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MARY LEE VANDEVANDER

and

ELIZABETH PUGH et al.

v.

Docket No. 15-88-002-3

HANCOCK COUNTY BOARD OF EDUCATION

D E C I S I O N

Mary Lee Vandevander and Elizabeth Pugh, grievants herein, are employed as elementary teachers by the Hancock County Board of Education. They filed a grievance on their own behalf and that of their fellow teachers at Jefferson Elementary School, Carole Fetty, Norma Hobbs, Verneta Martin, Kathy Piscitani, Linda Robinson and Judy Mae Shaffer alleging violation of W.Va. Code, 18A-4-5a, W.Va. Code, 18-29-2m and W.Va. Code, 18-29-2o when a junior high school teacher was retained to teach during his planning period for extra compensation. Upon adverse decisions at the lower levels the matter was appealed to level four in January 1988 and heard February 16, 1988. The grievants representative filed proposed findings and conclusions March 7, 1988 and the board did not expand upon its level two determinations.

On or about May 18, 1987 teacher members of the Hancock County Education Association (HCEA) and Superintendent Russell Slack entered into a written agreement regarding a plan to utilize teaching staff within a school building for filling a temporary absence by another of the staff when a substitute could not be located. The plan would allow teachers within the building to cover the classes of the absent teacher during their own planning period for ten dollars compensation; if more than one teacher had a planning period at the same time the opportunity to substitute must be rotated. The plan for implementing these provisions on the elementary level are somewhat different. "For example, if there are three (3) sixth grades and one of the teachers is absent, those students are divided between the other two sixth grade classes; those teachers would be compensated accordingly." This arrangement would contemplate six periods in the instructional day and the ten dollars per period would be divided among the teachers who participate. Although never formally adopted by the school board, this agreement/administrative procedure was given a favorable consensus by board members at the June 8, 1987 meeting.

At the start of the 1987-88 school year Louis Casini, a music teacher, was assigned to teach a computer class during one of his class periods at Chester Junior High. As he had attained a high degree of proficiency due to his personal use and knowledge of computers, he also agreed to waive his daily planning period for \$10 per day to teach a second computer class; he fulfilled this assignment for nineteen days and earned \$190.

FINDINGS OF FACT

1. Grievants herein, all teachers at Jefferson Elementary School object to a written agreement between their teacher advocacy group, HCEA, and school administrators which establishes separate criteria for both elementary and secondary teachers to waive a planning period or other arrangement to substitute for an absent teacher at the compensation rate of ten dollars per period when a substitute teacher cannot be secured.

2. Because the nature of teaching schedules and assignments of elementary and secondary teachers is different, the policy is implemented differently between the groups. Secondary teachers have an opportunity to waive only one planning period per day to substitute while elementary teachers assume a portion of an absent teacher's class load and compensation is divided between the participating teachers based on a maximum six period day. Elementary teachers have less opportunity for this temporary assignment than do secondary teachers.

3. In accordance with the provisions of W.Va. Code, 18A-4-14, Mr. Louis Casini taught a computer class during his planning period at Chester Junior High for nineteen days and was compensated at the rate of \$10 per period, \$190. Grievants have not supported their contention that they are entitled to receive the same \$190 supplemental salary that Mr. Casini received as his assignment was not violative of the statute which empowers a board of education to compensate a teacher in a particular school for waiving a planning period on an ongoing basis.

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; Ludford v. Pleasants County Board of Education, supra.

2. Whether a written agreement entered into between a teacher's advocacy group and school administrators which provides an opportunity for a temporary assignment and salary enhancement for two separate groups of teachers should be abolished is not the proper subject for an adjudication by the West Virginia Education Employees Grievance Board as long as the agreement is not per se violative of school law even though some members of the teacher advocacy group dispute and object to the agreement.

3. Grievants herein have made no showing that the agreement is discriminatory in its concept or implementation among elementary teachers as a group or is otherwise violative of school law nor have they shown entitlement by law, policy or practice to an award of \$190 compensation.

Accordingly, this grievance is DENIED in its entirety.

The grievants contend the board violated the terms of the aforementioned agreement by employing Mr. Casini since he was not temporarily filling an absent teacher's position and the assignment was not rotated among the teachers at the junior high.¹ In addition, the grievants contend that the agreement made between the board and the HCEA violates the uniformity provisions of school law, is discriminatory and results in favoritism because elementary teachers are not in as favorable a position to earn the extra money as are secondary teachers.² The grievants claim entitlement to the amount of money that Mr. Casini received, \$190, and they ask that the agreement between HCEA and the administration be abolished.

The respondent board agrees that there may be differences in any given teacher's ability to earn additional compensation as per the agreement due to the differences in scheduling responsibility between elementary and secondary teachers and the unpredictable nature of teacher absenteeism. The board however denies violation of uniformity provisions as the agreement is for special instructional assignments and has nothing to do with overall salary increments or compensation for all teaching staff.

¹ Perhaps teachers at Chester Junior High School may have had grounds for this protest but it is not clear upon what basis grievants herein take offense.

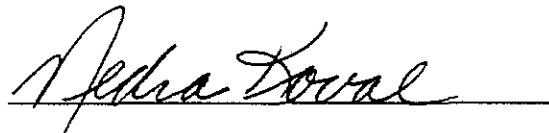
² Administrative notice can be taken that for some purposes elementary and secondary teachers do not perform "like duties" as an elementary teacher may teach more minutes per day while secondary teachers may have a total pupil load in excess of 120 students and the groups have different schedules. Likewise, secondary teachers are advantaged in that they may bid on extra-curricular assignments involving athletic coaching or various cultural or social sponsorships for which they receive extra compensation.

W.Va. Code, 18A-4-14 establishes that 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 particular school. Ludford v. Pleasants County Board of Education, Docket No. 37-87-265-3. In this instance, the board improperly relies on the substitute teaching agreement to justify its use of Mr. Casini when it already had the power to do so via the statute. Accordingly, there has been no violation of the uniformity requirements of W.Va. Code, 18A-4-5a as grievants suggest nor any entitlement for them to receive \$190 compensation on that or any other basis. Additionally, even though grievants may not benefit by a policy which the majority of their HCEA colleagues have approved, their disagreement with the policy does not amount to discrimination or favoritism or a grievable event as contemplated by the grievance statutes and appears to be a matter best settled between themselves and agents of their teacher advocacy group.

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

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock 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: April 29, 1988

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

NEDRA KOVAL
Hearing Examiner