



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

JUANITA HOOVER, et al.

V: DOCKET NO: 16-86-072

HARDY COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a level three evidentiary hearing and decision by the Hardy County Board of Education, which denied the grievants the relief they sought.

The grievants, Juanita Hoover, Deborah Hambleton, Diana Lang, and Joyce Strawderman, complain that they are working more hours than other teachers at Mathias Elementary School, where they are assigned, and are working more hours than other teachers in other schools in Hardy County. Grievants further assert, that their schedule is discriminatory because their salary schedule does not reflect payment for working more hours than other teachers similarly situated.

The grievants' circumstances are a direct result of two current practices presently being carried out in Hardy County. In as much as these involve separate issues and results, they will be so discussed herein.

I.

A portion of the grievants' complaint is a direct result of the busing plan being followed, which affects the start and end of the work day for teachers located at East Hardy High School, Mathias Elementary School, and Wardensville School. The Mathias and Wardensville Schools are utilized as "feeder" schools for students who attend East Hardy High School.¹ This requires the teachers at Mathias and Wardensville Schools to start their work day before the teachers assigned to East Hardy High School and to end their work day after the teachers at East Hardy High School. As aforesaid, the grievants complain this practice is discriminatory.

In response, the Hardy County Board of Education asserted that it had investigated alternative plans and that the alternatives were too costly or would receive adverse reaction from either the public or teachers.

In as much as none of the teachers are required to work in excess of 8 hours per day or 40 hours per week, the establishment of a busing plan, is generally considered to be within the full discretion of the superintendent and the county board of education. Further, the Hardy County Board of Education has established a written policy, #GBR-R, which permits individual school principals to establish the starting and ending time for the students and staff of that school.²

¹The term "feeder" school is used to designate an interim destination where students are either dropped off or proceed to their final destination.

²Hardy County Board of Education Policy #GBR-R in pertinent (footnote cont.)

This is a proper delegation of authority in the absence of proof of an arbitrary abuse of that authority, and this Board will not intervene. The fact that the hours making up a regular work day may vary from school to school is permissible so long as those hours do not exceed 8 hours per day or 40 hours per week.

In this regard, the grievants' position is not valid.

(footnote cont)

part provides:

The purpose of this policy is to insure that there be adequate supervision during all times that there are students at school. In no case will the teachers' regular school day exceed eight hours nor will a normal school week exceed forty hours. Attendance at teachers' meetings before or after school is compulsory, if the teachers have been given at least two days prior notice.

If the principal finds that it is not necessary to have the total faculty present for the total regular school day as defined above, he may allow one or more teachers to be absent from school for part of the regular school day and to substitute for the time missed a specified amount of extra-curricular duty. However, all teachers must be given an equal opportunity to substitute extra-curricular duties for a portion of the regular school day and all such agreements must be mutually agreed upon by the teacher and principal, and be in writing pursuant to Hardy County File GBRC (Extra-curricular Assignments) and West Virginia Code Section 18A-4-16. All teachers will be expected to be present at least 15 minutes before school is convened. The principal shall determine a reasonable period after school is dismissed during which all teachers must be at school.

II.

The second portion of the grievance arises as a direct result of the Hardy County Board of Education Policy #GBR-R permitting the swapping of extra duty for extracurricular assignments. The grievants complain that the teachers who enter into extracurricular agreements are permitted to swap "extra duty" time, thereby allowing them to shorten their regular work day and place the burden of performing the extra duty upon those teachers who did not enter into the extracurricular agreements.

In response to this complaint, the Hardy County Board of Education replied that while this was true, all teachers were given an equal opportunity to enter into an extracurricular agreement, and therefore, the grievants had no standing to complain. The Hardy County Board of Education further asserts that WV Code §18A-4-16 permits a teacher and the superintendent to mutually agree upon the terms and conditions subject to the approval of the county board of education.

What the Hardy County Board of Education fails to recognize is that WV Code §18A-4-16 does not comprehend the swapping of extra duty arising during the regular work day for extracurricular assignments. WV Code §18A-4-16 in pertinent part provides:

(1) . . . extracurricular duties shall mean, but not be limited to, any activities that occur at times other than regularly scheduled working hours

(4) an employees contract of employment shall be separate from the extracurricular assignment agreement

(Emphasis added)

In a situation analogous to the present case, the term extra duty was defined as "an assignment during the school day which is supervisory in nature and not part of academic instructions as it occurs during the free time of the students."³ It is apparent, therefore, that even though extra duty and extracurricular activities are an integral part of school-life, they are different matters. The assignment of extra duties to teachers is done on a fair and equitable basis by the principal, whereas the assignment of extracurricular responsibilities arises out of mutually agreed upon contracts between a teacher and the superintendent with the approval of the County Board of Education. Extra duty occurs during the regular work day, whereas extracurricular duties arise out of activities which occur at times other than regular hours.

Thus, the practice of swapping extra duties for extracurricular assignments, where the end result is to cause teachers who do not enter into extracurricular assignments to have a longer work day, is discriminating. It is, therefore, concluded that in this regard the grievance is sustained.

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

³See Miller & Hamstead v. Berkeley County Board of Education, Docket No. 30-86-068, (1986).

FINDINGS OF FACT

1. Grievants, Juanita Hoover, Deborah Hambleton, Diana Lang, and Joyce Strawderman, are teachers employed by the Hardy County Board of Education and were assigned to Mathias Elementary School during the 1985-86 school term.

2. As a direct result of the 1985-86 bus transportation for Hardy County, some of the teachers at Mathias and Wardensville Schools are required to work longer hours than the teachers at East Hardy High School.

3. As a direct result of permitting teachers to swap extra duty for extracurricular assignments, the grievants were required to work longer hours than other teachers at Mathias Elementary School.

4. The assignment of extra duties was not done on a fair and equitable basis among all of the teachers at Mathias Elementary School. (Emphasis added)

CONCLUSIONS OF LAW

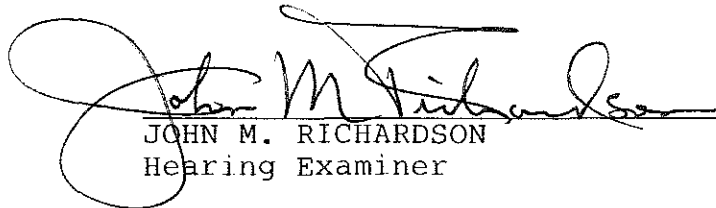
1. The swapping of regular working day extra duties for extracurricular assignments and thereby placing the burden on other teachers to perform the extra duties, is not contemplated by WV Code §18A-4-16 and such activity is the proper subject of a grievance, as set forth in WV Code §18-29-2(a)(m) and (o).

2. Extra duties at a school and which occur during the regular work day must be fairly and equitably distributed among all the teachers at that school. (Emphasis added)

3. Teachers who do not enter into an extracurricular assignment, may not be made to perform additional extra duties as a consequence thereof.

For the reasons set forth herein, the grievance is denied in part and granted in part, and the Hardy County Board of Education is directed to establish written policies and practices which ensure compliance with this decision. In order to accomplish this, the Hardy County Board of Education must abolish its policy of permitting teachers to swap extra duties for extracurricular assignments and establish a policy ensuring that all teachers assigned to a particular school perform extra duties on a fair and equitable basis.

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


JOHN M. RICHARDSON
Hearing Examiner

DATED: Oct. 7, 1986