THE WEST VIRGINIA PUBLIC EMPLOYEES

GRIEVANCE BOARD

QUINTON CRAWFORD, et al.,

Grievants,

v.

Docket No. 07-31-338

MONROE COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievants, employed by the Monroe County Board of Education ("MCBOE") as classroom teachers, filed a level one grievance on February 26, 2007, in which they allege a violation of W. Va. Code § 18A-4-5b by failing to provide "[S]alary supplement for teaching college level classes." For relief, Grievants request "[E]quivalent pay to the high school teachers teaching college level classes, back pay and benefits." After the grievance was denied at levels one and two, the MCBOE waived level three consideration, and Grievants filed a level four appeal on June 26, 2007. A level four hearing was held at the Grievance Board's Hearing Room in Beckley, West Virginia, on January 11, 2008. Grievants were represented by Ben Barkey, West Virginia Education Association. Respondent was represented by Gregory W. Bailey, Esquire. The matter became mature for decision upon receipt of the parties' fact/law proposals on March 3, 2008.

Synopsis

___The only issue presented to the undersigned is whether Grievants should receive the salary supplement given to teachers that provide Advanced Placement ("AP") courses. Grievants argue that they perform the same activities in providing dual credit courses tostudents as do teachers who

provide AP courses. Teachers who undertake to provide AP courses are paid a supplemental salary. Grievants are not paid a supplemental salary for providing dual credit courses and assert this results in a violation of W. Va. Code § 18A-4- 5b.

MCBOE asserts that aside from the fact that students may ultimately obtain college credit for taking either a dual credit or an AP course, the instruction of these courses is dissimilar. The differences are reflected in the manner in which the West Virginia Board of Education addresses AP courses as compared to dual credit courses. Although Grievants perform some duties similar to those teachers that provide AP courses, their evidence regarding planning time lacked meaningful comparison to AP course preparation time. In addition, students who enrolled in dual credit courses offered by Grievants received the same course of instruction regardless of whether any students took the additional steps to receive college credit. Grievants failed to show that MCBOE engaged in a statutory violation, or that they were otherwise entitled to the salary supplement paid to teachers of AP courses.

The following Findings of Fact are made based upon a preponderance of the evidence presented at levels two and four.

Findings of Fact

1. During the Spring of 2006, Monroe County Schools submitted a grant application to the College Board for funds to increase the number of AP courses at James Madison High School. This honorable, albeit unsuccessful application for the grant, led to a networking effort between teachers and staff resulting in the recommendation thatMonroe County allocate funds to promote enrollment in AP classes. (See footnote 1)

2. In August of 2006, two additional AP courses were offered, making the total of courses offered three: AP Literature, AP U.S. History, and AP Calculus. Teachers undertaking instruction of these courses attended summer training sessions, and prepared a syllabus along the guidelines of the requirements of the curricular areas.

3. The syllabus was developed with guidance from the College Board outlined curricula. The curriculum for each class was developed nationally by a committee “composed of an equal number of college and university academic faculty and experienced AP high school teachers for each subject field . . . The committee members are representatives of the wide range of secondary and post-

secondary institutions from all regions of the country, and a diversity of knowledge and perspectives in their fields . . . ” Level Two Administration's Exhibit Three, at page 10.

4. On October 3, 2006, the MCBOE approved weighted grades for those students taking AP classes, and who took the advanced placement exam for credit. The decision to give the grades in AP classes more weight prior to the start of school was meant to solicit enrollment, and was to encourage academically motivated students to take the more rigorous core classes.

5. The MCBOE considered buying the planning period of the three AP teachersin an effort to give them time to more adequately prepare for teaching the class, and to allow for both the preparation required to teach an AP class, and the fact that these teachers would be taking on this duty on top of teaching and grading for five other classes.

6. On December 5, 2006, the MCBOE voted to approve paying AP teachers an additional one-seventh of their daily rate to compensate them for the time required to prepare. In addition, this compensated them for the additional responsibilities of providing the rigorous course work in the academic classes.

7. In contrast to the above history, the development of dual credit courses in the Monroe County school system is the product of loose arrangements between Grievants and New River Community and Technical College and, to a limited extent, Bluefield State College. The MCBOE did not have any involvement in approving dual credit courses, or any other matters relating to the administration of such courses.

8. Students who enrolled in dual credit classes offered by Grievants received the same course of instruction regardless of whether any of the students took the additional steps required to receive college credit. Students who enroll in AP classes receive a more rigorous level of instruction.

9. Grievants' time and effort for preparation when offering dual credit classes required only slight, if any, changes in the class material for students to be eligible for college credit through New River Community College. The approval of classes for college credit by New River Community College only required the submission of a syllabus by Grievants. It is unclear what standards were used by the Community College in rendering acceptance for college credit. 10. Preparation associated with AP classes placed significant time and effort demands on teachers providing those classes. Students who complete AP courses are eligible to take an AP exam for the purpose of attaining credit, college placement or both. Placement opportunities include exemption form

introductory-level college course requirements. More than three thousand colleges and universities accept qualifying AP exam scores for those purposes.

Discussion

In non-disciplinary matters, Grievants bear the burden of proving their allegations by a preponderance of the evidence. W. Va. Code § 18-29-6. (See footnote 2) "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievants argue that they are entitled to the same salary supplement as teachers of AP classes, and rely on W. Va. Code § 18A-4-5b, which provides in part:

> The county board of education may establish salary schedules which shall be in excess of the state minimums fixed by this article.
>
> These county schedules shall be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings,operation of equipment or other requirements. Further, uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county.

The MCBOE counters by making reference to W. Va. Code § 18A-4-5a, which provides that counties:

> [m]ay 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 also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county . . .

County boards of education are required to provide uniform benefits and compensation only to similarly situated employees, meaning those who have “like classifications, ranks, assignments, duties and actual working days.” *Bd. of Educ. v. Airhart*, 212 W. Va. 175, 569 S.E.2d 422 (2002); *Covert v. Putnam County Bd. of Educ.*, Docket No. 99-40-463 (Feb. 29, 2000); *Stanley v. Hancock County Bd. of Educ.*, Docket No. 95-15-217 (Sept. 29, 1995). Grievants seeking to enforce the uniformity provisions must establish that their duties and assignments are like those of the employees whom they are attempting to compare themselves. *Locket v. Fayette County Bd. of*

Educ., Docket No. 01-10-477 (Dec. 28, 2001); *Adkins v. Lincoln County Bd. of Educ.*, Docket No. 97-22-165 (Sept. 24, 1997).

Grievants correctly point out that assignments and duties need not be identical to be similar. However, Grievants have the burden of proving this similarity, and presented insufficient evidence of their duties compared to the duties of teachers providing AP classes. The evidence offered by Grievants that would allow a comparison of actualteacher time, effort, and preparation was meager. One Grievant did not even teach any dual credit courses. Other Grievants were unable to describe in detail activities requiring more time and effort than any other classes they are teaching. One Grievant, a health occupations science technology teacher, indicated that she is required to make only slight changes in her classes for students to be eligible for college credit through New River Community College. However, she was unable to provide any explanation of the reasons or amount of extra planning time that is involved. As with other Grievants, she provides essentially the same course of instruction to all of her students, regardless of whether they seek college credit at the local Community College.

The approval of classes for college credit by the New River Community College is not associated with any requirements that establish the presence of substantially greater teacher preparation time. The approval of classes for college credit by New River Community College merely requires the submission of a syllabus. It is unclear from the record what standards were used by the Community College in rendering acceptance for college credit. In contrast, all students who enroll in AP classes receive a more rigorous level of instruction. Consequently, the planning and preparation associated with AP classes placed significant demands upon those teachers. For example, in the AP English course, students are required to perform a significant amount of supplemental reading, choosing among several literary options. A teacher of this class is required to be well versed in such supplemental reading materials in order to provide quality instruction to the students. Grievants have not demonstrated that they perform duties and assignments substantially similar to the duties and assignments associated with AP class instruction. On the surface it may appear that a similarity does exist between students who successfully take an AP exam and are eligible for college credit; and the student that may obtain college credit through the election to take a high school course eligible for that credit through a Community College. These likenesses are, however, broadly drawn. This similarity is not the type that demonstrates the performance of substantially similar duties and

responsibilities. Grievants' evidence does not address the significant, inherent difference in the AP course planning and preparation compared to those which they teach. The salary supplements AP course teachers are paid is related to their actual job assignments and duties as compared to Grievants. As discussed above, they are not similarly situated.

County boards of education are afforded considerable latitude in the implementation of curricular programming. In *Cowen v. Harrison County Board of Education*, 195 W. Va. 377, 465 S.E.2d 648 (1995), the West Virginia Supreme Court of Appeals held:

> County boards of education have substantial discretion in matters relating to hiring, assignment, transfer, and promotion of school personnel, as well as matters involving curricular programs and qualification and placement of personnel implementing those programs. However, that discretion must be tempered in a manner that is reasonably exercised, in the best interest of the schools, and in a manner which is not arbitrary and capricious.

Grievants made no showing that the MCBOE policy decisions relating to AP courses curricular programming are arbitrary and capricious. The evidence does not establish that any of Grievants hold the qualifications to teach AP courses. Therefore, Grievants havefailed to establish a violation of W. Va. Code § 18A-4-5b, or that they were otherwise entitled to the same salary supplement as the AP course teachers.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. In non-disciplinary matters, Grievants bear the burden of proving their allegations by a preponderance of the evidence. W. Va. Code § 18-29-6. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. County boards of education are required only to provide uniform benefits and compensation to similarly situated employees, meaning those who have “like classifications, ranks, assignments, duties and actual working days.” *Bd. of Educ. v. Airhart*, 212 W.Va. 175, 569 S.E.2d 422 (2002); *Covert v. Putnam County Bd. of Educ.*, Docket No. 99-40-463 (Feb. 29, 2000); *Stanley v. Hancock County Bd. of Educ.*, Docket No. 95-15-217 (Sept. 29, 1995).

3. Grievants seeking to enforce the uniformity provisions must establish that their duties and

assignments are like those of the employees whom they are attempting to compare themselves. *Locket v. Fayette County Bd. of Educ.*, Docket No. 01-10-477 (Dec. 28, 2001); *Adkins v. Lincoln County Bd. of Educ.*, Docket No. 97-22-165 (Sept. 24, 1997).

4. County boards of education have substantial discretion in matters relating to hiring, assignment, transfer, and promotion of school personnel, as well as mattersinvolving curricular programs and qualification and placement of personnel implementing those programs. However, that discretion must be tempered in a manner that is reasonably exercised, in the best interest of the schools, and in a manner which is not arbitrary and capricious. *Cowen v. Harrison County Board of Education*, 195 W. Va. 377, 465 S.E.2d 648 (1995).

5. Grievants have failed to establish a violation of W. Va. Code § 18A-4-5b, or that they were otherwise entitled to the same salary supplement as the AP course teachers.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the "circuit court of the county in which the grievance occurred." Any such appeal must be filed within thirty (30) days of receipt of this decision. *See* W. Va. Code § 18-29-7 (repealed, *See Footnote 2, supra)*. Neither the West Public 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: May 16, 2008

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Ronald L. Reece

Administrative Law Judge

Footnote: 1

The College Board is a "not-for-profit membership association whose mission is to connect students to college success and opportunity. Founded in 1900, the association is composed of more than 4,500 schools, colleges, universities, and other educational organizations. Each year, the College Board serves over three million students and their parents, 23,000 high schools, and 3,500 colleges through major programs and services in college admissions,

guidance, assessment, financial aid, enrollment, and teaching and learning. Among its best-known programs are SAT, the PSAT/NMSQT, and the Advanced Placement Program (AP)." Level Two Administration's Exhibit Three, at page one.

Footnote: 2

In 2007, the Legislature, 2007 Acts ch. 207, abolished the West Virginia Education and State Employees Grievance Board, replacing it with the Public Employees Grievance Board. W. Va. Code §§ 18-29-1 to 18-29-11 and W. Va. Code §§ 29-6A-1 to 29-6A-12 were repealed and replaced by W. Va. Code §§ 6C-2-1 to 6C-2-7 and W. Va. Code §§ 6C- 3-1 to 6C-3-6 (2007). Grievances which were pending prior to July 1, 2007, are decided under the former statutes, W. Va. Code §§ 18-29-1 to 18-29-11, for education employees, and W. Va. Code §§ 29-6A-1 to 29-6A-12, for other state and higher education employees. See Executive Order No. 2-07, May 8, 2007. References in this decision are to the former statutes, which continue to control the proceedings in this case.