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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
GASTON CAPERTON
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CHERYL J. MOORE

v.

Docket No. 26-88-210

MASON COUNTY BOARD OF EDUCATION

DECISION

Grievant Cheryl J. Moore, employed by Respondent Board of Education as a math teacher and the cheerleading coach at Point Pleasant Junior High School, filed a grievance on September 14, 1988, alleging that her compensation for her cheerleading responsibilities violated the requirement of W.Va. Code §18A-4-5a that "uniformity shall...apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county...." Her grievance contended that, inasmuch as her duties and time spent on cheerleading equalled that of both the football and basketball coaches, she should be paid commensurately. At Level I Grievant's Principal Virgil Burris held that "[c]ontractual terms are the purview of the board of education." Upon appeal a Level II hearing was held September 21, 1988, and on September 26th

Superintendent Charles Chambers held as the Level II evaluator as follows:

Finding of Facts:

1. According to the West Virginia Secondary Schools Athletic Commission Cheering Manual the teacher working with cheerleaders is known as a "Cheerleading Coach."
2. According to West Virginia State Statute 18A-4-5a, "County salary supplements for teachers." "Uniformity also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties with the county."
3. Duties performed by the Cheerleader Coach are essentially the same as the duties performed by the Junior High Football Coach.
4. There is a disparity of pay between the Junior High Football Coach and the Cheerleader Sponsor (coach).
5. There is a disparity of pay between the Junior High Basketball Coach and the Cheerleader Sponsor (coach).
6. The Cheerleader Sponsor (coach) works during both Football and Basketball season and receives pay while the Football Coach works and is paid for football season and is paid an additional salary, if employed, for the basketball season.
7. The grievant would consider the grievance resolved when she receives \$900.00 salary for Cheerleading Coaching during football season and \$900.00 salary of \$1800.00 for Cheerleader Coaching the two aforementioned seasons.

Decision:

The grievance of Mrs. Moore is valid. Since contractual matters are the purview of the board of education I would recommend that the board take the necessary steps to rectify the existing situation [cites to all attachments omitted].

Grievant appealed to Level III. On October 18, 1988, the Board of Education denied the grievance, making the following findings: ¹

1. That the employee's contention that WVSSAC rules deem her a coach instead of a "sponsor" is correct. 2. That WVSSAC rules establish that a cheering season shall begin on Monday of week 5 and end the last day of the school term. 3. While the employer's grievance has some merit, it is untimely inasmuch as the employee signed and accepted a contract for the stipulated amount prior to the season.

Grievant appealed to Level IV on October 19, 1988, and a hearing was held January 9, 1989. At the hearing it was clarified that the Board denied the grievance at Level III and defended the grievance at Level IV on the grounds that the filing of the grievance had failed to fulfill the timeliness requirements of W.Va. Code §18-29-4(a), which requires that a grievance 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 or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance.

It is accordingly accepted as conceded by Respondent that Grievant's work was commensurate with basketball and football coaching² and, if this grievance was properly

¹ Grievant was not apprised that Respondent Board of Education had adopted these findings until the Level IV hearing.

² Respondent's proposed findings of fact and conclusions of law deny a violation of W.Va. Code §18A-4-5a. Inasmuch as that contention is contrary to the finding of
(Footnote Continued)

filed, Grievant is entitled to yearly payment of \$1,800.00 for her coaching responsibilities.³ The only issue that need

(Footnote Continued)

Respondent Board of Education at Level III and concessions made at the Level IV hearing, it is not here addressed. In fact, it is arguable that Respondent should be held to have conceded that the grievance was timely filed inasmuch as Respondent's Counsel, upon completion of Grievant's testimony, stated that she would recommend to Respondent that it grant the grievance. However, because Counsel stated her view as a recommendation, her representations were accepted as an effort at settlement. On January 10, 1989, she wrote the undersigned,

This letter is to inform you that the Mason County Board of Education has declined to resolve this grievance at Level III by paying unto the grievant an annual salary of \$1,800.00. After explaining to the Respondent Board the basis for Mrs. Moore's grievance being untimely filed, said Board took no action upon Mrs. Moore's grievance.

Therefore, I must inform you that it is necessary to proceed at Level IV....

The letter exhibits some confusion on the grievance procedures in that the matter remained at Level IV. Further, inasmuch as the Respondent Board of Education took no action, it could be held to the representations of its Counsel at hearing that the grievance was not untimely filed.

Finally, it should be noted that Grievant did testify regarding her duties as cheerleading coach and compared the amount of time spent on cheerleading coaching to football and basketball coaching. Her testimony indicated that her duties were commensurate to those of the football and basketball coaches and also indicated that, since her responsibilities were for both the football and basketball seasons, her time spent equalled the combination of time spent by the football and basketball coaches on their coaching. This testimony need not be considered beyond notation that it is consistent with Respondent's concessions.

³ The evidence at Level II, corroborated by Grievant's testimony at Level IV, did establish that Grievant was paid
(Footnote Continued)

be addressed, therefore, is whether the grievance was timely filed.

Grievant testified that she received her contract sometime in June, and being aware that Mr. Chambers was going to take over on the first of July, she felt it was in her best interest to wait until he arrived and within a week of his arrival she discussed the situation with him. She stated Mr. Chambers suggested to her that the best way of proceeding was to file a grievance. She went to her principal, Mr. Burris, who informed her that she could not file a grievance until she had performed the duties, which he said was the first football game. She accordingly waited until the first game; the morning thereafter she filed her grievance.

Grievant relies on Steele v. Wayne Co. Bd. of Ed., Docket No. 50-87-062-1 (Sept. 29, 1987), and Blevins v. Fayette Co. Bd. of Ed., Docket No. 10-87-161 (Oct. 22, 1987), where it was held that an employee who makes a good faith, diligent effort to resolve a grievable matter with school officials and relies in good faith upon the representations of such officials that the matters will be rectified will not be barred from pursuing the grievance if

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\$600.00 per fiscal year for her responsibilities, the football coach was paid \$1,656.00, and the basketball coach \$900.00. At Level IV, as she had at Level II, Grievant said she would be satisfied with yearly payment of \$1,800.00 for her responsibilities.

the grievance is not filed within the time limits of Code §18-29-4(a)(1). While those cases do not directly resolve the issue of timeliness at issue here since there was no representation that the matter would be resolved, nevertheless the circumstances of this case demand the same result. It was reasonable for Grievant to rely on the expertise of a representative of Respondent in this case, and the resulting delay was short.

In addition to the foregoing narrative, the following finding of fact and conclusion of law are appropriate.

Finding of Fact


1. Grievant filed her grievance immediately after the first football game, in good faith reliance on the representation of Virgil Burris, the principal of Point Pleasant Junior High School, that she could not file until then.

Conclusion of Law

1. In that Grievant's reliance on the representation of a representative of Respondent that she could not file until the first football game was in good faith and reasonable and the delay was short, Grievant is not barred by W.Va. Code §18A-29-4(a)(1) from pursuing her grievance.

The grievance is accordingly **GRANTED**. Respondent is **ORDERED** to pay Grievant \$1200 owed her for her cheerleading coaching for school year 1988-89.

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 or 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 1, 1989