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**BRUCE LUDFORD**

**v.**

**Docket No. 37-87-265-3**

**PLEASANTS COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Bruce Ludford, is employed by the Pleasants County Board of Education as a language arts instructor assigned to St. Marys High School. On September 10, 1987 he filed a level one grievance alleging violation of W.Va. Code, 18A-2-7 in that his extra-curricular contract was modified outside of the prescribed procedure. The grievance was denied at levels one, two and three and appealed to level four on October 21, 1987. An evidentiary hearing was scheduled for November 24, 1987 but continued to December 10, 1987 upon the mutual request of the parties. The parties agreed to submit supporting briefs, the last of which was received December 29, 1987.

The basic facts of this dispute are not in contention. In September 1986 after the beginning of the 1986-87 school term, school officials decided to reinstate a video yearbook program at the high school. Grievant was approached in regard to this endeavor because he had previously taught or sponsored a similar media class. Grievant's schedule at that time could not be altered, thus, the only open time that grievant could have assumed the media class would have been during his planning period. Grievant agreed to forego the planning period and a contract was executed whereby grievant would teach the class in that scheduled time slot.

The contract form for the initial assignment was titled, "Assignment Agreement." The pre-prepared language, in part, appears to provide for an extra-curricular assignment as per W.Va. Code, 18A-4-16 and by its terms was subject to the provisions of W.Va. Code, 18A-2-7, as applicable. The contract terms added to the form specifically stated that grievant would be involved with this activity for 165 hours and be compensated at the rate of \$9.50 per hour to supervise the media class during his planning period.<sup>1</sup>

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<sup>1</sup>The school board contends the contract form is used primarily for extra-curricular assignments but that the specific terms of this agreement were made to comply with W.Va. Code, 18A-4-14 which requires that a teacher be compensated for waiving a planning period.

Apparently the activity was successful during its first year. Grievant testified that during the course of the year a product was produced that met with favor and donations amounting to several thousands dollars helped support the program.

Several days after the present school year began, grievant discovered a contract to cover the activity for the 1987-88 school year which contained different terms than the contract for the previous year. Although the latter contract was identical in form to the former it indicated the assignment would provide a flat compensation of \$725 for 125 hours maximum. Grievant refused to agree to the terms of the contract and the assignment to teach the media class/video yearbook sponsor was given to another teacher who did agree to those terms.

In 1986-87 grievant's teaching schedule (after he agreed to teach the media class) was: five English classes, one study hall and the media class which replaced his planning period. Grievant's schedule for the 1987-88 school year was: five English classes, one media class and one planning period. When grievant refused to take the media/video yearbook sponsor assignment he was then assigned to teach another English class. Thus, his final schedule then for the current year was: six English classes and one planning period.

Grievant contends that by altering the extra-curricular contract for the 1987-88 school year, the board expected him to perform the same duties that he had the previous year but with a cut in salary of almost one-half of that which he made the previous year.<sup>2</sup> He argues that the contract alteration is a change of assignment and cites several West Virginia Education Employees Grievance Board cases in support of his position.<sup>3</sup> He asks that he be reinstated to his position of video yearbook sponsor and that his prior year assignment of 1986-87 be instated.

The board of education denies that grievant's assignment was changed and points out that he was assigned exactly the same classes the current year as he was the previous year. The only difference that the board acknowledges is that grievant no longer teaches media by his own refusal to do so and has been assigned another English class in its stead. The board contends that the assignment grievant refused would not have paid him less for doing the same amount of work because his restored planning period allowed him 55 minutes per day to do the classroom tasks that he could not do during school hours last year.

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<sup>2</sup> Grievant admitted the 1986-87 contract was an agreement to compensate him for his planning period; since the terms specifically state the compensation was predicated on a curricular assignment, the characterization that the contract was extra-curricular, within the purview of W.Va. Code, 18A-4-16, is without merit.

<sup>3</sup> Grievant's citations are inappropriate as those cases involved primary teaching assignments and drastic subject matter alterations under a regular teaching contract. The nature of grievant's teaching schedule, including the media class assignment, was not altered in 1987-88.

The board urges that the 1986-87 agreement, waiver of a planning period, is not the type of agreement which is subject to W.Va. Code, 18A-2-7 because the 1986-87 agreement and the resultant compensation was produced in an extraordinary, emergency situation and in compliance with W.Va. Code, 18A-4-14, not W.Va. Code, 18A-4-16.

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

#### FINDINGS OF FACT

1. A video yearbook program was begun at St. Marys High School subsequent to the beginning of the 1986-87 school term. On September 23, 1986 grievant contracted with the board to perform the assignment during his planning period as his schedule could not be modified in any manner to include the new assignment at any other time.

2. The contract form was developed by the board for extra-curricular assignments pursuant to W.Va. Code, 18A-4-16 but could be modified for other use. The 1986-87 contract terms provided an amount of \$9.50 per hour for 165 hours and compensated grievant for the remaining hours left for planning periods in the scheduled school term.

3. The evidence preponderates that grievant's 1986-87 assignment agreement contract specifically addressed the needs of that year only and compensated him as per W.Va. Code, 18A-4-14, for relinquishing his planning period when it was impossible for the class to be scheduled at any time other than the planning period.

4. The assignment to teach the media class and produce a media yearbook would normally encompass the teacher's curricular responsibilities as a scheduled class and requires additional extra-curricular time to complete the product of the program. School officials provide similar arrangements, terms, conditions and compensation for the picture yearbook class and product. Grievant presented no evidence or documentation that the media yearbook project/sponsorship required more time than the picture yearbook project/sponsorship.

5. For school year 1987-88 grievant was reassigned the media class; it was scheduled during a regular class period and his planning period was properly restored to his schedule. Pursuant to W.Va. Code, 18A-4-16, a contract was prepared to compensate him for the extra-curricular time needed for the media yearbook endeavor. When offered to grievant in August 1987 the 1987-88 extra-curricular contract provided him compensation of \$725 for 125 hours and was consistent with the contract held by the picture yearbook teacher/sponsor.

6. Grievant himself choose not to teach the media class or assume the sponsorship of the video yearbook as he would not agree to the terms of the extra-curricular contract regarding the number of hours of the assignment and the amount of the compensation.

#### CONCLUSIONS OF LAW

1. Teachers are entitled to a daily duty free planning period but may agree to exchange this time for compensation as long as the terms are consistent with those available to other teachers within the school. W.Va. Code, 18A-4-14.

2. W.Va. Code, 18A-4-16 allows boards of education to enter into contracts with school personnel for the performance of extra-curricular duties and those duties are defined as those which occur at times other than regularly scheduled working hours and must be separate from and not part of an employee's regular contract of employment. McComas v. Lincoln County Board of Education, Docket No. 22-87-197.

3. Grievant's 1986-87 assignment agreement stated that compensation was provided for waiver of 165 hours of planning period, a component of his curricular schedule. Absent an allegation or showing that the exchange of planning periods for

compensation is a practice at grievant's school and available to all teachers with consistent terms, grievant was not entitled to a renewal of a contract to provide him compensation to waive a planning period when the original contract was only executed to cover an extraordinary and emergency situation.

4. W.Va. Code, 18A-4-5a allows county boards of education to provide additional compensation for teachers assigned extra-curricular duties and uniformity shall apply to such additional duties for all persons performing like assignments and duties. Wray v. Mercer County Board of Education, Docket No. 27-87-285-4. The 1986-87 extra-curricular assignment contract offered to grievant was consistent with that offered a teacher performing a similar assignment, thus grievant was not entitled to greater compensation.

5. A teaching schedule adjustment not including changes outside of a teacher's presently utilized area of certification, discipline, department or grade level of many years standing are not changes of assignment amounting to a transfer as contemplated by W.Va. Code, 18A-2-7. Schafstall v. Brooke County Board of Education, Docket No. 05-86-347-3. See generally, Pansmith v. Taylor County Board of Education, Docket No. 46-86-057; Burge, Worrell v. Mercer County Board of Education, Docket No. 27-86-113.

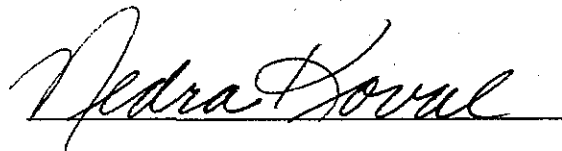


6. Grievant has not shown that courses assigned or assignments offered to him in 1987-88 involved a substantial change in duties, responsibilities and subject matter requiring compliance with W.Va. Code, 18A-2-7 as a matter of law. Schafstall v. Brooke County Board of Education, supra.

Accordingly, this grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Pleasants 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: February 4, 1988

A handwritten signature in cursive script, reading "Nedra Koval", written over a horizontal line.

NEDRA KOVAL  
Hearing Examiner