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LINDA BURDETTE

v.

Docket No. 45-87-030-4
45-87-046-4

SUMMERS COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Linda Burdette, is employed by the Summers County Board of Education as a teacher assigned to Sandstone Elementary School. She filed a grievance in December 1986 alleging a new schedule implemented by her principal, Mr. James Withrow, deprived her of a duty free planning period in violation of W.Va. Code, 18A-4-14. A decision rendered after a Level II hearing held on December 19, 1986 was adverse to grievant and an appeal to Level IV was made on February 9, 1987. A Level IV evidentiary hearing was held April 11, 1988.¹

¹ The case was originally assigned to Hearing Examiner John Richardson in February 1987 and the matter was continued on the motion of the parties on numerous occasions. It was assigned to the undersigned hearing examiner in November 1987 and a Level IV hearing was scheduled for January 26, (footnote cont.)

In November 1986 grievant was given a schedule which indicated she would lose some "free time" due to changes in the music teacher's schedule. Previously grievant and another teacher had alternated supervision of one another's classes during music instruction in such a way that they both would have thirty to fifty minutes for planning or making copies of materials. (T1.18, 33,34)² The new schedule which would take effect in December 1986 required teachers to assist the music teacher thus eliminating this period of time outside the classroom. When grievant approached her principal and explained the effects of the schedule, he informed her planning periods would be from 7:55 a.m. to 8:25 a.m. (T2.____) Previously, teachers reported to school at 8:25 a.m., the start

(footnote cont.)

1988 and continued on the notification by the parties that the matter may be resolved. Negotiations apparently broke down in March 1988 and the parties agreed a Level IV hearing was necessary.

It should also be noted the grievance Docket No. 45-87-046-4 concerned an incident where grievant's name was broadcast over a local radio station in connection with a hearing before the Summers County Board of Education and it had been resolved when the matter reached Level IV. Apparently the broadcast was the result of a clerical error and Superintendent Demetrius Tassos had issued a formal apology and had taken steps to see that no such errors would be made in the future. Accordingly the matter is not addressed herein.

² The Level II and Level IV hearings are herein-after referred to as T1 and T2, respectively.

of the instructional day unless they were assigned to morning bus duty in which case they reported to the school at 7:30 a.m.

Grievant contends the extension of the work day is in direct violation of W.Va. Code, 18A-4-14, which in pertinent part reads:

(2) Every teacher who is regularly employed for a period of time more than one half the class periods of the regular school day shall be provided at least one planning period within each regular school day to be used to complete necessary preparations for the instruction of pupils. Such planning period shall be the length of the usual class period in the school to which such teacher is assigned, and shall be not less than thirty minutes. No teacher shall be assigned any responsibilities during this period, and no county shall increase the number of hours to be worked by a teacher as a result of such teacher being granted a planning period subsequent to the adoption of this section.

Ms. Burdette also contends the previous arrangements she had made with another teacher did not constitute an official planning period and that her principal has never included one in her schedule.

The Board takes the position that the prohibition against increasing the working hours of teachers refers to the maximum number of hours a teacher may be required to work in a day and notes that the new schedule only requires grievant to work seven (7) hours and thirty-five (35) minutes which is twenty-five (25) minutes less than the eight (8) hours county policy could impose in a teacher's schedule. This particular section of the

West Virginia Code however makes no reference to "allowable" number of hours a teacher may be required to work and is otherwise clear and unambiguous and requires no interpretation. See, Lavender v. McDowell County Board of Education, 327 S.E.2d 691 (W.Va. 1984); Kell v. McDowell County Board of Education, Docket No. 33-87-236. Mr. Withrow obviously attempted to avoid this restriction by not requiring teachers to report one-half ($\frac{1}{2}$) hour early but allowing those who wanted a planning period to do so. Planning periods are also not considered optional in the pertinent language of the West Virginia Code as evidenced by the use of the word "shall".

Grievant's second contention that she did not have a planning period prior to the implementation of the new schedule is not supported by the evidence. There was some indication that Mr. Withrow did not make the arrangements by which Ms. Burdette and another teacher were able to acquire thirty (30) to fifty (50) minutes a day outside the classroom but there was testimony that he was aware of and approved the arrangement. (Tl.18) Ms. Burdette used this time for grading papers, copying materials and planning and regardless of her characterization of it as "free time", it was clearly a planning period.

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

FINDINGS OF FACT

1. Grievant, Linda Burdette, is employed by the Summers County Board of Education as a teacher assigned to Sandstone Elementary School.

2. Prior to December 1986 grievant had a planning period of thirty (30) to fifty (50) minutes per day.

3. In December 1986 grievant's principal, Mr. James Withrow, instituted changes in her daily schedule which had the effect of requiring her to report to school thirty (30) minutes earlier for a planning period.

4. As a result of said scheduling change, grievant was required to complete a school work day of seven (7) hours and thirty-five (35) minutes.

CONCLUSIONS OF LAW

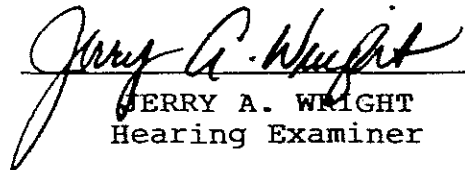
1. W.Va. Code, 18A-4-14 requires county boards of education to provide every teacher who is regularly employed for a period of time more than one half the class periods of the regular school day with a minimum thirty (30) minute planning period. Gant, et al. v. Pendleton County Board of Education, Docket No. 36-86-073; Ford v. Wood County Board of Education, Docket No. 54-86-06-1; Ryan v. Wood County Board of Education, Docket No. 54-86-332-3.

2. The language contained in W.Va. Code, 18A-4-14 prohibiting a county board of education from increasing the number of hours to be worked by a teacher as a result of said teacher being granted a planning period is clear and unambiguous and as such should be given full force and effect and not be interpreted. Lavender v. McDowell County Board of Education, supra; Kell v. McDowell County Board of Education, supra.

3. The actions taken by grievant's principal, Mr. James Withrow, in changing her schedule and requiring her to report to work one-half ($\frac{1}{2}$) hour early if she worked a planning period, was in violation of the express provisions of W.Va. Code, 18A-4-14.

Accordingly, the grievance is GRANTED and the Summers County Board of Education is hereby ORDERED to provide the grievant, Linda Burdette, with a planning period within her previously scheduled working hours and to further compensate her for the loss of her planning period at a rate of 6.9% of her daily salary dating back to December 1, 1986.

Either party may appeal this decision to the Circuit Court of Summers County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of said decision. (W.Va. Code, 18-29-7) Please inform this office of your intent to do so in order that the record can be prepared and transmitted to the Court.


JERRY A. WRIGHT
Hearing Examiner

Dated: June 22, 1988