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JOHN DeFELICE

v.

Docket No. 33-88-232

MCDOWELL COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, John DeFelice, is employed by the McDowell County Board of Education (Board) as a teacher assigned to Iaeger Intermediate School. He filed a grievance at Level I October 10, 1988 alleging his principal had improperly assigned him to daily evening bus duty. After denials at that level and at Level II, following a hearing held November 3, 1988, grievant appealed to Level III where the Board affirmed the Level II findings. A Level IV hearing was held January 23, 1988. The parties elected not to submit proposed findings of fact or conclusions of law.

The facts giving rise to the grievance are essentially undisputed. Toward the end of the 1987-88 school term, Mr. Claude Roberts, Principal of Iaeger, began formulating the teachers'

schedules for the next school year and, in an attempt to coordinate those schedules, offered all teachers the following agreement:

CONTRACT FOR 1988/1989 SCHOOL YEAR

I, _____, agree to rotate morning, lunch, classroom substitution, in-school suspension center and late bus duty for release [sic] from the 7½ hour work day as required by the McDowell County Board of Education.

I understand there will be times when:

- (1) The 7½ hour work day will be exceeded
- (2) I will not receive a duty free lunch
- (3) I will not receive a duty free planning period

I, _____, agree to:

- (1) Release the above named employee from the 7½ hour work day.
- (2) Compensate the above named employee at a rate of \$7.50 per hour for each hour of duty exceeding the amount of release time as documented by employee and verified by me.
- (3) Divide a \$500.00 pool among participating employees if no employee's duty time exceeds release time.
- (4) Divide the balance of the \$500.00 pool after compensation is paid to employee for duty time exceeding release time.

All teachers signed the form except grievant and two others. Grievant turned in the form to Mr. Roberts with the notation "I'm not signing anything until I know my class schedule for next year!" Mr. Roberts responded in a handwritten note that

he would not be offering any new contracts after the end of the school term and anyone who did not sign would "receive the duty free lunch/duty free planning period as per state law".

On September 1, 1988 grievant received another note which advised him that, since he did not sign the agreement, his schedule would be as follows:

8:33 - Report on duty

3rd Period - Duty free planning period

Lunch - Duty free lunch

3:05-3:48 - Afternoon bus duty

Grievant's bus duty assignment meant the teachers who signed the agreement were relieved of the obligation to perform that duty contained in the agreement. The in-school suspension program was terminated, apparently prior to the beginning of the school term, and all teachers were thus relieved of those duties.¹ The

¹It appears a minor change was also made in the manner in which those teachers who signed the agreement covered the classes of absent teachers when substitutes were unavailable but the testimony presented did not fully explain its effect. Little emphasis was placed on the change and it has, therefore, been accorded little, if any, probative value herein.

effect of the scheduling was that teachers who signed the agreement supervise, on a rotating basis, children as they disembark from buses in the morning. They also supervise the student lunch period and regular classroom periods if substitutes are not available to cover for absent teachers. Rotation of duties generally insures that the loss of planning and lunch periods remains constant but the unpredictability of teacher absences causes the loss of those periods for coverage of classroom periods to be rather sporadic. Grievant has no responsibilities for any of those duties but is assigned the afternoon bus duty each day. Grievant alleges this scheduling arrangement is improper for three reasons:

1. The afternoon bus duty assignment extended his workday beyond the 7½ hours required by the Board in violation of W.Va. Code §18A-4-14.
2. The deletion of late bus duty and in-school suspension from the list of duties contained in the agreement rendered it a new agreement which he should have been offered.
3. The arrangement is discriminatory as his schedule entails a substantially greater number of non-instructional duty hours than those of the other teachers.

As relief grievant requests that he be assigned late bus duty no more frequently than other teachers and that he be compensated at an hourly rate for the number of times his assignment to bus duty has exceeded the number he would have been so assigned under the terms of the agreement.

The Board maintains there was no discrimination in the manner in which non-instructional duties were assigned and grievant has merely been assigned such duties in accordance with its policy permitting principals to do so. The Board further contends grievant's refusal to sign the agreement precludes him from objecting to any of its provisions. The Board also denies grievant's workday was extended as a result of his assignment to late bus duty.

Because grievant's assertions concerning the discriminatory effect of differences in the schedules is correct, his remaining arguments need not be addressed.² W.Va. Code §18A-4-14(3), in pertinent part, provides:

Nothing in this section shall be construed to prevent any teacher from exchanging his lunch recess or planning period or any service personnel from exchanging his lunch recess for any compensation or benefit mutually agreed upon by the employee and the county superintendent of schools or his agent: Provided, that a teacher and the superintendent or his agent may not agree to terms which are different from those available to any other teacher granted rights under this section within the individual school or to terms which in any way discriminate among such teachers within

²Grievant's contentions regarding material differences between the agreement provisions and what was actually implemented has merit but the assertion that his workday was extended is unfounded. Grievant himself admitted that delays in bus runs which required him to stay at the school an additional ten to fifteen minutes were balanced out by early arrivals.

the individual school, and that service personnel granted rights under this section and the superintendent or his agent may not agree to terms which are different from those available to any other service personnel within the same classification category granted rights under this section within the individual school or to terms which in any way discriminate among such service personnel within the same classification category within the individual school.

Computations prepared by grievant with figures derived from Mr. Roberts' testimony at Level II reveal that, pursuant to their agreements, other teachers have approximately seventy-five (75) hours of non-instructional duties while grievant has approximately one hundred and twenty-five (125) hours³ (Grievant's Exhibit No.2). The disparity in assignments is substantial even if it were accepted as fact that the other teachers perform their non-instructional duties at times which might be considered more active or demanding. W.Va. Code §18A-4-14(3) clearly prohibits county boards of education from entering into agreements with employees which have the effect of imposing disproportionate duties upon employees

³Counsel for the Board objected to the admission of these computations on the grounds that they were unreliable and self-serving. Mr. Roberts' testimony, however, revealed that, while he thought the figures concerning hours served covering absent teacher's classes were speculative, he believed most of the computations were accurate. Mr. Roberts also conceded that the approximation of the number of hours each teacher spends in covering absent teacher's classes was reasonably based on figures from the preceding school term.

with which it has no agreement.

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

FINDINGS OF FACT

1. Grievant is employed by the McDowell County Board of Education as a teacher assigned to Iaeger Intermediate School.

2. Prior to the beginning of the 1988-89 school term, grievant refused to sign an agreement offered by his principal in which he would consent to the loss of his duty free lunch and planning periods in exchange for a early release time and was assigned to everyday late bus duty at the beginning of the school term.

4. McDowell County Board of Education policy mandates a 7½ hour day for professional personnel and grievant's assignment to late bus duty did not entail any extension of that workday.

CONCLUSIONS OF LAW

1. Pursuant to W.Va. Code §18A-4-14(3) county boards of education may enter into agreements in which a teacher exchanges

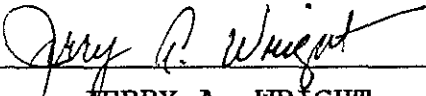
his lunch and/or planning period for compensation or benefit but the terms of such agreements may not in any way discriminate among teachers within a school.

2. The implementation of the agreements entered into between Mr. Roberts and eighteen (18) teachers at Iaeger resulted in a substantially greater number of non-instructional duty assignments for the grievant and was therefore discriminatory.

3. Grievant did not, as a result of said assignments, work beyond the 7¼ hour day required by Board policy or incur any financial loss and is therefore not entitled to compensation for any inequities between his schedule and those of other teachers at Iaeger.

Accordingly, the grievance is **GRANTED** only to the extent that the McDowell County Board of Education is hereby **ORDERED** to take any and all steps necessary to provide grievant a schedule which has non-instructional duty hours comparable to those of other teachers at Iaeger Intermediate School.

Either party may appeal this decision to the Circuit Court of McDowell County or the Circuit Court of Kanawha 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.



JERRY A. WRIGHT
Chief Hearing Examiner

Dated: June 29, 1989