WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

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JUDITH G. TAYLOR

v. Docket No. 89-40-429

PUTNAM COUNTY
BOARD OF EDUCATION

D E C I S I O N

Grievant, a teacher at Hurricane High School, alleges that Respondent Putnam County Board of Education violated the uniformity provisions of W.Va. Code §18A-4-5a[1] in failing to add the club Student Action for Education/Future Teachers of America (SAE/FTA), which she has sponsored, to

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[1] W.Va. Code §18A-4-5a provides in pertinent part,

> The board [of education] may establish salary schedules which shall be in excess of the state minimums fixed by this article, such county schedules to be uniform throughout the county as to the above stipulated training classifications, experience, responsibility and other requirements. . .. Counties may fix higher salaries for teachers placed in special instructional assignments, for those assigned to or employed for duties other than regular instructional duties. . ., and they may provide additional compensation for any teacher assigned duties in addition to his regular instructional duties wherein such noninstructional duties are not a part of the scheduled hours of the regular school day. Uniformity also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county[.]

the list of paid "extra-duty" assignments. She further alleges that it was favoritism, see W.Va. Code 18-29-2(o),[2] for Respondent to compensate the sponsors of the National Honor Society (NHS) chapter and the Student Council (SC) at Hurricane while not compensating her since her duties as sponsor of SAE/FTA were parallel to theirs.[3] Grievant requests that SAE/FTA be added to the list and she be compensated for the time spent as sponsor during the 1988-1989 school year.

The Level I evaluator ruled that he had no authority to decide the grievance. The Level II evaluator held that W.Va. Code §18A-4-16, relating to extracurricular assignments,[4] was the appropriate statutory provision and that,

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[2]"'Favoritism' means unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees." W.Va. Code §18-29-2(o).

[3]Grievant also alleges violations of "policies" EDG4 and EDG5. Review of the record reveals there are no such policies, for EDG4 and EDG5 are simply the job descriptions for the sponsors of National Honor Society and Student Council, respectively.

[4]W.Va. Code §18A-4-16 provides in pertinent part:

> (1) The assignment of teachers and service personnel to extracurricular assignments shall be made only by mutual agreement of the employee and the superintendent, or designated representative, subject to board approval. Extracurricular duties shall mean, but not be limited to, any activities that occur at times other than regularly scheduled working hours, which include the instructing, coaching, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly
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> (Footnote Continued)

since mutuality of consent was required thereunder and Respondent had not consented to creation of an extracurricular position for SAE/FTA, Grievant was not required to act as sponsor for SAE/FTA. He stated that the grievance was "granted," concluding,

> I direct the principal of Hurricane High School not to require you or expect you to perform the duties as faculty sponsor for SAE/FTA for the upcoming schol year. You may bid upon any compensated club sponsor position at Hurricane High School which may be posted.

Grievant appealed to Level III, where the grievance was denied on the basis that it had been won at Level II. On August 3, 1989, Grievant appealed to Level IV, stating, "Grievance was granted at Level II, but relief sought was not addressed. Relief sought was compensation and club to be paid extra-duty." Grievant requested that a decision be made on the evidence presented below. With receipt of proposed findings of fact and conclusions of law from the Grievant on September 8, 1989,[5] that decision can be made.

(Footnote Continued)
scheduled basis.

(2) The employee and the superintendent, or a designated representative, subject to board approval, shall mutually agree upon the maximum number of hours of extracurricular assignment in each school year for each extracurricular assignment.

(3) The terms and conditions of the agreement between the employee and the board of education shall be in writing and signed by both parties.

[5]The parties were notified that the deadline for submission of proposed findings and conclusions was September 6, 1989, and no submission has been made by Respondent.

Clearly the grievance was not actually granted at Level II since the evaluator did not find any violation of the uniformity provisions or favoritism, as alleged. Rather, by ruling that Code §18A-4-16 was the appropriate provision and disallowing all requested relief, he in fact denied the grievance. Accordingly, the issues remain whether Grievant established violations, as charged, and is entitled to the relief requested.

Grievant testified as follows to the facts of this matter, which are not in dispute: In 1985, the discovery by some teachers of the original charter for the FTA catalyzed discussions among them. Grievant testified, "[W]e decided talking as a faculty it would be a good idea to offer that club at the high school." Tr. 8. Grievant talked to the counselor, who agreed to be the sponsor, but due to shortage of his time the club was not organized that year.

> So at the beginning of the next year he asked if I would just take it over, if I would do it, so I said I would do that. I got all the information together, and I went to Mr. [Howard] Lovejoy, my principal, and asked him if I could begin a program or a club, the SAE/FTA at Hurricane High School. He said I could.

Tr. 9. The club was started.

In December 1988, while a member of the Teacher Board Liaison Committee (TBLC), Grievant discovered that the sponsors of the NHS and the SC were paid for their services and, upon reviewing the job descriptions of those sponsors, she determined that "there was nothing that they did that the rest of us did not do also." Tr. 9. The TBLC recommended to Respondent in 1988 and again in 1989 that all

sponsors of clubs who, like Grievant, perform the same duties as the NHS and SC sponsors be given extra pay,[6] but Respondent never acted on the recommendation. On cross-examination Grievant agreed that she did not undertake the sponsorship as a paid position and it has been at her discretion that she has continued that sponsorship.

Mr. Lovejoy testified that NHS and SC sponsors have been paid since before he became principal eight years ago. He believed those sponsors were issued contracts "a few years ago." Tr. 25. He understood that when a vacancy occurs in one of those sponsorships the position is posted. He corroborated Grievant's testimony that when he approved the establishment of the SAE/FTA club no mention was made of payment and stated that Grievant could refuse to continue acting as sponsor at any time.

The critical fact, as the Level II evaluator recognized, is that Respondent has in no way requested Grievant to take on the duties of the club sponsorship. Grievant's voluntary sponsorship does not provide her any legal right that she be paid equally to those sponsors who are filling positions established by Respondent. Similarly, there is no favoritism shown because, quite simply, there is no "unfair treatment" of Grievant since there has been no action of the

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[6]Grievant testified that, besides herself, two club sponsors received no extra pay.

Respondent. Rather, only at Grievant's own behest is she doing work equal in nature to the NHS and SC sponsorships.

In addition to the foregoing discussion, the following findings of fact and conclusions of law are appropriate:

Findings of Fact

1. Grievant volunteered to sponsor an SAE/FTA club at Hurricane High School.

2. Grievant signed no contract with Respondent to be said sponsor and she has been free to cease her sponsorship at any time.

Conclusions of Law

1. It is incumbent upon a grievant to prove the allegations of his complaint by a preponderance of the evidence. Hanshaw v. McDowell Co. Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988); Andrews v. Putnam Co. Bd. of Educ., Docket No. 40-87-330-1 (June 7, 1988).

2. Since there was no contract with Respondent for Grievant to be the SAE/FTA club sponsor and there was no "unfair treatment" of Grievant since Respondent took no action regarding Grievant's club sponsorship, as a matter of law Grievant failed to establish any violation of Code §§18-29-2(o) or 18A-4-5a.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Putnam 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: September 21, 1989