



Final

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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

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NANCY GANT, PAULA WAGGY, RITA WILSON,  
GAILAND HARTMAN, CARL GANT, SHEILA RUDDLE,  
JOHN DORSEY, CALVIN THOMPSON, and  
WENDELL WARNER

v.

DOCKET NO: 36-86-073

PENDLETON COUNTY BOARD OF EDUCATION

and

SUE HARPER, NANCY M. SITES, ELIZABETH  
KIMBLE, PATRICIA HAMMER, CAROL A.  
CONRAD, SANDRA E. VANDEVANDER, PATRICIA  
SITES, and JO LYNN MITCHELL

v.

DOCKET NO: 36-86-074

PENDLETON COUNTY BOARD OF EDUCATION

DECISION

These grievances came before the West Virginia Education Employees Grievance Board on appeal from a level three action by the Pendleton County Board of Education whereby that Board reviewed and affirmed the decision of John F. Bowers, the Superintendent of Pendleton County Schools. Upon the request of the parties, the level four evidentiary hearing was waived and in lieu thereof, the parties presented, on September 25, 1986, oral arguments together

with additional exhibits to be considered with the accumulated record.

The grievants, Nancy Gant, et al., in grievance/docket number 36-86-073, are teachers in grades 5 through 8 who are employed by the Pendleton County Board of Education and assigned to Franklin Elementary School. They are herein referred to as the "upper grade" teachers.

The grievants, Sue Harper, et al., in grievance/docket number 36-86-074, are teachers in grade 1 through 4 and are also employed by the Pendleton County Board of Education and assigned to Franklin Elementary School. They are hereinafter referred to as the "lower grade" teachers.

The lower grade and upper grade teachers agreed to having the hearing of their respective grievances combined at level two by John F. Bowers, Superintendent of Pendleton County Schools. In their Petition of Appeal, the upper grade teachers requested that this Hearing Examiner determine the following:

1. Each upper grade teacher at Franklin Elementary School is entitled to a daily duty-free planning period of at least 56 consecutive minutes each day.
2. Petitioner Wendell Warner may not be scheduled for daily bus duty in lieu of a homeroom assignment.
3. All extra duties, bus, hall, lunch, playground, etc., must be distributed on an equitable basis and within the eight (8) hour working day.
4. Principal Waggy and Superintendent Bowers are guilty of reprisal action against Petitioners by permitting a schedule change after the grievance to change 3:05 until 3:25 to supervision of students.
5. The Pendleton County Board of Education is required to compensate Petitioners for 90 hours or mutually agreeable compensation based

on their normal rate of pay for the 30 minutes of planning time that they were denied each of the 180 instructional days during the 1985-86 school term.

6. Teachers at Franklin Elementary School cannot be compelled to attend meetings after the eight (8) hour work day expires.
7. Any other relief or compensation deemed acceptable.<sup>1</sup>

The lower grade teachers in their Petition of Appeal requested that this Hearing Examiner determine the following:

1. Each teacher at Franklin Elementary School is entitled to a daily duty-free planning period of at least 45 consecutive minutes.
2. Each teacher at Franklin Elementary School is entitled to a duty-free lunch recess of not than less 30 consecutive minutes daily.
3. The fifteen (15) minutes prior to the beginning of the instructional day and thirty (30) minutes after the end of the instructional day are not considered planning because duties are assigned.
4. The Pendleton County Board of Education be required to compensate Petitioners for 75 hours salary based on their normal rate of pay for the 25 minutes they were denied each of the 180 school days of adequate planning time or provide other mutually agreeable compensation.
5. Any other relief or compensation deemed acceptable.<sup>2</sup>

Franklin Elementary School is a school attended by students in grades one through eight. The instructional requirements of the students dictate that teachers in grade one through four have class periods of different length from those in grade five through eight. This practice has been followed over a number of years, but has now created an impasse between the teachers and Principal Waggy regarding

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<sup>1</sup>This request was contained in the upper grade teachers Petitions of Appeal and more particularly in their Prayer of Relief.

<sup>2</sup>The lower grade teachers were also contained in their Petition of Appeal. See footnote #1, supra.

the length of their planning periods.

Pursuant to WV Code §18A-2-9, a principal under the supervision of the superintendent is responsible for establishing the schedules of teachers assigned to his/her school.

WV Code §18A-2-9 in pertinent part provides:

Upon the recommendation of the county superintendent of schools, the county board of education shall employ and assign, through written contract, public school principals who shall supervise the management and the operation of the school or schools to which they are assigned. Such principals shall hold valid administrative certificates appropriate for their assignments.

Under the supervision of the superintendent and in accordance with the rules and regulations of the county board of education, the principal shall assume administrative and instructional supervisory responsibility for the planning, management operation and evaluation of the total educational program of the school or schools to which he is assigned.

In developing schedules, principals must allow for the fact that teachers are entitled to a thirty minute, duty-free, lunch period and a duty-free planning period the length of the usual class period in the school. In this regard, WV Code §18A-4-14, in pertinent part provides:

- (1) Notwithstanding the provisions of section seven [§18A-2-7], article two of this chapter, every teacher who is employed for a period of time more than one half the class periods of the regular school day and every service personnel whose employment is for a period of more than three and one-half hours per day and whose pay is at least the amount indicated in the "state minimum pay scale" as set forth in section eight-a [§18A-4-8a] of this article shall be provided a daily lunch recess of not less than thirty consecutive

minutes, and such employee shall not be assigned any responsibilities during this recess. Such recess shall be included in the number of hours worked, and no county shall increase the number of hours to be worked by an employee as a result of such employee being granted a recess under the provisions of this section.

- (2) Every teacher who is regularly employed for a period of time more than one half the class period of the regular school day shall be provided at least one planning period within each regular day to be used to complete necessary preparations for the instruction of pupils. Such planning period shall be the length of the usual period in the school to which such teacher is assigned, and shall not be less than thirty minutes. No teacher shall be assigned any responsibilities during this period, and no county shall increase 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 [March 1982].

Principals, and assistant principals, where applicable, shall cooperate in carrying out the provisions of this subsection, including, but not limited to, assuming control of the class period or supervision of students during the time the teacher is engaged in the planning period. Substitute teachers may also be utilized to assist with classroom responsibilities under this subsection: Provided, That any substitute teacher who is employed to teach a minimum of two consecutive days in the same position shall be granted a planning period pursuant to this section.

It is clear from the evidence in the record that all teachers at Franklin Elementary School are required to be at the school by 7:45 a.m., except for those teachers having early bus

duty, who are required to be at school by 7:30 a.m. The teachers remain at school until 3:30 p.m. even though students begin leaving at 3:05 p.m.

As a result of these grievances, Ron Wetzel, County Coordinator of Curriculum and Instruction, computed and testified at the level two hearing that the average length of a class period in grades one through eight was 43.361 minutes. Included in this average were classes in handwriting, spelling, and library, which were part of the language arts block of instruction (level two T.44). Thereafter, and in his level two decision, Superintendent Bowers announced that the length of the usual class at Franklin Elementary School was 43 minutes (level two D.3).

The upper grade teachers contend that their classes are longer than the lower grade teachers and 55 minutes would be the length of their usual class period. Further, both the upper and lower grade teachers allege that they are entitled to one planning period rather than split planning periods as is often part of their schedules.<sup>3</sup>

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<sup>3</sup>Superintendent Bowers incorrectly interpreted a State Superintendent of Schools' decision dated October 17, 1983, which applied to a multi-county vocational/technical center and wherein the State Superintendent of Schools apparently permitted a teacher to have one 30 minute planning period followed later by another planning period(s) of at least 15 minutes. In applying this decision, Superintendent Bowers chose not to apply a June 6, 1983 decision, which properly applies WV Code §18A-4-14 under these circumstances.

The upper and lower grade teachers provided evidence at the level two hearing that showed that extra duties were assigned to them during their lunch and planning periods. They also explained that other duties were assumed by them, such as, escorting the children to and from lunch which was necessary but not always assigned. Testimony further revealed that at least one of the teachers, namely, Wendell Warner, was assigned daily bus duty in lieu of a homeroom assignment.

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

#### FINDINGS OF FACT

1. The grievants, Nancy Gant, Paula Waggy, Rita Wilson, Gailand Hartman, Carl Gant, Sheila Ruddle, John Dorsey, Calvin Thompson, Wendell Warner, Sue Harper, Nancy Sites, Elizabeth Kimble, Patricia Hammer, Carol Conrad, Sandra Vandevander, Patricia Sites, and Jo Lynn Mitchell, are all employed by the Pendleton County Board of Education and assigned as teachers at the Franklin Elementary School.

2. The lower grade teachers were denied a complete 30 minute duty-free lunch period each day as a result of scheduling which required them to perform the duty of dismissing children for lunch.

3. The length of the usual class period at Franklin Elementary School is 43 minutes.

4. The lower grade teachers were denied a daily planning period which was the length of the school's usual class period, namely, 43 minutes.

5. The teachers were not assigned extra duties on a fair and equitable basis.

6. No evidence was presented which was designed to show precisely how many hours any teacher was required to work as a result of their being denied their complete duty-free lunch and planning period.

7. The upper grade teachers were not denied a 30 minute duty-free lunch period.

8. The upper grade teachers were denied a planning period which was the length of the school's usual class period, namely, 43 minutes.

9. The upper grade and lower grade teachers were not assigned extra duties on a fair and equitable basis.

10. Wendell Warner was assigned daily bus duty and not assigned homeroom duties.

#### CONCLUSIONS OF LAW

1. Grievants are required to prove every element of their grievance by a preponderance of the evidence.

2. The grievants did not offer sufficient evidence upon which an award for payment for compensatory time worked could be made.

3. WV Code §18A-4-14(1) requires that every teacher who teaches more than one half of the class periods of the regular school day be provided a thirty consecutive minute lunch recess and such teacher shall not be assigned any responsibilities during this recess.



4. Walking children to and from lunch is a responsibility/duty that may not be assigned to a teacher during that teacher's lunch recess.

5. Every teacher within the description contained in WV Code §18A-4-14(2) at Franklin Elementary School is entitled to at least one planning period which is 43 consecutive minutes in length and during such planning period may not be assigned any responsibilities.

6. In order to comply with WV Code §18A-4-14(2), principals are required to cooperate in carrying out its provisions which includes preparation and providing of schedules which reflect proper lunch recesses, planning periods, and do not require the assumption of unassigned but otherwise necessary duties.

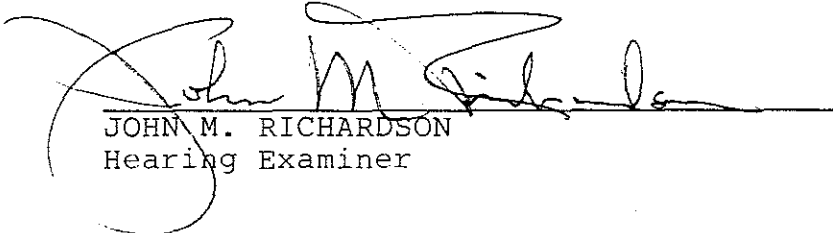
7. Failure to assign extra duties on a fair and equitable basis is a grievable matter pursuant to WV Code §18-29-2(a).

8. Assigning early bus duty every day to Wendell Warner, in lieu of a homeroom assignment, is unfair and in violation of WV Code §18-29-2.

For all of the foregoing reasons, the grievance is granted in part and denied in part. The Board of Education is **ORDERED** to direct the Pendleton County Superintendent of Schools to obtain from the Principal of Franklin Elementary School a schedule for teachers which reflects compliance with this decision. Thereafter, and at the first meeting of the Pendleton County Board of Education after 30 calendar days from this decision, the Pendleton County Board

of Education shall ascertain in the minutes of its meeting whether Franklin Elementary School is in fact in compliance with this decision.

Either party may appeal this decision to the Circuit Court of Pendleton County or Kanawha County and such appeal must be filed within thirty (30) days 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. 10, 1986