WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD
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LAWRENCE E. WRIGHT

v. Docket No. 26-88-226

MASON COUNTY BOARD OF EDUCATION

DECISION

Grievant, Lawrence E. Wright, employed as a teacher by Respondent Mason County Board of Education for eight years, also had extracurricular contracts with Respondent for athletic training for the school years of 1986-87 through 1988-89. While Grievant worked the entire season in 1987-88 and was paid the full amount of his extracurricular contract (Grievant's Exhibit 2), of $2355, in 1986-87 and 1988-89 Grievant did not work the entire season covered by his extracurricular contracts. His grievance, filed September 27, 1988, alleged that the "way I have been paid for the 1986 season and the 1988 season is inconsistent and unfair."

The grievance was denied at Level I on September 29, 1988, and at Level II on November 9, 1988, and Respondent waived participation at Level III. On November 30, 1988, Grievant appealed to Level IV and a hearing was held January 13, 1989. Proposed findings of fact and conclusions of law were received from the parties on and before February 16, 1989.

At Level IV Grievant contends that the payment to him of $900 for the 1986-87 season was unfair and contrary to the uniformity of pay provision of W.Va. Code §18A-4-5a,[1] which provides in pertinent part as follows:

> 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 for teachers of one-teacher schools, 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.

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[1] In denying the grievance at Level II, Superintendent of Schools Charles Chambers only addressed whether there was any unfairness or impropriety regarding the method of payment to Grievant for the 1988-89 season (the record of the Level II hearing was not made part of the evidentiary record at Level IV). As explained in note 6, there was confusion at the Level IV hearing on whether Grievant was complaining about the payment for 1986-87 or 1988-89 or both. However, in closing argument and in Grievant's proposed findings of fact and conclusions of law Grievant's representative clarified that the grievance at Level IV relates solely to the payment for the 1986-87 season.

Respondent does not reply to Grievant's argument regarding uniformity of pay,[2] but argues that Grievant failed to show any violation of law or policy. Respondent also contends that the grievance regarding the 1986-87 contract was untimely filed.

Grievant testified that in 1986-87 he started work as a trainer the week before Labor Day,[3] when the other trainers had already been working 15 to 18 days. He worked the remaining part of the season. At that time he inquired how the $900 he was awarded by the contract was calculated. The woman who did payroll informed him that the season was broken into two parts: for work performed in August, prior to when school was actually in session, a trainer was paid his daily rate as a teacher per day, and thereafter, once school got started, he was paid a flat supplement of $900.

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[2] Respondent merely contends that, in that Grievant and Respondent mutually agreed to the terms of the 1986-87 contract, it complied with the provisions of W.Va. Code §18A-4-16. Suffice it to say that a board of education is required to provide uniform pay to its employees under W.Va. Code §18A-4-5a and is not excused from that requirement because an employee signs a contract providing him non-uniform pay.

[3] Grievant also testified that his contract for that year, Grievant's Exhibit 1, was entered into after he began work, and the contract is dated September 17, 1986. By proposing as a finding of fact, "Lawrence Wright was not employed by the Board of education until the 17th day of September, 1986, as an athletic trainer," Respondent may be intending to contend that Grievant started work later than his testimony supported. Any such contention is not supported by the record.

He accepted that, since he had not worked in the summer, he was paid the $900 flat supplement only. Only recently, upon inquiry regarding the disparity in his 1986-87 and 1988-89 pay, Grievant found out that, while the method described to him had applied prior to 1986-87, in June 1986 the method had been changed to payment of a lump sum for completion of the contract. In 1986-87 that amount was $2300.

Grievant also testified regarding the 1988-89 contract. While much of his testimony is not pertinent to these matters, he testified that his contract for the entire season was $2392. While he began his duties as trainer at the beginning of the season in the summer, the contract was terminated after he had worked a few days into the school term because he was unable to complete further schooling that was necessary for him to retain certification as a trainer. For his services he was paid $726.48. Upon inquiry he was told that the amount was calculated on the basis of number of days worked, that because the contract was for 79 days and he had worked 24 days, the contract value of $2392 was divided by 79 days and that dividend of a daily rate was multiplied by the 24 days he had worked.

Grievant's testimony regarding the methods of payment was corroborated by George Miller, Director of Finance for Respondent. He agreed that the method of payment had been changed in June 1986 to a flat rate, or lump-sum method of payment for completion of a contract, from the method of a daily rate for summer work plus a supplement for work

thereafter. He did not know how Grievant's $900 was calculated in 1986-87. In corroborating Grievant's testimony regarding the method of payment for 1988-89, he stated that Grievant was paid for 24 days because he had worked 21 days in August and 3 days in September.

Grievant correctly argues that his grievance regarding the 1986-87 season was timely because he did not find out about the disparity in payment until he received the payment for 1988-89.[4] See W.Va. Code §18-29(4)(a)(1).[5]

On the merits, Grievant's primary contention is apparently that he is entitled to be paid according to the same method in the 1986-87 season as he was in the 1988-89 season. That is, Grievant requests that the amount payable for completing the contract in 1986-87 be divided by the number of days covered by the contract, a daily rate be thus determined, and he be paid that rate times the number of days worked. Under Grievant's approach work on each day of the season covered by the contract would be compensated equally, although trainers worked longer days, apparently

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[4] Furthermore, insofar as Grievant did not base his grievance on the 1986-87 payment until learning during these proceedings that the method of payment had changed prior to that season, any issue arising from that information may be addressed pursuant to W.Va. Code §18-29-3(j).

[5] Code §18-29-4(a)(1) provides that a grievance must be filed "within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant...."

full-time, prior to the beginning of the regular school year and had shorter work days after school began, ostensibly only after school on school days.[6]

The uniformity provision of W.Va. Code §18A-4-5a does not require that the method of paying trainers be the same year to year. However, it does require that uniform work of employees be uniformly paid. Grievant's approach would contravene the uniformity requirement. He worked only the shorter days of the contract after school began, and payment for each of those days would equal the pay of a trainer who worked a full day in the summer.

Furthermore, Grievant failed to establish any impropriety regarding the 1986-87 contract. While the evidence established that the method of calculating the payment for a contract for the entire season had changed in June 1986, there is no evidence establishing that the $900 paid Grievant for working only the days after school had begun was an unfair contractual amount for working as a trainer for only the part of the season when the workdays for a trainer were shorter than the summer part of the season. Further, Grievant did not show that such compensation was not uniform to payment for the other trainers who worked the entire season. For example, Grievant did not show that the

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[6] While there was no direct testimony regarding the number of hours worked during the summer and after school began, the record strongly implicated that the working days were much longer in the summer.

amount paid for each hour he worked was not equal to that paid for each hour the other trainers worked.

By the same token, the record reveals that Grievant was inadequately compensated in 1988-89, for that year he worked the longer days of summer rather than the shorter days after school started.[7] That is, in essence Grievant was paid at a lower hourly rate than the other trainers who completed their contracts by working the shorter days of the season. Such payment is not fair or uniform.[8]

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

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[7] While Grievant's representative stated there was no argument regarding the 1988-89 season, see n. 1, Grievant's testimony showed that he thought his 1988-89 payment was unfair, for he stated that he expected to be paid his daily rate as a teacher for work in August. In that Grievant so testified and the propriety of the 1988-89 payment has been at issue in this case throughout these proceedings, Grievant will not be limited to the arguments made by his representative, but instead, in the interest of fairness, the propriety of the 1988-89 payment is here addressed.

[8] While the daily division used by Respondent results in non-uniformity of payment, dividing the full contract amount by the number of hours a trainer would work under the full contract, multiplying that number by the hours Grievant worked in 1988, and paying Grievant the resultant amount would be fair and consistent with relevant provisions of West Virginia law.

Findings of Fact

1. Grievant was awarded an extracurricular contract in 1986 for working a partial season as an athletic trainer from the week before Labor Day until the end of the season. The contract provided for payment of $900.

2. Payment for fulfilling a contract as an athletic trainer for the entire season in 1986 was approximately $2300.

3. In 1988-89, although Grievant signed an extracurricular contract providing for payment of $2392 for duties as an athletic trainer for the entire season, the contract was terminated when he failed to fulfill certification requirements. He worked 21 days in August and 3 days in September.

4. The working days as a trainer are generally longer in August, before school begins, than the days after school begins in Sepember.

5. Grievant was paid $726.48 for his service as an athletic trainer in 1988 on the basis that he worked 24 out of the 79 days of the season and was therefore entitled to 24/79 of $2392. No account was taken that he had worked the longer days required of trainers.

6. Grievant did not discover any disparity in payment between 1986 and 1988 until he received payment in 1988. He also did not discover that the method of payment for athletic trainers had changed in 1986 until these proceedings.

Conclusions of Law

1. The grievance was timely filed. See Rawson v. Mason County Board of Education, Docket No. 25-86-296-1 (March 11, 1987).

2. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. Hanshaw v. McDowell County Board of Education, Docket No. 33-88-130 (Aug. 19, 1988); Andrews v. Putnam County Board of Education, Docket No. 40-87-330-1 (June 7, 1988); Bulford v. Preston County Board of Education, Docket No. 39-87-203 (Feb. 26, 1988).

3. Grievant failed to show that the $900 paid in 1986 was inadequate or not uniform to that paid the other athletic trainers for equal work.

4. The record indicated that the $726.48 paid Grievant for working the longer days of August and 3 days in September in 1988 did contravene the requirements of W.Va. Code §18A-4-5a that require uniform pay for uniform work.

Accordingly, the grievance is **GRANTED** in part. Respondent is **ORDERED** to reassess the amount of time Grievant worked in 1988, to the best of its ability; to calculate the amount he should have been paid for his work that season consistently with this decision; and to pay Grievant what may be owed him under that assessment.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mason County and such appeal must be filed within thirty (30) days of receipt of this decision See 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
HEARING EXAMINER

DATE: March 10, 1989