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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**

GASTON CAPERTON
Governor

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TIMOTHY CUNNINGHAM

v.

Docket No. 89-23-698

**LOGAN COUNTY
BOARD OF EDUCATION**

DECISION

Grievant Timothy Cunningham, employed as an assistant girls' basketball coach by Respondent Logan County Board of Education, filed a grievance alleging a violation of W.Va. Code §18A-4-5a.¹ The description of the grievance was as follows:

Discrimination between boys['] assistant basketball coaches['] pay, who receive 20 working days, plus \$400.00, compared [sic] to the girls['] assistant basketball coach['s] pay, who only receive [sic] 5 working days, plus \$300.00. There exist[s] a great inequity in terms of pay for assistant girls['] basketball coaches at Logan High School. My work days require me to work jus[t] as much. There exist two assistant boys['] basketball coaches at Logan High School, compair [sic] to one girls['] assistant coach[;] they each receive [sic] their full pay. I feel[] that I am being discriminated against, [and,]

¹While the grievance actually referred to W.Va. Code §18A-4-5, it is clear from the pleadings that Grievant is referring to W.Va. Code §18A-4-5a, which, inter alia, requires uniformity in compensation for teachers who are assigned "duties other than regular instructional duties" where they are "performing like assignments and duties."

because of this great inequity, I am filing a grievance.

Grievant requested that his pay be made equal to that of the boys' assistant basketball coaches and backpay for the 1989-90 school year be provided. The Level I evaluator found merit to the complaint and wrote Wesley Martin, Superintendent of the Logan County Schools, asking "that Coach Tim Cunningham receive an equal pay supplement as the Boys['] Assistant Basketball Coaches do."² At Level II the evaluator, Associate Superintendent Jack Garrett, notified Grievant,

Your Level II grievance hearing was held on October 25, 1989. In your grievance you state that you are being discriminated against as a girls' basketball coach, because you receive a smaller supplement than the boys' basketball coaches. You also state that the duties and responsibilities are practically the same with the time element and number of games played being equal.

Since the budget for this fiscal year has already been established and monies obligated, I recommend that Mr. Willie Akers, Assistant Superintendent, establish a committee of coaches (boys['] and girls[']) for the purpose of making recommendations to eliminate salary discrepancies between girl[s'] and boy[s'] coaches. These recommendations would take effect at the beginning of the 1990-91 school term.

Therefore, I deny this grievance at this particular time.

Consideration was waived at Level III and Grievant advanced his claim to Level IV on December 1, 1989, making the same

²The opinion of the Level I evaluator cannot be considered a granting of the grievance because apparently he did not have authority to order any requested relief.

allegations but amending his requested relief to add interest.

On December 12 the undersigned wrote the representatives of both parties, stating that the Level II decision "clearly finds discrepancies as alleged, and indicates that Respondent is conceding that such discrepancies were violative of W.Va. Code §18A-4-5a" and that the mere fact that the monies were obligated would not be a defense for a violation. A clear statement of Respondent's position was asked for. On January 10, 1990, Respondent was further advised that, unless a response was received, the grievance would be granted on the basis of the pleadings.

Respondent's Counsel replied by letter of January 17, 1990,

In response to your letter of January 10, 1990, after having consulted with the Logan County Board of Education, associate superintendent, Jack Garrett, it is my considered opinion that no basis for a grievance hearing exists in this cause of matter [sic] based upon the pleadings. It is apparent that the Logan County Board of Education's only reservation in this cause of action is the inability of the Board to pay Mr. Cunningham due to fiscal problems rather than the correctness of his legal position. Therefore I see no practical use for a Level IV grievance hearing.

The pleadings in this matter and Respondent's concession that Grievant's legal position is correct support a conclusion that Respondent violated W.Va. Code §18A-4-5a. Grievant is entitled to the requested relief of backpay for the 1989-1990 school year and his future coach's pay must be made equal to that of the boys' assistant basketball coaches. However, his request for interest, added at Level IV,

is denied, for interest is not deemed fair and equitable relief under the circumstances of this case. See W.Va. Code §18-29-5(b), W.Va. Code §18-29-3(k).³

Findings of Fact

1. Grievant, an assistant girls' basketball coach at Logan High School, contends that Respondent compensates boys' assistant basketball coaches 20 working day plus \$400 while girls' assistant basketball coaches are compensated for 5 working days plus \$300 in violation of W.Va. Code §18A-4-5a.

2. Grievant has requested throughout these proceedings backpay for the 1989-1990 school year. At Level IV he also requested interest.

3. Respondent concedes that the discrepancy in compensation referred to supra is violative of W.Va. Code §18A-4-5a, only arguing that the monies for the 1989-1990 school year are obligated.

Conclusions of Law

1. Pursuant to the pleadings in this matter and Respondent's concession, it is concluded that Respondent

³W.Va. Code §18-29-3(k) provides, "Any change in the relief sought by the grievant shall be consented to by all parties or may be granted at level four within the discretion of the hearing examiner."

violated W.Va. Code §18A-4-5a in providing less compensation to Grievant in the 1989-90 school year than provided a boys' assistant basketball coach.

2. Grievant is entitled to the difference between the amount of compensation provided a boys' assistant basketball coach and a girls' assistant basketball coach in the 1989-1990 school year as damages. Prejudgment interest is not awarded.

The grievance is therefore **GRANTED**. Respondent is **ORDERED** to provide Grievant relief, as provided above.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Logan 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
HEARING EXAMINER

Dated: January 31, 1990