



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

**DAVID RAWSON, TERRY ROLLINS,
LARRY MARKHAM, RUSSELL WOOD,
STEVE SAFFORD and RICHARD TIBBETTS**

v.

Docket No. 25-86-296-1

MASON COUNTY BOARD OF EDUCATION

DECISION

Grievants are employed by the Mason County Board of Education as teachers and have also executed extracurricular contracts as follows: Rawson, Markham, Wood and Rollins are assistant football coaches, Safford is head football coach and Tibbetts is athletic trainer at Point Pleasant High School. In September, 1986, they filed a grievance alleging that only one of the grievants, Terry Rollins, had received an increase in salary in his 1986-87 coaching contract and this violated W.Va. Code, 18A-4-5a. On September 29, 1986, the grievance was denied at level two on the basis that it was untimely and an appeal to level four was filed on October 20, 1986; a level four evidentiary hearing was conducted on

January 20, 1987.¹

Prior to the 1986-87 school year grievants had been paid a base pay for coaching duties and also given additional compensation for seventeen excess days in August.² In February, 1986, the board of education directed Superintendent Barker to submit a salary schedule for all coaching positions and extracurricular activities within the county schools in order to effectuate uniformity in salaries and duties (Employer's Exhibit 1).³ Superintendent Barker

¹ On November 17, 1986, counsel for the board of education filed a motion to dismiss the level four grievance on the grounds that it had been untimely filed initially. The response of grievants' representative to the motion to dismiss raised evidentiary matters relative to the date upon which grievants became aware of a disparity in their contracts. Accordingly, the motion to dismiss was denied at that time with the understanding it could be raised at the hearing and the evidence thereon developed along with the evidence on the merits.

Upon consideration of all of the evidence it is the opinion of the hearing examiner that the grievance was, in fact, filed within fifteen days of the day on which grievants learned of the difference in the amount of pay in Mr. Rollin's contract and the motion is therefore denied. Cameron v. Hancock County Board of Education, Docket No. 15-86-149-2; Clark v. Kanawha County Board of Education, Docket No. 20-86-205-1.

² The head football coach appears to be a token grievant in this grievance. Assistant football coaches and the athletic trainer were compensated at a rate of \$900.00 plus compensation for seventeen days during the 1985-86 school year. The seventeen days was a per diem based upon grievants' regular teaching salaries.

³ The board of education had become involved in this area in the fall of 1985 as the result of a grievance which had been filed alleging disparity in pay in coaching contracts. Football coaches were the only coaches who received extra days and the disparity grew as the daily rate of pay increased due to supplemental pay increases. Superintendent Barker concluded that it was the calculation of the seventeen extra days for grievants which created the disparity among coaches in general.

County, Ohio. It had been their understanding that their salaries had been "frozen" at the 1985-86 level by the board of education in June, 1986, but during the discussion Terry Rollins indicated he had received an increase in his 1986-87 contract. Grievants agreed to bring in their contracts on August 18 and upon doing so they learned that Mr. Rollins had, in fact, received an approximate \$66.00 increase. On August 20, Mr. Rawson spoke with the principal at Point Pleasant High School, Mr. Ralph Sayre, and was instructed to wait until the teachers' meeting on August 25 or 26 to raise the question.

Grievants contend that when the coaches received the \$900.00 plus seventeen days their total compensation differed because of the different steps of the salary schedule but because each received seventeen days they acknowledged the arrangement as being "uniform". However, they assert that when the salaries were converted to dollars with all reference to days removed, it resulted in a compensation system for football coaches lacking any semblance of "uniformity" as required by W.Va. Code, 18A-4-5a. Counsel for the board of education contends that the board is authorized to "freeze" salaries of school personnel and grievants accepted the contracts with the

(footnote continued)

After the seventeen days were removed grievants were not classified as 217 day employees but were required to fill out a calendar stating that they were to work seventeen days in August.

salary figures by signing the contracts and performing thereunder.⁵

In addition to the foregoing factual recitation the following specific findings of fact are appropriate.

FINDINGS OF FACT

1. Grievants are employed by the Mason County Board of Education in the football program at Point Pleasant High School and have executed extracurricular contracts.

2. In July, 1986, grievants executed their 1986-87 contracts with the understanding that their salaries had been "frozen" at the 1985-86 level by the board of education.

3. In August, 1986, grievants learned that one of the grievants, Terry Rollins, had received approximately \$66.00 increase over his 1985-86 contract and a grievance was filed.

⁵ The argument of the board, of course, ignores the increase in salary to Terry Rollins of almost \$66.00 for performing the same duties as the other grievants. This, of course, violates even the "perception of fairness". Cf. Mooney v. Marshall University, Docket No. 06-86-150-1.

Superintendent Barker suggested that the dollar figure on Mr. Rollins' contract could be an error or could be a result of an increase due to an advanced certification for Mr. Rollins between the 1985-86 contract and the 1986-87 contract. However, this was pure speculation on his part.

4. No hearing was conducted at level two because the level two grievance evaluator dismissed the grievance as untimely.

5. The assistant football coach grievants are performing like duties and assignments; no evidence was offered as to the other grievants.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-5a provides that counties may fix higher salaries for teachers assigned duties in addition to regular instructional duties but that uniformity shall apply to such additional compensation for all persons performing like assignments and duties.

2. W.Va. Code, 18A-4-5a provides enhanced economic rights and is liberally construed to effectuate that purpose. Dillon v. Mingo County Board of Education, 301 S.E.2d 588 (W.Va. 1983); Turner v. McDowell County Board of Education, Docket No. 33-86-049.

For the foregoing reasons the grievances of grievants Rawson, Markham and Wood are granted and the board is Ordered to rectify any lack of uniformity in pay scale between those grievants and Mr. Rollins. The grievances of Steve Safford and Richard Tibbetts are denied.

Either party may appeal this decision to the Circuit Court of Kanawha County or Mason 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: March 11, 1987