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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

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JEANNE FISHER

v.

DOCKET NO. 27-86-112

MERCER COUNTY BOARD OF EDUCATION

**DECISION**

Grievant, Jeanne Fisher, is employed by the Mercer County Board of Education as a teacher and has also been head coach of the female basketball program at Princeton Junior High School for over six years. On December 13, 1984 the Mercer County Board of Education approved extra duty assignments for Ben Disibbio and Waled Modad for the position as coach aide for basketball at Bluefield Junior High School and Princeton Junior High School; the salary for this extra duty assignment was to be \$450.00 for the school term.

On November 25, 1985 grievant filed a grievance alleging a violation of Mercer County Policies and Code, 18A-4-5a and Code, 18A-4-8b and a hearing was conducted on December 16,

1985.<sup>1</sup> At this hearing grievant stated that according to the Mercer County Board of Education Coaches Pay Policy the head coach at the junior high school level should be paid 5 percent of the coach's beginning salary for a person with an AB degree, plus .5% for each year of experience. Following that formula grievant received \$114.04 gross pay per month and a total of \$342.12 for three months. Accordingly, as a junior high school head coach in the basketball program and six years experience she recieved less pay than the coach aide. She concluded that the grievance could be resolved by paying her \$107.33 plus interest.<sup>2</sup>

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<sup>1</sup> According to grievant no testimony was adduced at this hearing because at the conclusion of the opening statement of the WVEA representative, the hearing officer, Mr. Jack Martin, assistant superintendent, agreed that the board had, in fact, erred and proposed a settlement; that grievant agreed to wait until January 15, 1986 for a decision.

<sup>2</sup> She was also attempting to show that the board had adopted a coaches pay scale which did not provide for a coach aide position and that these positions had not been posted as required by law. She stated that the Coaching Pay Policy provided for one head coach for boys junior high basketball and one head coach for girls junior high basketball to be paid along with one assistant boys basketball and one assistant girls junior high basketball coach; that nowhere in the policy was the term "coach aide" mentioned.

Mr. Martin, the hearing officer at level two, agreed that the board of education had violated the pay policy but added that Waled Modad had not been paid because the error had been corrected; that Ben Disibbio had been paid \$450.00 but agreed to repay it to the board of education. He suggested that Mr. Disibbio could repay the \$450.00 or that the board could pay grievant \$107.33 plus interest. Grievant preferred to be paid the money and it was agreed that Mr. Martin would have a decision by January 15, 1986 thereon.<sup>3</sup>

Thereafter, an unsigned decision was issued finding that:

1. The positions involved had been advertised by code-a-phone and administrative memo dated November 28, 1984.
2. Code, 18A-4-8b had not been violated because the positions had been posted for five working days.
3. The evidence demonstrated that Mercer County Board of Education Policy GCBA, Salary Schedules, and Code, 18A-4-5A had been violated by the excessive salary increment for the position of "coach aide".

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<sup>3</sup> Mr. Martin advised grievant that it would probably be much easier on the Mercer County Board of Education if Mr. Disibbio repaid the money because there were approximately thirty other coaches that could file the same grievance.

The grievance evaluator concluded that to pay grievant \$107.33 would bring her supplement in line with the amount paid to the coach aide but would make her compensation for coaching in 1984-85 excessive in comparison to the other coaches in the county. Therefore, Mr. Disibbio was required to repay the difference to the Mercer County Board of Education.

Grievant filed an appeal to level four of the grievance procedure and on April 28, 1986 the parties submitted the grievance to the hearing examiner for decision.<sup>4</sup>

In addition to the foregoing factual recitation the following specific findings of fact are appropriate.

#### FINDINGS OF FACT

1. Grievant is employed by the Mercer County Board of Education as a teacher/coach at Princeton Junior High School.

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<sup>4</sup> The parties were advised that it was not possible to render a decision on the basis of the record submitted in that there was no evidence on the issue of "posting" and that the findings of fact and conclusions of law were incomplete; that the grievance could either be set for a level four evidentiary hearing or await receipt of a more complete record. On June 17, 1986 Superintendent Baker forwarded additional evidence upon which this decision is based. He also advised that Mr. Martin was the hearing officer but that Dr. Deborah Akers, the personnel director, had written the decision.

2. On November 28, 1984 via Administrative Memo No. 38, two coach aide positions were posted for Princeton Junior High School and Bluefield Junior High School; there were only two applicants for the positions.
3. On December 13, 1984 the Mercer County Board of Education approved extra duty assignments to Ben Disibbio and Waled Modad for the positions of coach aide for basketball at Bluefield Junior High School and Princeton Junior High School at a salary of \$450.00 per school term. However, only Mr. Disibbio actually received payment of the salary as the error was corrected in the case of Mr. Modad.
4. Mercer County Board of Education Policy on computation of supplemental pay for junior high school coaches provides for 5 percent of the beginning county salary for a person with an AB degree and an increase of .5 percent for each year of experience; there is no provision for the position of "coach aide" but there is a position of "assistant coach" for junior high school.
5. On December 16, 1985 a level two grievance hearing was conducted and the hearing officer, Mr. Martin, offered a compromise to grievant, i.e., to pay the grievant \$107.33 plus interest or require Mr. Disibbio to repay the salary to the county board of education. Grievant elected to take the money but the hearing officer advised grievant he would give grievant his decision in a week.

6. The ultimate level two decision was made by Dr. Deborah Akers, the personnel director, and was that Mr. Disibbio would be required to repay the excessive salary; that payment to grievant of \$107.33 would render her compensation for coaching in 1984-85 excessive in relation to other salaries for coaches in the county.

#### CONCLUSIONS OF LAW

1. A county school board is required to abide by the policies it properly establishes to conduct school affairs.
2. The purpose of Code, 18-29, et. seq., the grievance procedure, is to resolve problems at the lowest possible administrative level. Where a school board has acknowledged its error and rendered a decision in favor of the grievant it is incumbent upon the grievant to demonstrate whereupon the decision is incorrect or inequitable.
3. On the basis of the record presented, the grievant has failed to demonstrate that the decision of the grievance evaluator was incorrect or that the grievant would not have been unjustly enriched by the award of \$107.33, plus interest.
4. The purpose of Code, 18-29, et. seq., is not to punish a county board of education when a good faith error has occurred but to provide a fair and equitable remedy to the grievant whereby the grievant is made whole.

For the foregoing reasons the level four grievance is denied.

Either party may appeal this decision to the Circuit Court of Kanawha County or Mercer County and such appeal must be filed within thirty days of receipt of this decision. (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.



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LEO CATSONIS  
Hearing Examiner

Date 7-25-86