

Final



Members
James Paul Geary
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone 348-3361

CARMEN BALL, KAREN HUGHES, KATHERINE
NELSON, ARLENE SMITH, REBECCA JUSTUS,
LAURA BALL, CYNTHIA HARLESS, and
PATRICIA MORGAN

v:

DOCKET NO: 27-86-033

MERCER COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a level three hearing of the Mercer County Board of Education. A level four hearing was held before John M. Richardson, Hearing Examiner, wherein William Flanigan, Attorney-at-Law, appeared on behalf of the grievants and Kathryn R. Bayless, Attorney-at-Law, appeared on behalf of the respondent. In addition to the matters presented at the hearing, the parties filed in November, 1986, proposed findings of fact and conclusions of law which were considered in arriving at this decision.

The grievants are regular full-time or regular part-time Speech Pathologists who complain that the respondent, Mercer County Board of Education, entered into special contracts with Speech Pathologists in order to provide required services to students that

otherwise would not have received services due to the shortage of regular full-time and regular part-time Speech Pathologists. The "special contract" Speech Pathologists were paid at a rate considerably greater than the grievants. The grievants believe this to be in violation of WV Code §18A-4-5a, which provides for the uniformity of salary for persons performing like assignments and duties.

The respondent contends that due to an undisputed lack of regularly employed Speech Pathologists, it was necessary to contract for those required services. Further, it was necessary to pay a greater rate for the contracted services in order to encourage the full-time and part-time Speech Pathologists to increase their case load by working on additional cases after their regular hours.

It is noted that three of the four "special contract" Speech Pathologists were regularly employed on a part-time basis by the respondent. These Speech Pathologists expanded their case loads and worked after their regular part-time hours, even though they performed their special contract functions during regular school hours.¹

Another factor in this grievance is that the regular contract responsibilities in providing Speech Pathologist services were greater than those provided under the special contract even though the rate of pay for the regular services was less.²

¹For example, a regular part-time Speech Pathologist worked two and a half days per week under the regular contract and two and a half days per week at the higher, special rate. The only full-time Speech Pathologists who undertook to provide services under the special contract had to perform her duties after regular school hours.

²Speech Pathologists regularly employed by the respondent were
(footnote cont.)

Because of the alleged inequities, the grievants offered alternative plans and even suggested that the full-time Speech Pathologists be placed on a part-time status so that they could take advantage of the higher rate of pay during regular hours.³ These alternative plans or suggestions were either refused or not implemented.

Neither of the parties disputed the authority of the respondent to contract for the required services and agree that this matter revolves around the interpretation and application of WV Code §18A-4-5a, which, in pertinent part, provides:

County boards of education in fixing the salaries of teachers shall use at least the state minimum salaries established under the provisions of this article. The board may establish salary schedules which shall be in excess of the state minimums fixed by the article, such county schedules to be uniform throughout the county as to the above stipulated training classifications, experience, responsibility and other requirements, except that no county schedule may exceed one hundred two and one-half percent of a schedule which incorporate the state minimum salary for teachers in effect on the first day of July, one thousand nine hundred eighty-four, so as to assist the state in meeting its objective of salary equity among the counties: Provided, That all teachers in the state shall be entitled to any increases in the minimum salary schedules established under the provisions of this article, and when a county schedule changes due to said increase in the state minimum salary taking effect after the first day of July, one thousand nine

(footnote cont.)

required to provide more services such as screening and testing in addition to therapy. The Speech Pathologist performing under the special contracts had only to provide therapy.

³It is undisputed that regular full-time Speech Pathologists could have availed themselves of the higher pay for performing their services under the special contract after their regular hours. However, for the respondent to have permitted them to become part-time employees, would have meant reducing their regular hours case load creating a greater need for services at greater expense.

hundred eighty-four, it shall not be deemed to exceed the maximum salary schedule prescribed herein.

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 they may provide additional compensation for any teacher assigned duties in addition to his 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: Provided, That in establishing such local salary schedules, no county shall reduce local funds allocated for salaries in effect on the first day of January, one thousand nine hundred and eighty-four, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction.

It is noted that neither party referred to these special contracts as extracurricular assignments; however, the characteristics are remarkably similar. It is unquestioned that these "special contracts" were a result of mutual agreement between the Superintendent and employee and approval by the respondent board.⁴ As a result of these special contracts, therapy was provided for those students determined to be in need. Further, the contracting parties agreed on the number of hours that therapy would be provided and that the services would be performed at times other than the

⁴While there was mention of private Speech Pathologists being solicited, none of the complaints of the grievants were addressed to them but were addressed to those Speech Pathologists who were already regular part-time or full-time employees.

regularly schedule working hours already being covered by their regular employment contracts. These special contracts were in writing and were separate from the employees regular contracts. As aforesaid, these characteristics are similar to those covered by WV Code §18A-4-16 which provides:

- (1) The assignment of teachers and service personnel to extracurricular assignments shall be made only by mutual agreement of the employees and the superintendent, or designated representative, subject to board approval. Extracurricular duties shall mean, but not limited to, any activities that occur at times other than regularly scheduled working hours, which include the instructing, coaching, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly scheduled basis.
- (2) The employee and the superintendent, or a designated representative, subject to board approval, shall mutually agree upon the maximum number of hours of extracurricular assignment in each school year for each extracurricular assignment.
- (3) The terms and conditions of the agreement between the employee and the board of education shall be in writing and signed by both parties.
- (4) An employee's contract of employment shall be separate from the extracurricular assignment agreement provided for in this section and shall not be conditioned upon the employee's acceptance or continuance of any extracurricular assignment proposed by the superintendent, a designated representative, or the board.

In addition to the foregoing, the following findings of fact and conclusions of law are incorporated herein.

FINDINGS OF FACT

1. Carmen Ball, Karen Huges, Katherine Nelson, Arlene Smith, Rebecca Justus, Laura Ball, Cynthia Harless, and Patricia Morgan are all Speech Pathologists employed by the respondent, the Mercer County Board of Education.

2. All of the Speech Pathologists employed by the respondent were offered the opportunity to enter into extracurricular contracts.

3. Those Speech Pathologists who chose to enter into the extracurricular contracts were paid uniformly.

4. All of the extracurricular services were performed at times other than regularly scheduled working hours of the employee performing the services.

5. All of the Speech Pathologists who entered into the extracurricular contracts were regular part-time or full-time employees of the respondent.

6. The respondent by approving and entering into these extracurricular contracts, obtained required services for the identified students in Mercer County.

CONCLUSIONS OF LAW

1. Pursuant to WV Code §18A-4-16, the respondent was authorized to enter into contracts containing terms that were mutually agreeable.

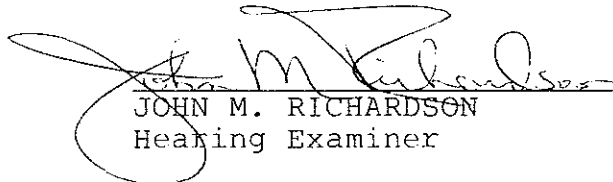
2. The grievants suffered no grievable loss as a result of the respondent entering into the extracurricular contracts.

3. Pursuant to WV Code §18-5-15, the uniformity provisions contained therein apply to extracurricular contracts entered into under the provisions of WV Code §18A-4-16.

4. The respondent did not violate the provisions of WV Code §18-5-15 or WV Code §18A-4-16.

For all of the foregoing reasons, the grievance is denied.

Either party may appeal this decision to the Circuit Court of Mercer County or Kanawha County and such appeal must be filed within thirty days (30) of receipt of this decision. (WV Code §18-29-7) Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.


JOHN M. RICHARDSON
Hearing Examiner

DATED: Dec. 11, 1986