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LARRY MARKHAM et al.

v.

Docket No. 26-87-101

MASON COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants, Larry Markham, Gene Moore, Paul Sayre, David Rawson, David Bodkin, William Buchanan, William Rice and Tom Cullen, are all employed by the Mason County Board of Education as teachers and have extracurricular coaching contracts as basketball or baseball coaches. They filed a level four appeal alleging that the establishment of incremental salaries for only football coaches violated the uniformity provisions of W.Va. Code, 18A-4-5a. The matter was submitted for decision based upon the record and supplemental briefs tendered by each party.<sup>1</sup>

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<sup>1</sup> The grievance was filed at level one by the various coaches as three separate actions but was consolidated at level two wherein it was denied. Counsel for the board includes Gorden Spenser as a grievant herein but his name does not appear on the level four filings although he is among the group of coaches affected by this grievance issue and was a party to the level two adjudication.

The basic facts giving rise to this grievance are not controverted. Sometime during the 1986-87 school year, the board instituted a salary schedule for all football coaching staff which froze salary levels at the 1985-86 level but included minimum and maximum salary limits with yearly experiential increments commencing with the 1987-88 supplemental contracts. The salary schedule also established an entry level salary for newly hired coaches subject to verifiable years of experience.

Grievants herein contend that they perform like duties and assignments as the football coaches and are "similiarly situated." Therefore, grievants argue, they are also entitled to yearly salary increments however small.

The board argues that grievants herein do not perform the same duties and assignments as football coaches since the sports involved are inherently different. The board states that football coaches are required to work more days than other coaches and receive a salary commensurate with their responsibilities.

Grievants rely on an advisory by the State Superintendent of Schools that W.Va. Code, 18A-4-5 applied to positions held by both service personnel and teachers. They also cited several West Virginia Education Employees Grievance Board decisions upholding uniformity requirements in regard to contract employment terms and across the board salary increases for similiary situated service personnel.

These cases and the advisory grievants rely upon address an employee's continuing contract of regular employment and are not controlling in this dispute. Here, grievants' contract terms come within the purview of W.Va. Code, 18A-4-16 which provides that the parties execute a contract separate from the regular contract of employment and that the parties mutually agree upon terms and conditions of the extracurricular contract. Absent an allegation that the minimum or maximum salary accorded to football coaches is improper, that the across the board salaries accorded basketball or baseball coaches is insufficient or that the football coaches salary schedule is unlawful, there is no basis to disturb the board's determination that football coaches must attain the maximum allowable salary through yearly increments. It is important to note that several of the grievants herein are also football coaches who have apparently agreed to the terms of their football coaching contracts and do not fault those contracts herein.<sup>2</sup>

In addition to the foregoing narration the following findings of facts and conclusions of law are appropriate.

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<sup>2</sup> Grievants cited William Miller, et al. v. Mason County Board of Education, Docket No. 26-86-183-1 which dealt with an allegation by junior high coaches that they performed the same duties as senior high coaches who were granted raises. In Miller it was only possible to rule on the issue, which involved coaches teaching the same sport, by applying a yardstick, i.e., to literally count the number of duties to determine whether the two factions performed like duties.

### FINDINGS OF FACT

1. Grievants herein are teachers who additionally coach basketball or baseball. Several, such as grievants Markham and Moore, also coach football. Coaches are compensated for each sport coached.

2. The board of education froze football coaching salaries at the 1985-86 level and established a salary scale for its various football coaching personnel. Each category of the football coaching staff, varsity head coach, varsity assistant coach and/or athletic trainer and junior high coach, were ranked and accorded a salary range. A minimum entry level salary was identified for each rank and newly hired coaches would be scaled according to verifiable past experience.

3. The salary schedule further provided yearly increments for some coaches, but every football coach does not automatically get the supplement since a maximum salary is identified of which no football coach within a particular rank/level can exceed.

4. The grievants herein do not fault the salary schedule applicable to all football coaching staffs nor do they take exception that the lowest ranking football coaching personnel receives a higher salary than the highest ranking coach in any other sport.

5. Grievants herein take exception that football coaches have yearly increments (which admittedly cease after a maximum salary amount has been attained) and believe that baseball and basketball coaches, now compensated by a flat, across the board rate, should also receive some yearly salary increments.

6. Football coaches have a term of employment days which exceeds the other sports and involves work days beyond the academic year. Traditionally, football coaches have been afforded a higher rate of compensation than coaches for other sports, said salary differential not contested by grievants herein.

7. The sport of football is inherently and substantially different than baseball and basketball and, as such, requires different coaching duties and assignments although all coaches presumably adhere to some common goals and practices established for all sport activities which may appear on the various coaching job descriptions.

8. Grievants' acquiescence regarding the greater overall amount of compensation paid to football coaches than to other coaches vitiates their position herein that the various coaches perform like duties in their coaching assignments.

### CONCLUSIONS OF LAW

1. The employment of professional or service personnel for extracurricular assignments shall be made by mutual agreement of the employee and employer and the agreed upon terms and conditions of the employment shall be executed in a contract separate from the regular contract of employment. W.Va. Code, 18A-4-16.

2. While a numerical count of duties found on a job description may be the only means to determine whether coaches in the same sport perform like assignments and duties, a quantitative assessment of coaching duties for two different sports is not sufficient to prove the duties are similar when other evidence indicates otherwise, namely, the nature of the sport and the accepted overall salary differentials. See generally, William Miller v. Mason County Board of Education, Docket No. 26-86-183-1.

3. Grievants herein have failed to demonstrate that baseball and basketball coaching entails the same duties as football coaching and have not otherwise proved violation of W.Va. Code, 18A-4-5a on the part of the board in establishing different methods of compensation for each group of coaches to attain a maximum allowable salary.

Accordingly, this grievance is DENIED.

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

DATED: November 30, 1987

Nedra Koval

NEDRA KOVAL  
Hearing Examiner