



**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**

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**MARTHA ADKINS, MERLE MANNS, MARGARET ELLIS,
DEBORAH FORTH, JANICE ADKINS, JUDY MABE
and TOLA HUTCHINSON**

v.

Docket No. 89-22-699

LINCOLN COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants, all teachers at Respondent's Pleasant View Elementary School (PVES), initiated the following grievance shortly after the commencement of school term 1989-90 for students:

Violation of. . .[W.Va. Code §] 18A-4-14 in regard to the lack of one planning period within each school day for the grievants and an extension of the scheduled school day. Relief sought is to be granted a scheduled planning period during the instructional day and compensation for time spent for school year 1989 to date.

After denials at Levels I and II¹ and waiver at Level III, Grievants advanced their claim to Level IV on December 6, 1989.

The undersigned has been advised by representatives of both parties that the factual and legal underpinnings of

¹ A transcript of the Level II hearing, and the detailed Level II decision, are of record.

this grievance are virtually identical to those of another case, namely, Adkins et al. v. Lincoln Co. Bd. of Educ., Docket No. 89-22-323 (Aug. 21, 1989) (hereafter, "Adkins I"). In Adkins I, grievants, the same petitioners as in the instant case plus one,² complained that they were not afforded a planning period during each instructional day. Respondent's defense, in essence, was that PVES faculty members could each, in her discretion, arrive at school daily before 8:00 a.m. for a planning period, and that this optional time did not extend the teacher's workday beyond the eight hours included in the same by Lincoln County Policy 8-07.00. Respondent further contended. if a teacher chose not to appear before 8:00 a.m. she had the freedom and convenience of scheduling her own time outside the schoolday, as she saw fit, to plan.³

² The undersigned has been advised that Ms. Jennifer Holley, a 1988-89 PVES teacher who was an Adkins I grievant, resigned her employment with Respondent at the end of that school year. It is she who is referred to in Adkins I at n. 5.

³ PVES has utilized this procedure since 1986-87, when it lost its full-time physical education instructor. Apparently, until then, teachers had a daily planning period during their students' gym sessions. This is a similar scenario to that in Burdette v. Summers Co. Bd. of Educ., Docket Nos. 45-87-030/046 (June 22, 1988), wherein a teacher lost her original planning period, which was during her pupils' music instruction, when a policy change mandated her direct assistance in that instruction.

Because the only relief the Adkins I grievants sought was alteration of their 1988-89 schedules,⁴ and because that case was neither filed nor heard at Level IV until well after the close of that school term, the claim was denied as moot. However, it is noted from the Adkins I record that the grievants were advised, "This problem will be worked out mutually between the staff at Pleasant Valley Elementary and Mr. Nelson, the Principal, before school starts next school term, 1989-90." Adkins I, Level II decision, Finding of Fact 6. Apparently, settlement of the issue was not reached, and the situation at PVES with regard to planning periods has been virtually unchanged from the previous to the current instructional term.⁵ See, e.g., Level II decision, instant case. Therefore, the undersigned has taken the full Adkins I record into account in arriving at this Decision.

The salient facts surrounding this dispute are stipulated. Respondent's longstanding policy provides its teachers shall have to work no more than eight hours per day. Grievants are required to be at PVES from 8:10 a.m. until 2:30 p.m. each day, a total of six hours and twenty minutes, but are not afforded a daily half-hour planning period during this time. They are, however, allowed to report at

⁴ This distinction between Adkins I and the case at bar is recognized.

⁵ This is not to say the parties have not, at all times, operated in good faith and attempted to resolve this problem. In fact, all indications are to the contrary.

7:40 a.m. for planning time per diem, if they desire to do so. If they exercise this option, their formal workday is effectively extended, but only to six hours, fifty minutes. PVES' teachers must engage in planning; they merely are given control over whether that occurs at the designated time each day, i.e. 7:40-8:10 a.m., or during their off-duty hours.⁶

The primary legal issue in this case is the correct definition of "regular school day" as that term is used in W.Va. Code §18A-4-14, which provides, in pertinent part:

(2) Every teacher who is regularly employed for a period of time more than one half the class period 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... .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. . .

(3) Nothing in this section shall be construed to prevent any teacher from exchanging his. . .planning period. . .for any compensation or benefit mutually agreed upon by the employee and the county superintendent of schools or his agent. . .

⁶ As noted in Burdette, "[p]lanning periods are. . .not considered optional in the pertinent language of the West Virginia Code as evidenced by the use of the word 'shall.'" The principal in that case "obviously" intended for the aggrieved teacher to be present at school for the early-morning planning time only if she "wanted a planning period." See Burdette, p. 4. Again, in this case, the option of not participating at all in daily planning was not available to Grievants, as it apparently was Ms. Burdette.

In a recent decision of the West Virginia Education & State Employees Grievance Board, planning periods and "the regular school day" in the Lincoln County system were discussed. Smith v. Lincoln Co. Bd. of Educ., Docket No. 89-22-544 (Nov. 14, 1989). In Smith, Hearing Examiner Sunya Anderson ruled that Code §18A-4-14(2)'s reference to "regular school day" should be understood to mean "instructional day," i.e., that time students and teachers are present together from the daily commencement of classes until the last class is concluded. In Smith, the board of education argued that it had by policy established an eight-hour workday for its instructors, and that the grievant, who had been required to give up her first-period planning time on several occasions to fill in for absent teachers, "nevertheless could have a planning period before or after the regularly scheduled workday within the 8 hours of paid time." Smith, p. 3. It was held in Smith that "W.Va. Code §18A-4-14(2) unambiguously mandates that each teacher be provided a daily planning period within each regular schoolday, making 'no reference to "allowable" number of hours a teacher may be required to work[.]' Burdette v. Summers Co. Bd. of Educ., Docket Nos. 45-87-030/046 (June 22, 1988)." ⁷

⁷ The mid-year schedule change in Burdette "had the effect of requiring her [Ms. Burdette] to report to school thirty. . . minutes earlier for a planning period." Even
(Footnote Continued)

Another Grievance Board decision, Ryan v. Wood Co. Bd. of Educ., Docket No. 54-86-332-3 (Sept. 1, 1987), appears at first blush to conflict with Smith. In Ryan, Hearing Examiner Nedra Koval ruled, in the context of a planning-period case with issues similar to those discussed herein,

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' compensation is allocated.

Finding of Fact 6. Clearly, then, Ryan is easily distinguishable from Smith and the case at bar. In neither of the latter were or are the teachers "required to attend his or her assigned school" during the proposed optional planning period time. Therefore, that time is not included within "work day" within the contemplation of Ryan, and there is no pertinent conflict in the holdings.⁸ While there are some distinguishing features between Smith and Grievants' current complaint, enough similarity exists that it, Smith, must be found to control.

(Footnote Continued)

though the county policy was for a maximum eight-hour workday, and the extra thirty minutes did not extend Grievant's daily service to that length, Hearing Examiner Jerry A. Wright held this a Code §18A-4-14(2) violation. But cf. n. 9.

⁸ Admittedly, there is some difference in the reasoning employed between Ryan and Smith, but that is of no consequence herein.

The remainder of this Decision will be presented as formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievants are not allowed an uninterrupted half-hour planning period during each instructional day.

2. Grievants are given the option of reporting to work one half-hour early for the purpose of planning. This extra half-hour is within the maximum eight-hour workday established by Respondent's policy.

3. Grievants are required to participate in planning as part of their daily work.

CONCLUSIONS OF LAW

1. W.Va. Code §18A-4-14(2) mandates that a teacher shall be given an uninterrupted half-hour planning period during each "regular school day." Burdette v. Summers Co. Bd. of Educ., Docket Nos. 45-87-030/046 (June 22, 1988).

2. "Regular school day" clearly includes the "instructional day," see Smith v. Lincoln Co. Bd. of Educ., Docket No. 89-22-544 (Nov. 14, 1989) and Ryan v. Wood Co. Bd. of Educ., Docket No. 54-86-332-3 (Sept. 1, 1987), but does not include time an employee is not required to be present at work, id., regardless of the maximum schoolday allowed by the county board of education.

Accordingly, this grievance is **GRANTED**.⁹ Respondent is ORDERED to forthwith provide each Grievant with a daily uninterrupted planning period of at least one half-hour during the time she is required to be at school, unless she agrees to waive this right pursuant to the provisions of W.Va. Code §18A-4-14(3).¹⁰ Respondent is further ORDERED to compensate each Grievant, commencing with school term 1989-90 and ending when her schedule is changed under the terms of this Decision, for every day in which she did not have an uninterrupted half-hour planning period during her required workday, less any appropriate setoff.¹¹

⁹ An argument could be made that Respondent is able to unilaterally augment Grievants' PVES workday by thirty minutes, even to include a 7:40-8:10 a.m. planning period. Code §18A-4-14(2) disallows a county from increasing "the number of hours to be worked by a teacher," and Respondent's well-established policy is that those hours can extend to as many as eight. This argument was made and rejected in Burdette. However, taking the §18A-4-14(2) prohibition to its extreme, a teacher who transfers from a school to another one in the same county with a longer workday would seem to have a valid claim of a violation of the statute unless county policy is the understood standard.

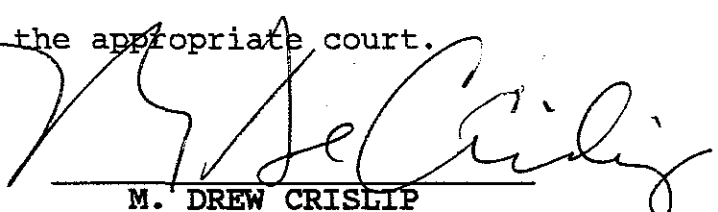
It might be also be contended that the current PVES practice is actually a benefit to its faculty; nevertheless, a technical violation of §18A-4-14(2) has been established and Grievants therefore must prevail.

¹⁰ The reader's attention is invited to Bailes v. Nicholas Co. Bd. of Educ., Docket No. 89-34-119 (Aug. 30, 1989).

¹¹ The Level II decision in the instant case contains this language:

One of the grievants, Judy Mabe, Kindergarten Teacher, is given Wednesday (no kindergarten children present) to plan. All kindergarten
(Footnote Continued)

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate court.


M. DREW CRISLIP
Hearing Examiner

Date: December 28, 1989

(Footnote Continued)

teachers in Lincoln County have Wednesdays to plan without children present. She also has the planning period from 7:40 to 8:10 a.m., if she chooses to use it. Mrs. Mabe and the other teachers at Pleasant View Elementary is [sic] provided an extra planning period when the traveling physical education teacher is at Pleasant View Elementary. The traveling physical education teacher splits her time between Pleasant View Elementary and another school.

Finding of Fact 5. The Level II decision in Adkins I has a nearly-identical finding, see its Finding of Fact 5. An arrangement similar to Ms. Mabe's was at least implicitly found to not fulfill the requirements of Code §18A-4-14 in Bailes.