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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.  
Governor

RITA RYAN

v.

Docket No. 54-86-332-3

WOOD COUNTY BOARD OF EDUCATION

DECISION

Rita Ryan, grievant, is employed by the Wood County Board of Education as a teacher assigned to Park Elementary School for the past four years. On October 8, 1986 she filed a level one grievance alleging that school officials have deprived her of a daily planning period in violation of W.Va. Code, 18A-4-14; the grievance was denied. Upon a level two decision she deemed adverse to her, grievant pursued the appeal to level four. The parties agreed to submit the matter for decision based upon the existing record and exchange of supplementary briefs, the final of which were to be filed no later than March 14, 1987.<sup>1</sup>

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<sup>1</sup> On June 12, 1987, counsel for the respondent mailed a copy of a recent advisory issued by the State Superintendent of Schools (March 9, 1987) to the hearing examiner and to grievant's representative who thereupon, by letter dated June 17, 1987, voiced strong objection to the submission. Due to the disposition of the grievance, the advisory will not be considered nor will grievant's objections thereto be addressed.

The underlying facts of this grievance are not in dispute. The established work day for teachers at Wood County Schools is seven (7) hours and forty-five (45) minutes and the policy has been in place since 1967. Grievant reports for work at Park Elementary at 7:45 a.m. and the work day ends at 3:30 p.m. The instructional day begins at 8:25 a.m. and ends at 3:06 p.m.

Throughout the instructional year teachers have two or three one week periods of bus duty for fifteen or twenty minutes in the forty minute period prior to the instructional day and again in the afternoon after the teaching day ends for five or ten minutes. The bus duty assignment rotates among the teachers to spread each one week duty throughout the year. Once a month, on Wednesdays, teachers are to attend a faculty meeting prior to the instructional day.

At the level two hearing,<sup>2</sup> grievant testified that she has only three thirty minute planning periods per day during the school day, one each on Monday, Wednesday and Friday. This, she alleges, violates W.Va. Code, 18A-4-14 which requires that a teacher be provided at least one planning period "within each regular school day" for instructional preparation. The "regular

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<sup>2</sup> The hearing was conducted October 27, 1986 and references to the transcript shall be cited as (T.\_\_\_).

school day," she contends, does not occur until all of the students and teachers are assembled for the commencement of classes. Thus, in her perception, the school day and instructional day are synonymous.

School officials refute grievant's perception of the situation and maintain she has a daily forty minute planning period before classes commence and a twenty-four minute period following the instructional day as well as the additional thirty minute mid-morning periods every Monday, Wednesday and Friday. It is the respondent's position, therefore, that school day and work day are synonymous and planning periods assigned prior to the start of the instructional day are legitimate as long as the work day had not been increased to accomodate the planning period.

Grievant at no time concedes that the respondent's view, that school day and work day equate, is correct. If its view is deemed correct, she argues, then given her three rotational one week blocks of bus duty, she falls short of a full thirty minute planning period before the instructional day on six days of the year, three Tuesdays and three Thursdays. Notwithstanding the thirty minute mid-morning planning period on Wednesdays, the faculty meetings she is required to attend one Wednesday per month disturb the pre-instructional day planning period on that

day. A planning period, she insists, must be duty free and not subject to ongoing interruptions even when adequate notice is given.<sup>3</sup>

An adjudication at level two determined that grievant indeed fell short of a daily uninterrupted thirty minute planning period on six days per year when she had bus duty. The level two decision rendered November 5, 1986 directed the school principal to schedule each teacher at Park School for at least one uninterrupted thirty minute planning period each and every regular school day. No evidence of non-compliance was presented at level four by grievant.<sup>4</sup>

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

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<sup>3</sup> This argument is substantiated by statute and decisional law, unlike grievant's creative but unconvincing arguments postulating that a "regular school day" is only that period of time when children and teachers are assembled together, i.e., the instructional day.

In addition, it is clear from grievant's level two testimony that the interruptions she describes, bus duty (fifteen days per year) and faculty meetings (ten days per year), are the only assigned duties or responsibilities that intrude upon the pre-instructional time designated by respondents as planning periods (T.6).

<sup>4</sup> It is noted that counsel for the board deemed the entire grievance issue as moot. He further objected to grievant's surprise request in her level four brief for back pay for two periods per week when she allegedly had no planning period. Counsel's argument is well taken that not only was the request unsubstantiated with proper data, but the request had not been presented at the lower levels nor was justification shown for modification at level four of the relief sought.

8. Prior to the level two hearing on this grievance, grievant had a daily forty minute planning period before the start of the instructional day and three thirty minute mid-morning planning periods each Monday, Wednesday and Friday. The forty minute planning period during her pre-instructional day was disturbed on those mornings she had bus duty, approximately fifteen per school year, and one morning (Wednesday) per month when she had to attend a faculty meeting. Because of her three additional thirty minute planning periods, Monday, Wednesday and Friday, grievant only fell short of a required thirty minute planning period per day on six days per year, three Tuesdays and three Thursdays, by five or ten minutes each day. At the most, grievant was deprived of one hour's planning period time per year.

9. In his level two decision of November 5, 1986, the superintendent of schools directed that the principal of Park School establish a work schedule that provided at least one daily thirty minute, uninterrupted planning period for each teacher at Park School. The grievant offered no evidence at level four to show non-compliance of the directive.

### FINDINGS OF FACT

1. Grievant is employed by the Wood County Board of Education as a second grade teacher assigned to Park Elementary School.

2. For salary and attendance purposes the board of education has established a seven hour, forty-five minute school day. In grievant's school, the teachers' attendance hours are 7:45 a.m. until 3:30 p.m. The instructional day begins at 8:25 a.m. and ends at 3:06 p.m. The work day was established in 1967.

3. Grievant is required to perform several one week blocks of bus duty throughout the instructional year which consists of fifteen or twenty minutes prior to the commencement of classes and five to ten minutes after classes. One Wednesday morning per month she is required to attend a faculty meeting. Grievant testified that these were her only assigned duties and offered no other testimony regarding any other instructional related responsibilities in the pre or post instructional day. (T.6).

4. Prior to the instant grievance, the principal of Park School had designated as planning periods each daily forty minute pre-instructional block of time as well as three mid-morning thirty minute periods on Monday, Wednesday and Friday.

5. The grievant has shown no law, policy or evidence to support her position that a "regular school day" is synonymous with instructional day.

6. A school day is synonymous with work day and encompasses a period of time for which a teacher is required to attend his or her assigned school during properly established work hours for some purpose and for which teachers' remuneration is allocated.

7. A regular school day is a work day in which both teachers and students are in attendance and instructional activities are conducted in a normal fashion. A regular school day would thus exclude school/work days when teachers had in-service, or school days when classes were cancelled or abbreviated for a field trip and the like. A regular school day is not synonymous with "instructional" day but does allude to a school day when student instruction will occur.

10. The grievant has made no showing that subsequent to the level two decision rendered November 5, 1986 she still lacked a thirty minute planning period each day.

11. The grievant's level four request for back wages on the planning period issue was improperly tendered after submission for decision on the record and was thus untimely and unsubstantiated by the presentation of law or evidence.

#### CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-14 requires that every teacher be scheduled at least one planning period of not less than thirty minutes during every school day in which a normal instructional schedule is in effect. Robert Ford, et al. v. Wood County Board of Education, Docket No. 54-86-06-1; Nancy Gant et al. v. Pendleton County Board of Education, Docket No. 36-86-073.

2. Grievant herein has failed to prove that subsequent to the initiation of this grievance she lacked a daily, uninterrupted thirty minute planning period as a matter of law.



3. Pursuant to W.Va. Code, 18-29-3(k) a level four hearing examiner has discretionary power to grant a grievant a modified request for relief, if all parties do not consent to modification. David Tallman v. Wetzel County Board of Education, Docket No. 52-86-270-3.

4. The Education Employees Grievance Board will not anticipate issues not fairly raised in the evidence. Raymond A. Dunleavy v. Kanawha County Board of Education, Docket No. 20-87-102-1.

Accordingly, this grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wood 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:

September 1, 1987

Nedra Koval

NEDRA KOVAL  
Hearing Examiner