.

American Heritage Dictionary, 2d College Ed., at 1331 (1991).

Applying that definition to the 1994-95 Bell Schedule, what will be considered normal or regular will be seven 50-minute classes on three days of the week, and three 95-minute classes plus one 50-minute class the other two days of the week. So on at leasttwo days of the week, it will be "usual" for students and teachers to expect 95-minute block class periods and, consequently, 95-minute planning periods. Thus, Respondent has violated W. Va. Code § 18A-4-14(2) in limiting the teachers' 95-minute planning period to only one of the two days on which they teach three 95-minute class periods.

Conclusion of Law

1. The "usual class period" for determining the length of the planning period pursuant to W. Va. Code § 18A-4-14(2) is the class period that most frequently occurs on any given day of a weekly class schedule.

2. County school systems are required to provide teachers with planning periods which are equal in length to the time actually spent in the classroom teaching period. Gant v. Waggy, 377 S.E.2d 473 (W. Va. 1988).

Accordingly, this grievance is **GRANTED** and Respondent is hereby **ORDERED** to rearrange the 1994-95 Bell Schedule to reflect a 95-minute planning period on each of the days which contain a majority of 95-minute class periods.

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

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MARY JO ALLEN

Administrative Law Judge

Dated: October 28, 1994

Footnote: 1 *John Miller, Jr., Marchetta Bailey, Edithe Byers, Linda Davis, Robert Dickson, Jacqueline Switzer, David Webster, Arnold Moore, William Posey, Carolyn Harman, Sherry Lucas, Nancy Moore and Diana Sharp.*