**LARRY HARDMAN, et al.,**

**Grievants,**

**v. DOCKET NO. 95-20-249**

**KANAWHA COUNTY BOARD OF EDUCATION,**

**Respondent.**

**D E C I S I O N**

Grievants (See footnote 1) are properly certified vocational teachers employed on a regular, full-time basis by Kanawha County Board of Education ("Board") at Ben Franklin and Carver Career Centers. Grievants filed three separate grievances at level one on March 28, 1995, April 4, 1995, and May 9, 1995, which were consolidated at the level two grievance hearing on May 25, 1995. The parties agreed to submit the matter on the record, and the case became mature for decision on September 15, 1995, the date for filing proposed findings of fact and conclusions of law. Grievants allege they were not provided with a planning period for the 1994-95 school year during the instructional day as required by W. Va. Code§ 18A-4-14. Grievants seek compensation for the lack of a planning period for school year 1994-95, and, either a regularly scheduled planning period for the 1995-96 school year, or compensation in lieu of the planning period. (See footnote 2)

It is undisputed Grievants were not provided a planning period as required by statute in 1994-95. It is also undisputed that the lack of a scheduled planning period had never been raised by Grievants prior to the mid-point of the second semester of the 1994-95 school year. The Board raised timeliness as a defense at the level two hearing. Grievants now receive a 30-minute planning period for the 1995-96 school year.

Grievants' class periods consist of a morning instructional period of approximately 183 minutes and an afternoon instructional period of approximately 135 minutes. Students spend half the day at their home schools and the other half at the vocational centers, either in the morning or afternoon. The level two hearing examiner granted the relief requested in part, and ordered the Board to compensate Grievants for the difference between the existing "available time" the teachers had

during the day and 30 minutes, the minimum amount of time allowed for a planning period under Code § 18A-4-14. (See footnote 3) However, the hearing examiner limited payment to the period extending from fifteen instructional days prior to the filing of the grievances by the respective schools' grievants through the last instructional day, June 8, 1995, because Grievants had been "dilatory" in filing their grievances until the mid-point of the second semester of the 1994-95 school year. In addition, finding that granting Grievants a planning period equal to "the length of the usual class period in the school to which such teacher is assigned" would produce an absurd result in the instant case, the principals of the schools were directed to develop a schedule for the 1995-96 school year which provides for a 30-minute planning period within each instructional day to comply with the statute. Carver and Ben Franklin have both instituted 30-minute planning periods for the 1995-96 school year.

The issue appealed to level four is one of relief. Grievants wish to be compensated for the lack of a planning period for the entire 1994-95 school year, and further seek a planning period greater than the 30 minutes allotted to them for the 1995-96 school year, or compensation in lieu thereof.

W. Va. Code § 18A-4-14 provides, in pertinent part:

> (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. . . .
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> (3) Nothing in this section shall be construed to prevent any teacher from exchanging his lunch recess or a planning period . . . for any compensation or benefit mutually agreed upon by the employee and the county superintendent of schools or his agent: Provided, That a teacher and the superintendent or his agent may not agree to terms which are different from those available to any other teacher granted rights under this section within the individual school or to terms which in any way discriminate among such teachers within the individual school, . . . .

First, the undersigned agrees with the level two hearing examiner that Grievants were "dilatory" in waiting to file their grievances until the mid-point of the second semester of the 1994-95 school year. It certainly was clear to Grievants at the very beginning of that school year that they were not provided a planning period as required by the above statute. There is no evidence that any action

was taken on the part of Grievants prior to the filing of their grievances to resolve this situation with the Board. Thus, any relief which is to be granted for the 1994-95 school year is limited to fifteen instructional days prior to the filing of the grievances by the respective schools' grievants through the last instructional day, June 8, 1995. See Allman v. Harrison County Bd. of Educ., Docket No. 89-17-215 (June 29, 1990).

The next issue is whether Grievants are entitled to compensation in lieu of a planning period for the 1995-96 schoolyear. As noted above, Grievants were provided with a 30-minute planning period for the 1995-96 school year, which they claim is insufficient under the statute. Grievants want either an extended planning period or compensation in lieu thereof. The statute clearly provides that an employee may exchange his planning period for compensation mutually agreed upon by the employee and the county superintendent of schools or his agent. In the instant case, the superintendent, or his designated agents, the principals of the two schools, have made it clear through testimony that compensation in lieu of a planning period is unacceptable. Because the statute only provides for compensation in lieu of a planning period upon mutual agreement of the parties, the undersigned cannot order the Board to provide Grievants compensation when a planning period is readily available. Obviously, there is nothing to prohibit the parties from agreeing among themselves to provide compensation in lieu of the planning period in the future.

Finally, the appropriate length of the planning period must be determined. The Board has been ordered to provide Grievants with the minimum requirement of a 30-minute planning period for the 1995-96 school year, and compensation for the difference between the Grievants' available time during the instructional day and 30-minutes for the 1994-95 school year.

As noted above, Grievants' instructional days consist of basically two class periods, one in the morning and one in the afternoon. The statute provides the planning period "shall be the length of the usual class period in the school to which suchteacher is assigned, and shall be not less than thirty minutes." The undersigned agrees with the level two hearing examiner that to grant Grievants a planning period the length of one of their two class periods would produce an absurd, if not impossible, result in this instance. It is doubtful the Legislature intended what Grievants seek. The statute provides for one planning period a day for several classes in the usual situation. It does not provide for a 1-to-1 ratio the Grievants seek here. Further, as discussed below, Grievants have made no showing of need for either a 183 or a 135 minute planning period.

Grievants contend their schedules are similar to the 90-minute block schedules found in some upper grade schools in Kanawha County, and thus, they should benefit from those block schedules. The WVFT Grievants request a 90-minute planning period. The WVEA Grievants apparently seek a compromise and request compensation for a 75-minute planning period for the 1994-95 school year and a 60 minute planning period for the 1995-96 school year. Interestingly, the WVEA Grievants have not shown why they should be granted a 75-minute planning period for the 1994-95 school year, but only a 60-minute planning period for the 1995-96 school year. Grievants do not contend their instructional day or class periods are shorter for the 1995-96 school year.

Unfortunately, there is no testimony on record from Grievants explaining their instructional periods or the time they feel is necessary to prepare for their class periods. Presumably becauseGrievants' representatives believed this was simply a question of law, no testimony was elicited from the Grievants on these matters.

Thus, because of the difficulty in determining what would be an appropriate planning period for Grievants, the undersigned will look to the Grievants' requested relief for guidance. The WVFT Grievants have asked for a 90-minute planning period, because they teach high school students and 90-minute block scheduling is becoming the norm in Kanawha County high schools. The WVEA Grievants have asked for a 60-minute planning period.

It is noted these classes are vocational in nature, dealing with hands-on training and instruction of the same students every day. There is some evidence the instructors must set up for the class periods, check the machinery or other equipment which will be used, and do other preparatory work for the classes. However, unlike those high school teachers with 90-minute block periods, Grievants only have to prepare for a total of 2 classes per day. Other high school teachers are teaching anywhere from 4 to 7 different classes per day. See Miller v. Kanawha County Bd. of Educ., Docket No. 94-20-409 (Oct. 28, 1994). Thus, it appears a 90-minute planning period is not justified in this instance. Further, as both set of Grievants hav easked for compensation in lieu of a planning period, it does not follow that the planning period itself is viewed as an absolute necessity. Therefore, the undersigned agrees with the level two evaluator that a 30-minute planning period per day is sufficient to allow Grievants to plan for their classes.

## Conclusions of Law

1. The Board admitted a violation of Code § 18A-4-14(2) with respect to Grievants' planning period; therefore, Grievants are entitled to redress.

2. It is impracticable to award Grievants a planning period the length of the "usual" class period for the school, because Grievants' instruct two lengthy class periods per day. Grievants are entitled to a 30-minute planning period per day, which is sufficient time to plan and set up for the two class periods.

3. The appropriate remedy for a violation of Code § 18A-4-14 is money damages. See Smith v. Lincoln County Bd. of Educ., Docket No. 89-22-544 (Nov. 14, 1989).

4. Grievants failed to timely initiate the grievance process until the mid-point of the second semester of the 1994-95 school year, when it was clear from the first day of the school year they were not being provided with planning periods. See Dennis v. Wetzel County Bd. of Educ., Docket No. 95-52-166 (June 27, 1995); Allman v. Harrison County Bd. of Educ., Docket No. 89-17-215 (June 29, 1990).

5. Grievants are entitled to compensation for the 1994-95 school year lack of planning periods in an amount equivalent to a 30-minute planning period per day from the period extending from fifteen instructional days prior to the filing of the grievances by the respective schools' grievants through the last instructional day, June 8, 1995. See Allman v. Harrison County Bd. of Educ., Docket No. 89-17-215 (June 29, 1990). Compensation shall becalculated by dividing the teacher's daily rate of pay by eight hours.

5. Grievants are entitled to a 30-minute planning period for the 1995-96 school year.

Accordingly, this grievance is **GRANTED**, in part, and **DENIED** in part. The Board is hereby **ORDERED** to compensate Grievants in a manner consistent with this Decision, and to institute a 30-minute planning period for the remainder of the 1995-96 school year.

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 SWARTZ**

**Administrative Law Judge**

**Dated: October 19, 1995**

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Footnote: 1 *Larry Hardman, Bob Hardy, Mary Beth Abbot, Chris Hudson, Debbie Sampson, Dale Grimmett, David Longsworth, Paul Miller, Leroy Mosely, Harry Radcliffe, Roy Russell, Larry Taylor, Jesse Mullins, Bobby Athill, Bill O'Dell, Thomas L. Montgomery, John Taylor, Charlie Claypool, Dorris Walls, Leon Ashworth, and O.W. Price (sic).*

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Footnote: 2 *Grievants are represented as two separate groups by the West Virginia Education Association ("WVEA") and the West Virginia Federation of Teachers ("WVFT"). The group represented by WVEA requests as relief in their proposed findings of fact and conclusions of law compensation for 75 minutes of planning time for school year 1994-95 and 60 minutes of planning time for the 1995-96 school year. The group represented by WVFT requests as relief in their proposed findings of fact and conclusions of law an additional 90 minutes of pay daily to compensate for loss of their planning time.*

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Footnote: 3 *"Available time" is the time the teachers have between the departure of the last morning bus and the arrival of the first afternoon bus. For instance, teachers at Carver have fifty minutes between the departure of the last morning bus and arrival of the first afternoon bus. Thirty minutes of this time are used for a duty free lunch period, leaving twenty minutes available for planning. Thus, the Carver teachers would be compensated for the ten minutes per instructional day needed to make up the required thirty minute period.*