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JUDITH C. MILLER & THEODORA HAMSTEAD
VS.
BERKELEY COUNTY BOARD OF EDUCATION

GRIEVANCE NO. 30-86-068

DECISION

Theodora Hamstead and Judy Chofnas Miller, hereinafter known as grievants, are employed as learning disabilities resource teacher and a Chapter I reading and math teacher, respectively, at the Burke Street Elementary School in Martinsburg, Berkeley County, West Virginia. The grievants are employed as teachers of programs which provide those children who qualify supplemental assistance in addition to regular classroom instruction.

The grievants allege they are assigned extra duties on a basis inequitable with the remainder of the staff and they further allege this treatment to be retaliatory in nature and harassment as a result of a prior dispute.¹

This grievance was processed through level one through four under the grievance procedure in effect prior to the enactment of W.Va. Code 18-29-1. At level four, the State Superintendent of Schools remanded the matter back to the Berkeley County Board of Education for the purpose of correcting a procedural defect. Upon receipt of the second decision rendered by the county board of education denying their grievance, the grievants have properly appealed to this Board.

¹ Although the issue raised in the previous dispute is not part of this grievance, it will be addressed in this decision as it relates to the grievants' charges of harassment and retaliation.

From the evidence submitted through the record previously developed and written statements by both parties, this examiner makes the following finding of facts:

1. That Theordora Hamstead is employed as a Learning Disabilities Resource teacher and Judy Miller is employed as a Chapter I Reading teacher by the Berkeley County Board of Education.

2. That the grievants are employed as part of special programs established for the purpose of offering supplemental instruction to students who meet the criteria of a program.

3. In order for Berkeley County to retain federal funding under the Chapter I program it must remain in compliance with the guidelines of the program, including those which address the assignment of a teacher to extra duties.

4. That neither teacher has been assigned a home room.

5. That duty schedule was issued for the month of September, 1984 at the beginning of the school year. This schedule listed the duties as being: breakfast, lunch I, play I, lunch II and detention.

6. That a second duty schedule was issued for September, 1984 with the following duties listed: homeroom, breakfast, lunch I, play I, lunch II and detention.

7. That the first schedule indicates grievant Hamstead was assigned duty on a daily basis and beginning September 12, 1984, grievant Miller was also assigned a duty daily. The duties assigned to the grievants were always lunch or play duty, never breakfast or detention.

Other teachers were assigned an extra duty one or two times per week and included lunch, play and detention duties.²

8. The second duty schedule issued for September, 1984 included the same duties and assignments of the first schedule plus listed homeroom as a duty performed daily by those teachers assigned a homeroom.

9. The duty schedule for October, 1984 was essentially the same as the second schedule for September. Homeroom was listed as a duty, the grievants were assigned lunch or play duty daily, the classroom teachers were assigned homeroom duty daily and lunch, play or detention duty one or two times weekly.

In this instance, the grievants believe they are being unfairly treated regarding the assignment of extra duties. They believe they receive more extra duty assignments than other teachers and that they are limited to lunch and play duties which are more stressful than other duties.

James I. Moore, Principal of Burke Street Elementary School, indicated in his testimony before the county board of education that having considered the nature of the activities performed in homeroom he believes it to be an extra duty for those teachers. He further indicated that his second September schedule shows that classroom teachers are assigned twenty-five or more duty units per month while the grievants were assigned only twenty.

He also stated that he believed homerooms to be as stressful as playground or lunch duty and he saw no inequality in his assignment of extra duties.

² Teachers were not assigned breakfast duty on either schedule.

In order to determine whether homeroom should or should not be considered as part of the duty schedule, "extra duty" must be defined. As neither of the parties have submitted a definition, it appears to this examiner from all of the information presented, that an "extra duty" is an assignment during the school day which is supervisory in nature and not a part of academic instruction as it occurs during the free time of the students. These duties are a monitoring of students' behavior while they perform a specific activity such as eating or playing.

Testimony from various witnesses help to define the homeroom period as that period of time at the beginning of the school day in which students arrive from home or return to the classroom from breakfast, when the teacher completes required administrative duties (for example: taking attendance) and both the students and teacher prepare instructional materials.

Homeroom is a time for the conducting of activities preliminary to the instructional day and provides a transitory period for the students from free time to the structured schedule of the school day. The teacher is responsible for only those students in her class.

The grievants are not assigned a homeroom for which they are responsible during this time period. Although no reason was stated for this, it would appear to be due to the traditional elementary school system where the students are taught all the basic subjects by the same teacher. While grievants teach in the same school all day they do not work in a self-contained classroom but offer supplemental instruction for a limited period of time to students from all grade levels.

Miller and Hamstead testified that they utilized the homeroom period to schedule parent conferences, testing of children, completion of records and reports and for planning.

Because the purpose and activity involved in homeroom is different from that during lunch or play and because it occurs during a part of the school day when all students and teachers are preparing for instructional session it should not be considered an extra duty.

The second issue is whether grievants are being unfairly treated by receiving assignments for lunch and play duties only.

Lunch and play periods are divided into two sessions as indicated by the duty schedule. This necessarily implies that the individual assigned to that duty is responsible for one half of the school population in a setting which will either be restrictive (in the lunchroom) or extensive (on the playground). Both settings put the teacher on duty in a situation involving a large number of students involved in a less structured activity which requires close attention and supervision throughout the time scheduled for that duty.

Detention duty involved twenty-five students or less. These students are located in a quiet classroom where strict discipline is enforced.

Certainly a quiet room with a few students would be a less stressful assignment than being responsible for a large number of students either indoors or out.

The grievants assert that Principal Moore's second September, 1985 duty schedule was discriminatory in nature, showed favoritism of other teachers, was intended to harass the grievants and was reprisal for a prior dispute.³

³ This prior dispute involved the use of these grievants as substitute teachers within the school. This situation arose in January, 1983 when the State Superintendent of Schools issued an emergency policy which severely curtailed the hiring of substitute teachers due to statewide fiscal cut-backs. This emergency policy applied only to the 1982-83 school year. The grievants allege they were assigned virtually

Principal Moore denies these allegations and defends his actions by finding homeroom to be a duty (T.p.100) and comparing the number of duty "units" assigned to the teachers (T.p.115-116). The second September duty schedule indicated classroom teachers were assigned approximately twenty-eight duty units while the grievants were assigned only twenty units. The grievants were not assigned detention duty according to Moore because they did not have space available in their classroom for up to twenty-five students (T.p.117). When questioned about the possibility of the grievants performing detention duty in another teacher's classroom, Moore stated, "teachers have twenty-five students in their homeroom and they will take care of their homeroom...I'm not saying that these two teachers would not, but I believe all agree that a teacher will take care of her area in a more conscious manner than possibly a visitor might" (T.p.117).

The purpose behind the change in scheduling is to provide additional planning time for the staff according to Moore. When questioned regarding the teacher's planning time, Moore responded that by law each teacher must receive thirty (30) minutes daily and that his staff had one hour daily (T.p.91). This hour was provided by art, music, counseling and physical education resource teachers and by a scheduled planning period from 3:15 to 3:45 (T.p.106).

It is apparent that if the teacher was assigned no duty at midday then the planning time would be increased to

(3 cont.)

all of the substitute work at Burke Street School. In March, 1983 grievant Hamstead met with the Supt. of Berkeley Co. Schools and conveyed to him her concerns regarding her substituteteaching in areas in which she was not certified and the disruption her substituting was causing within her own program. Supt. Flanigan assured her that under the emergency policy a principal could use a regular teacher as a substitute. Following this incident, Hamstead received an evaluation from Principal Moore indicating that she was unable to work under supervision. The substituting assignments continued throughout the 1983 spring and fall semesters and into the spring semester of 1984. After Hamstead's repeated efforts to again discuss the matter with Supt. Flanigan her legal counsel met with

ninety minutes daily. Although the grievants had planning time from 8:30 to 9:00 while other teachers had homeroom, they also were not relieved by resource teachers as they did not have a homeroom. This means their planning time was from 8:30 to 9:00 and during the school scheduled planning of 3:15 to 3:45. By being assigned a midday duty daily they were deprived of the extra thirty minutes of planning time that other teachers enjoyed three or four times per week.

Even if Moore's definition of homeroom as a duty is accepted, this schedule would be discriminatory in application to these grievants as they would be deprived of ninety to one hundred and twenty minutes of planning time weekly. As this examiner has determined that homeroom is not an extra duty, the grievants not only are deprived of planning time granted to others but perform a duty five times per week compared to one or two times per week by other teachers. This assignment of duties undeniably smacks with retaliatory motive following so closely a prior dispute in which grievant Hamstead apparently prevailed. "Such motivation is not uncommon in the educational employment context." Holland v. Board of Education of Raleigh County, 327 S.E.2d 155 (W.Va. 1985).

Having considered all evidence presented, this examiner now makes the following conclusions of law.

1. The building principal is given the authority and responsibility to manage the operation of the school to which

(3 cont.)

the Deputy Supt. of Schools and Principal Moore in February 1984. Following that conference grievant Hamstead was no longer required to do substitute work. Grievant Miller was still assigned to do in-school substitute work.

Petitioner Hamstead states that following the meeting with Principal Moore and her legal counsel that Principal Moore threatened grievant Miller with charges of insubordination for objecting to her assignment of substitute work and that she, Hamstead, perceived feelings of hostility and attempts at intimidation from Moore. Counsel for the Board of Education denies these allegations and points out that no evidence was submitted in their support.

he is assigned. This includes the planning, management, operation and evaluation of the total educational process. (W.Va. Code 18A-2-9)

2. All teachers may be assigned supervisory duties on a fair and equitable basis.

3. Teachers hired with federal funds may be assigned limited supervisory duties as stated by Chapter I guidelines.

4. The first half hour of the school day scheduled as homeroom is not by definition an extra supervisory duty such as lunch or play and should not be considered an extra duty "unit".

5. That the second duty schedule issued for September, 1984 was discriminatory in treatment of employees not related to the actual job responsibilities of the employees and not agreed to in writing by the employees. W.Va. Code 18-29-2(m)

6. That the second duty schedule showed favoritism by granting preferential, exceptional or advantageous treatment of employees other than grievants. W.Va. Code 18-29-2(0)

7. That the assignment of the grievants to a midday duty on a daily basis following a dispute on another issue does constitute harassment and reprisal as defined in W.Va. Code 18-29-2 and in the WV State Board of Education Grievance Policy in effect prior to July 1, 1985.

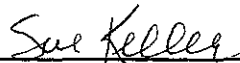
It has been noted by counsel for the board of education that a new duty schedule has been issued on December, 1985. While homeroom continues to be listed as a duty, the grievants are now assigned only two duties per week and are rotated to include breakfast and detention duties. If implemented, this schedule would appear to be in compliance with this decision.

Finally, counsel for grievant Miller requests an award of attorney's fees.

W.Va. Code 18-29-5(b) states that hearing examiners are authorized to provide such relief as is deemed fair and equitable in accordance with the provisions of that article. This section is broad in application and must be read with §18-29-8 which states that any expenses incurred at levels one through three of this procedure must be assumed by the party incurring such expenses. Expenses, again, is a very broad term and could be interpreted to include attorney fees.

W.Va. Code 18A-2-11 specifically states that if an employee should appeal to a circuit court an adverse decision of a board of education or a hearing examiner rendered in a grievance proceeding pursuant to the provisions of chapters eighteen and eighteen-a and, if that employee shall prevail, the adverse party shall be liable to such employee, upon final judgment or order, for reasonable attorney's fees for that employee's representation in all administrative hearings, not to be in excess of one thousand dollars. Thus the award of the attorney's fees lies outside the powers of this Board and that request is denied.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Berkeley 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.



HEARING EXAMINER