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MARY LOU SMITH

v.

Docket No. 89-22-544

LINCOLN COUNTY
BOARD OF EDUCATION

D E C I S I O N

Grievant Mary Lou Smith, employed by Respondent Lincoln County Board of Education as a Language Arts teacher at Guyan Valley High School, alleges that Respondent denied her planning periods in violation of W.Va. Code §18A-4-14(2). The grievance was denied at Level I and at Level II, after hearing, and consideration thereof was waived at Level III. Grievant appealed to Level IV on September 14, 1989, requesting a decision be made on the record compiled below. Proposed findings of fact and conclusions of law were received from Grievant October 20, 1989; Respondent waived its right to submit such proposals.

Grievant established that 37 times during the 1988-1989 school year she was required to substitute for absent teachers during her planning period, which was scheduled for first period. The Level II evaluator made the following pertinent findings of fact:

2. Ms. Smith covered classes at Guyan Valley High school many times during the past school year, 1988-89... .

4. It is the intent of the Lincoln County Board of Education to provide each teacher with a planning period within the eight (8) hour work day (Lincoln County Policy 8-09.00).¹ . . .

6... .If a substitute is not available, we feel that the administration of the school has the right to require a teacher to cover for the absent teacher on his or her planning period.

The evaluator also concluded that "[t]eachers may work an eight hour work day" and Grievant's work day, starting at approximately 8:00 a.m. and ending at 3:04 p.m., "is less than eight (8) hours; additional compensation could not be paid." Finally, he decided,

It is our belief that teachers may be required to cover classes on their planning period and that no compensation shall be paid for that function. A teacher is paid for an eight (8) hour day.

Grievant relies on the following language of W.Va. Code

§18A-4-14:

(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, . . .

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

¹The policy was not submitted into the record.

Respondent, by relying on the fact that the teachers are paid for an 8-hour day, is apparently making an argument that, although Grievant was disallowed use of her regularly scheduled planning period at the beginning of the day, the code was not violated because she nevertheless could have a planning period before or after the regularly scheduled workday within the 8 hours of paid time. In Respondent's view a teacher's free time can be considered a planning period simply because he or she receives payment for some extra time. If Respondent's interpretation were accepted, Code §18A-4-14(2) would have little meaning, for a teacher can always use his or her private time before or after the scheduled workday for planning and preparation. Indeed, such an interpretation was rejected in Burdette v. Summer Co. Bd. of Educ., Docket Nos. 45-87-030/046-4 (June 22, 1988), where it was held that the statute unambiguously requires a school board to provide planning periods within the schoolday, making no reference to the number of hours in a day the board may require the teacher to work.

That ruling is hereby confirmed. Code §18A-4-14(2) mandates that a school board provide each teacher a planning period "within each regular school day." Under Respondent's approach, the meaning of a "regular school day" would have to be the same as an 8-hour day. There is no support for such an approach. It is clear from the first sentence, "Every teacher who is regularly employed for a period of time more than one half the class periods of the regular

school day....," that the "regular school day" is divided into class periods, and therefore, when there are no more class periods, the "regular school day" is over. That is consistent with the normal usage of "school day" also, which assuredly refers only to the time school is actually in session, i.e., when the students are released, the school day is over. That such an interpretation should apply is even more apparent by the legislature's reference to the "regular" school day, thereby signifying that no term of art was intended; rather, the normal usage was intended. Accordingly, when Grievant was required to substitute during her first-period planning period, Respondent violated Code §18A-4-14(2).

In addition to the Findings of Fact and Conclusions of Law contained in the foregoing discussion, the following are appropriate:

Conclusions of Law

1. 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. 45-87-030/03-4 (June 22, 1988).

2. A teacher cannot be required to give up his or her planning period. Bailes v. Nicholas Co. Bd. of Educ., Docket No. 89-34-119 (Aug. 30, 1989).

3. If a teacher agrees to give up his or her planning period, he or she must be compensated therefor or provided another "benefit mutually agreed upon by the employee and the county superintendent of school or his agent[.]"

4. Respondent accordingly violated Code §18A-4-14 by requiring Grievant to give up her planning period and for failing to provide her compensation for lost planning periods.

Accordingly, the grievance is **GRANTED**. Respondent is hereby ORDERED to discontinue requiring Grievant to give up her planning periods and is furthermore ORDERED to compensate her for the 37 times she was denied her planning period during the 1988-89 school year.

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.

Sunya Anderson

SUNYA ANDERSON
HEARING EXAMINER

Dated: November 14, 1989