



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

WILLIAM MILLER, et al.,

V: DOCKET NO: 26-86-183-1

MASON COUNTY BOARD OF EDUCATION

DECISION

This grievance comes to the West Virginia Education Employees Grievance Board following an appeal of a level two decision and a written waiver of participation by the Mason County Board of Education at level three. The parties agreed, in writing, to waive an evidentiary hearing at level four and to submit the grievance for decision upon the accumulated record.

The grievants, William Miller, Gene Moore, Donnie VanMeter, Ed Cromley, and David Ranson are junior high assistant basketball coaches in addition to being regularly employed teachers at Point Pleasant Junior High School and Wahama Junior High School.

They complain that in February 1986, the high school varsity assistant basketball coaches were each given a raise of \$400.00 which was contrary to the practice of the Mason County Board of Education in providing equal pay to high school varsity assistant basketball coaches and junior high assistant basketball coaches.¹ Further, the grievants allege that the giving of the raise

¹The record is not clear about how long the coaches (assistant
(footnote cont.)

to the high school varsity assistant basketball coaches and not to the junior high assistant basketball coaches violated WV Code §18A-4-5a.²

The record reveals that the junior high assistant basketball coaches and the high school varsity assistant coaches, hereinafter referred to as Jr. High coaches and Sr. High coaches, entered into written contracts prior to the beginning of the 85-86 basketball season.³ An examination of these contracts revealed, that while there were many similarities, they differed, in particular, in the category of "duties to be performed."

(footnote cont.)
varsity and junior high) were equally paid but there is testimony and documentation that the practice extended over a period of three years or more. (Tr. p. 9)

²WV Code §18A-4-5a in pertinent part provides:

"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." (Emphasis added)

³A copy of the contract for the 85-86 basketball season of Sr. High coach David Bodkin was submitted, inter alia, by letter dated May 5, 1986, signed by Joseph C. Furtado, West Virginia Education Association, UniServ Consultant. A form of the contract executed by the Jr. High coaches was submitted into evidence at the level two hearing as Joint Exhibit III.

The Sr. High coaches were required to perform at least three duties in addition to those duties assigned to the Jr. High coaches.⁴ No duties such as those set forth in the Sr. High coaches contracts were contained in the Jr. High coaches contracts. Thus, it cannot be maintained that the grievants performed "like" duties as set forth in WV Code §18A-4-5a.⁵

The singular argument by the grievants that previous uniformity of pay should require the Board of Education to continue the practice of equal pay also cannot prevail since WV Code §18A-4-5a requires uniformity in pay only where there are "like assignments and duties."

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

⁴The additional duties were:

1. "Submitting to the athletic director an eligibility list of all participants in the varsity basketball program.
2. Working with the athletic director to assure coordination with and supervision of the junior varsity program.
3. Help assure that opposing teams are scrutinized through scouting to determine their capabilities, techniques, and strategies and determining the proper team approach to deal effectively with those capabilities, techniques, and strategies."

The grievants offered no evidence to show that Jr. High coaches actually performed these duties or that the Sr. High coaches did not perform them.

⁵See footnote 2, supra.

FINDINGS OF FACT

1. At the beginning of the 85-86 basketball season, the Jr. High coaches and the Sr. High coaches entered into written contracts with the Mason County Board of Education providing payment in the amount of \$900.00.

2. The provisions in the contracts entered into by the Jr. High coaches for the 85-86 basketball season were uniform among Jr. High coaches throughout the county.

3. The provisions in the contracts entered into by Sr. High coaches for the 85-86 basketball season were uniform among Sr. High coaches throughout the county.

4. The contracts entered into by the Jr. High coaches were materially different from those contracts entered into by the Sr. High coaches.

5. In February, 1986, the Sr. High coaches received a \$400.00 increase in pay. The total sum they received for the 85-86 basketball season was \$1,300.00.

6. The Jr. High coaches did not receive any raise and the total sum they received for the 85-86 basketball season was \$900.00.

7. The Sr. High coaches were required to perform at least three additional duties not required of Jr. High coaches, namely, (1) "Submitting to the athletic director an eligibility list of all participants in the varsity basketball program. (2) Working with the athletic director to assure coordination with

and supervision of the junior varsity program. (3) Help assure the opposing teams are scrutinized through scouting to determine their capabilities, techniques, and strategies and determining the proper team approach to deal effectively with those capabilities, techniques, and strategies."

8. The grievants offered no evidence that they performed the additional duties required of the Sr. High coaches.

CONCLUSIONS OF LAW

1. The grievants have the burden of showing by a preponderance of the evidence all of the material elements of their grievance.

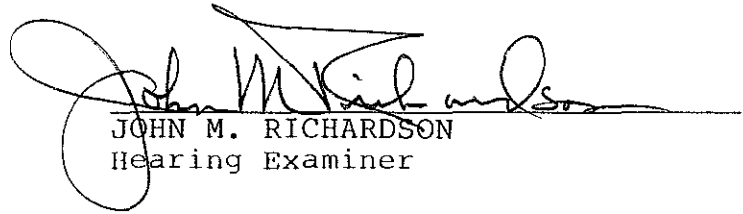
2. The grievants failed to prove by a preponderance of the evidence that their duties as Jr. High coaches were "like" duties as compared to the duties of the Sr. High coaches.

3. WV Code §18A-4-5a requires that uniformity be applied to additional salary increments or compensation for all persons performing like assignments and duties within the county. (Emphasis added).

4. While past uniformity in pay is relevant to the issues presented herein, that fact is not controlling in view of the statutory requirements set forth in WV Code §18A-4-5a. (Emphasis added).

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

Either party may appeal this decision to the Circuit Court of Mason County or to 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