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**LARRY CANTERBURY and
HAROLD ERWIN**

v.

Docket No. 40-86-325-1

PUTNAM COUNTY BOARD OF EDUCATION

DECISION

Grievants, Larry Canterbury and Harold Erwin, are employed by the Putnam County Board of Education as high school teachers/athletic directors. On September 12, 1986 they filed a grievance alleging that the board of education granted additional supplemental pay for all coaches, assistant coaches and athletic trainers who were required to report for work in August but refused grievants similar treatment; that this constituted "favoritism" and was violative of the "uniformity of pay" provisions of W.Va. Code, 18A-4-5a. A level two hearing was conducted on October 13, 1986 and the decision was appealed to level four on November 7, 1986. A level four hearing was waived by the parties and the grievance was submitted on the record made at the level two hearing. (T.____).

Grievant, Larry Canterbury, has been coaching for twenty years and has been assigned to Hurricane High School for ten years - five years as head football coach and in his fifth year as athletic director.¹ On August 18, 1986 the board of education ordered that all coaches, assistant coaches and athletic trainers who were required to report to work during August, 1986, be paid for those days worked at the corresponding individual daily rate of pay. Mr. Erwin discussed the supplemental pay award informally with some of the board members and by Order dated September 15, 1986 the board voted to pay athletic directors for five days worked in August.

Grievants assert that pursuant to the Order the head varsity football coach and assistant coaches received seventeen days pay, the athletic trainers received seventeen days pay, the girl's basketball coach received six days pay, the soccer coach received six days pay, the cross-country coach received six days pay and the golf coach received six days pay for August and contend that they are required to work with these coaches and trainers in the performance of their duties in addition to those duties

¹ There are four high schools in Putnam County and grievant Harold Erwin is athletic director at Buffalo High School; his complaint is identical to Mr. Canterbury's but his participation at the hearing was limited. The athletic directors at Poca and Winfield are unaffected by the controversy because they are also assistant football coaches and received the increase in pay.

enumerated in the job description of athletic directors. (T. 13).²

The job description for high school athletic director in Putnam County is a comprehensive outline of twenty two functions to be performed by the athletic director which include, in part, the following:

prepare a budget, and,
assign coaches by May 30, and,
approve all requisitions for equipment, etc., and,
schedule all athletic events, hire officials and prepare contracts, and,
arrange transportation for all athletic events, and,
arrange for insurance on all contestants, and,
arrange for medical examinations for all contestants prior to practice, and,
arrange for an athletic banquet and/or awards, and,
be responsible for planning the athletic budget
be responsible that equipment is properly stored and inventoried, and,
arrange half-time activities, and,
handle all athletic fees, and,
be responsible for coaches' meetings throughout the school, and,
etc.

The extra-duty work and pay schedule is predicated on an hourly basis relative to the number of sports involved and the minimum hours are established as follows:

² The number of days paid in August will depend upon the date the season opens, as set by the Secondary Schools Activities Commission (SSAC). Thus, the above personnel were paid for the number of days worked in August beginning with the first day of authorized practice according to SSAC until the first day teachers were required to report for work, i.e., August 26, 1986.

	Practice	Preparation, Travel, etc.	Pre-school Preparation	Total
15 or more sports	260	140	140	540
13/14 sports	230	140	140	510
11/12 sports	200	140	140	480
9/10 sports	170	140	140	450 ³

Grievants contend that the 140 hours listed as "pre-school preparation" was intended to cover the August employment and it translated to seventeen and one half eight hour work days. However, they assert, the actual number of days worked in August would be more than 17½ days because, in actuality, they commence work on July 1 in order to obtain program advertising commitments from those firms budgeting advertisement at that time; that in scheduling volunteer help it is necessary to work on Saturdays and evenings and grievants' schedules are therefore dictated by the availability of these volunteers.⁴ (T. 23, 24).

³ Although it is not in the transcript of the level two hearing, the level two grievance evaluator found as a fact that grievants received \$1,700.00 on their extra-duty supplementary contract for these services, which were agreed upon when the contract was signed. Significantly, the job description contains a notation on Employment Time which reads: "What is necessary to complete job description."

Also, the job descriptions of the coaches, trainers, etc., were not put into evidence at the hearing but it appears that coaches are not allotted a specific number of hours in their job descriptions but are governed by a "what is necessary" standard. (T. 32).

⁴ Grievants stated they attempted to get the Booster Club to help sell program ads but were unable to do so. (T. 27).

Grievants concede that football coaches historically have received more salary than athletic directors in Putnam county and statewide but contend that the differential was based upon "pressure points" and not time spent; that there is no pressure in August for football coaches but commences when the season begins. (T. 28, 29). Accordingly, grievants are requesting an additional twelve days pay for August, 1986 to align themselves with the coaches on the basis that W. Va. Code, 18A-4-5a requires uniformity in compensation for assignments that are similar.

The position of the superintendent in the level two decision is that the board of education may alter the amount of compensation paid to employees having extra duty supplemental contracts provided the change is acceptable to the employee; that all coaches are treated equally under the amended pay structure; that all of the positions require work in varying degrees during the month of August and that all of the positions involve different job demands and are therefore dissimilar to the duties of the athletic director.⁵

⁵ To support their claim grievants filed a twelve page document setting forth the activities performed in August, 1986 with each of the employees receiving the additional days of pay as well as other duties. However, no evidence of the similarity or dissimilarity of the positions in relation to the athletic director's position was offered and the findings of fact made by Superintendent Baldwin were obviously based upon his personal knowledge of those matters.

The sole question involved in this grievance as to whether the board of education had a legal duty to pay the grievants the same number of days as given to coaches turns upon the construction of W.Va. Code, 18A-4-5a, which, 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.

In addition to the foregoing the following specific findings of fact and conclusions of law are appropriate.

FINDINGS OF FACT

1. Grievant Larry Canterbury is employed as teacher/athletic director at Hurricane High School; grievant Harold Erwin is employed as teacher/athletic director at Buffalo High School.

2. In August, 1986 the Putnam County Board of Education decided to pay all coaches, assistant coaches and athletic trainers who were required to report to work during August, 1986 for those days worked at the corresponding individual daily rate of pay. This amounted to seventeen days pay for coaches and assistant coaches, seventeen days pay for athletic trainers and six days pay for girls' basketball coaches, soccer coaches, cross-country coaches and golf coaches.

3. Thereafter, on September 15, 1986 the board of education voted to award athletic directors pay for five days of work in August, 1986, in addition to the salary received under the extra duty supplemental contract.

4. The job description for high school athletic director is set forth in a Putnam County Manual and a minimum of 540 hours is established for grievant's classification. Of these 540 hours 140 hours are allocated to pre-school preparation, which translates to work performed by grievants in August. The job description includes the notation that the time required is that necessary to complete the job description.

5. The job description covers twenty two areas of responsibility and grievants are also required to work with coaches and trainers on several functions which apparently overlap. However, the evidence of grievants does not indicate that grievants are performing like assignments and duties of coaches and trainers but are working with these employees in the functions which overlap.

6. There is no evidence of the specific duties performed by coaches, assistant coaches and athletic trainers and grievants have failed to demonstrate the similarity of duties.

7. Grievants have failed to demonstrate an inequality of treatment under the amended pay structure or that their duties were changed after execution of the extra duty supplementary contract so as to negate the contract. The formula allocating 140 hours to pre-school preparation is not inherently or patently unfair and is not favoritism per se.

8. It appears that all of the positions were treated as different and separate positions involving varied duties and grievants have failed to demonstrate that the board of education engaged in "favoritism" as defined by law in the award of supplemental pay to the various positions.

CONCLUSIONS OF LAW

1. W.Va. Code, 18-29-2(o) defines "favoritism" as unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees. In the grievance procedure it is incumbent upon the grievant to demonstrate by a preponderance of the evidence the claim of "favoritism" as defined by law. Giammerino v. Raleigh County Board of Education, Docket No. 41-86-165-1.

2. W.Va. Code, 18A-4-5a provides for uniformity of additional salary increments or compensation for all employees performing like assignments and duties within the county and it is incumbent upon the grievants to establish a violation thereof by a preponderance of the evidence. Alice Turner v. Grant County Board of

Education, Docket No. 12-86-257-3.

3. Grievants have failed to prove "favoritism" or a violation of W.Va. Code, 18A-4-5a as a matter of law.

It is accordingly ORDERED that the grievance is DENIED.

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



LEO CATSONIS

Chief Hearing Examiner

Dated: January 28, 1987