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ROBERT SLONE, et.al.

v.

Docket No. 40-87-296-1

PUTNAM COUNTY BOARD OF EDUCATION

DECISION

Grievants, Robert Slone, Mary Campbell, Sue Bays and Janice Neal are all employed by the Putnam County Board of Education as professional employees assigned to Hurricane Middle School. They filed a level four grievance appeal sometime in November 1987 indicating their desire that the matter be decided upon the record. Originally assigned to the Charleston hearing examiner, the grievance was transferred to the undersigned examiner in late March 1988. Grievants' representative submitted the proposed findings of facts and conclusions of law tendered at the level two proceedings and the board tendered its proposals on or about March 24, 1988.¹

¹The record reveals that four other teachers who were parties to the original grievance had all withdrawn from the grievance prior to the submission at level four. Although their names remain in the proposals tendered by the parties, their respective positions will not be considered in this grievance decision.

Grievants Slone, Campbell and Neal are teachers of academic subjects while grievant Bays is assigned as a librarian at Hurricane Middle School. The grievants made no statement of their grievance issues in the level four filing but made reference to the issues presented at level two. Basically the grievants protest matters relating to planning time, the assignment of extra duties and a duty free lunch recess and allege the school administration has shown favoritism with inequitable assignments and scheduling.

Grievant Bays complaint was that she receives only 30 minutes of daily planning time while teachers teaching academic subjects receive 90 to 95 minutes of planning time daily. Grievant believes she is entitled to as much planning time as the other teachers.

Grievant Slone objected to the duty schedule. He testified that most teachers have 20 minutes duty but the itinerant teachers who are not part of the staff but provide services do not have duties nor do behavior disordered teachers who are staff members. He further objected because the rotation system of the past had been abandoned and a daily duty was fixed for each teacher for the 1987-88 school year. He claims that fixed duty is inequitable because some duties require more responsibilities than others and identified bus duty as a bad duty and a chore that can entail extra after school time especially in the winter when the buses may run late but walking the ballfield is a good

duty because of the beneficial exercise and it doesn't require a lot of supervision, hall duty is good when the weather is nice as not many students are in the hall and snack machine duty is a good duty. He could not give any other examples because he was not acquainted with everyone else's duty.

Grievant Campbell testified about her concerns regarding a 30 minute duty-free lunch and was unhappy because her lunch was not scheduled until 1:10 p.m. and she made no allegations that her lunch recess was routinely interrupted or that she had less than 30 minutes to complete her lunch. (T.83).

Grievant Neal took issue with a number of school matters and especially did not like being given a fixed outside duty. Although she and other members of her particular teaching unit-team had only 15 minutes duty, she felt all teachers should have either 20 minutes or 15 minutes, one or the other. She also complained that her lunch recess immediately followed her outside duty and she had no travel time allotted for the three minutes it took her to get to the lunch room. When asked to give an example of employees having time to travel during a lunch period she replied that her husband who works in the private sector had five minutes before and after his 30 minute lunch recess to wash his hands and otherwise prepare for lunch but she knew of no board employees given travel time in addition to a designated 30 minute lunch recess.

Grievant Slone also testified about a fourth grievance issue regarding the school's master schedule, but the testimony was convoluted and confusing and grievant repeatedly switched the point he was emphasizing from one concern that students were being shortchanged in instructional time due to the schedule to another concern that teachers (not him or any of the other grievants herein) were being shortchanged of their lunch recess time because of the instructional scheduling. The entire issue was not adequately articulated at the hearing and there was no evidence presented by any alleged affected teacher, therefore that issue will not be reached. (See, T.46-62).

The assistant principal at Hurricane explained that Putnam County middle schools had a Team Concept for teaching and groups of teachers worked together as a team or unit. She testified that staff teachers for academic offerings who received 90-95 minute planning periods did not have the entirety of that time set aside for individual planning periods. She explained that teams were required to meet three times weekly and a team working cooperatively and effectively could use their entire planning period working together for the benefit of their team group of students. (T.161-163).

Hurricane's principal discussed the issue of extra duty assignments. He explained that Hurricane's campus was large and teachers were on duty morning, noon and afternoon anywhere where students may be present, indoors or outdoors, such as the parking lot, driveway, ballfield area, cafeteria, hallways and detention hall at lunchtime. He stated that the rotation system in place several years ago was not effective because teachers did not always understand where they were supposed to be, students were confused due to inconsistencies brought about when the various teachers did not discipline the students in the same manner and the staff complained of favoritism when someone had to be on outside duty when the weather was bad or their preference of morning instead of afternoon assignments was not accommodated. The following year he allowed groups of teachers to be responsible for various grade levels and let each group choose the manner of covering and allocating duties by a rotation system or permanent assignment or any manner they chose. That system failed also because the teachers could not work out their own rotations and some teachers failed to meet their appointed duty, students were poorly disciplined and the staff complaints of favoritism continued. Therefore, he stated, this year he scheduled permanent assignments so he could know at all times which teacher had a responsibility for a certain area. He permitted duty swapping as long as the teachers informed the office so the change could be recorded on the schedule. (T.171-178). He also explained that two teachers who conduct an intramural activity alternate one outside duty but each one has the responsibility of monitoring the students who observe the intramural activities as well as the participants when they are not on duty outside.

Grievants allege and argue that the board's failure to assign equitable planning time constitutes favoritism as defined by law; that all teachers at the school or serving the school must be scheduled for extra duty assignments and that the only fair allocation would be on a rotating rather than fixed basis; and that lunch cannot properly be scheduled at 8:00 a.m. or 3:00 p.m. but must have some proximity to midday and grievant Campbell does not have a lunch recess until 1:10 p.m. and the lateness prevents it from being useful as a lunch period and contra to the intentions of W.Va. Code, 18A-4-14(1) that an employee shall receive midday sustenance.² Grievants cited several Grievance Board cases in support of their position but the facts of the cases were not analogous with those of the grievance herein and are inapposite. Several State Superintendent interpretations were cited but not made part of the record and some of the propositions were not relevant to the issues herein.

The school board responds that the county policy is to provide each teacher with a planning period equal to or greater than each respective teacher's first scheduled class and this objective

² 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. W.Va. Code, 18A-4-14(1) requires that every full time employee be granted a daily duty free lunch recess of at least 30 minutes.

has been met at Hurricane Middle School and the differences in the length of planning periods among certain teachers was reasonable and necessary and is not violative of school law or county policy; that the two staff special education teachers who were excluded from the posted extra duty schedule were required to be at school earlier than the regular teachers and are generally "on-duty" with their students at all times and during their lunch periods and planning periods, that one itinerant teacher is only at the school two hours and 45 minutes per day and another only two hours per day two days per week, thus, the exclusion of those teachers from scheduled duty is reasonable; and that a rotation system for duties has not worked in the past and the present fixed duty system is reasonable and not an abuse of the administration's discretion to make assignments in the manner it chooses after reasonable and informed judgment on the matter.

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

FINDINGS OF FACT

1. Grievants are all professional staff assigned to Hurricane Middle School. Grievants Slone, Campbell and Neal teach academic subjects with 90-95 minutes planning period daily while grievant Bays teaches a mini-course for a 25 minute period at the onset of the school day and serves as the school librarian; she has a 30 minute daily planning period.

2. County policy and practice provides every teacher with a planning period equal to or greater than each individual teacher's first scheduled teaching class. Teachers of academic subjects work in teams for unit planning and the like. Team teachers at Hurricane School are required to meet three days weekly and the meetings are incorporated into the extended planning time.

3. After several attempts in past years to implement a rotation system for duty assignments which were not workable due to inconsistent coverage and complaints of favoritism, the school administration assigned a fixed duty system for the 1987-88 year so it could know at all times which teacher had the responsibility for a certain designated area. Teachers were permitted to exchange their duty assignments with one another as long as they let the office know of the change.

4. Three of the grievants herein as well as most of the school staff were scheduled for their daily duty period of 20 minutes per day monitoring areas inside or outside the school or monitoring various sized groups of children but grievant Neal and several other teachers in her teaching group serve only 15 minutes. Two staff teachers who receive salary supplements to work with an intramural program have less assigned duty time than other teachers but they monitor student observers in the bleachers as well as the student participants. Also, two other staff members who teach special education do not have assigned

duty time as they must remain with their several students during lunch and planning periods throughout the day. Finally, one itinerant teacher who serves the school two hours for two days weekly and another who serves two hours and 45 minutes each day do not have assigned extra duties.

5. Grievant Neal has duty out of doors in a ballfield (for fifteen minutes) and her 30 minute duty free lunch recess occurs immediately afterwards but it takes her three minutes to walk to the lunch room. Grievant Campbell has her 30 minute lunch break scheduled for 1:10 to 1:40 p.m.

CONCLUSIONS OF LAW

1. A school principal is given the authority and responsibility to manage the operation of the school to which he or she is assigned. This includes the planning, management, operation and evaluation of the total educational process. (W.Va. Code, 18A-2-9); Miller and Hamstead v. Berkeley County Board of Education, Docket No. 30-86-068.

2. School officials at Hurricane School have reasonably and rationally scheduled extended planning periods for teachers of academic subjects who must devote part of that time to team meetings for improved student instruction and have provided adequate planning for the school librarian in an amount exceeding her only formal instructional class and in compliance with the minimum 30 minutes as contemplated by W.Va. Code, 18A-4-14(2).

3. A fixed duty assignment is reasonable when rotating duty systems have failed in the past and teachers are allowed to freely trade their assignments upon notification to proper school officials. The exclusion of duty for certain staff members who have uninterrupted responsibility for their charges and for itinerant teachers serving brief times at one school and who also serve other county schools is reasonable and not an abuse of administrative discretion.

4. Grievants cited no law, policy or practice to support their position that a lunch recess between 1:10 and 1:40 is untimely or that transportation time must be provided to navigate to an eating area when the longest transportation time complained of was only three minutes.

5. A grievant must prove all of the allegations contained in a grievance by a preponderance of the evidence. Wade v. Marion County Board of Education, Docket No. 24-86-248-3; Harrison v. Kanawha County Board of Education, Docket No. 17-87-082-2; Taylor v. Marshall University, Docket No. BOR2-87-310-1.

6. Absent a showing that any teachers at Hurricane Middle School were given preferential, exceptional or advantageous treatment, grievants herein have failed to prove their allegations of favoritism on the part of the administration and have otherwise failed to provide any basis to grant them the relief they requested.

Accordingly, the grievance is DENIED in its entirety.

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

May 26, 1988

Nedra Koval

NEDRA KOVAL
Hearing Examiner