MARSHA STARR, ET AL.

v. **Docket No. 94-22-125**

LINCOLN COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants, Marsha Starr, Haskell Holley, Martha Vickers, Sheila Stapleton, Deborah Hall, Susan Baisden, Kathy Childers, Cynthia Jones, Robin Stratton, and Kristin Burch, are employed as elementary teachers at Hamlin Elementary ("HE") by the Lincoln County Board of Education ("LCBOE"). They alleged a violation of W. Va. Code §18-5-18a, stating they were required to assume the extra duties and responsibility for students in excess of the limits mandated by statute. They requested the violation cease, (See footnote 1) and that they be paid for the overage of students. A Level IV hearing was held on May 25, 1994, and the case became mature for decision on June 22, 1994.

Findings of Fact

The undisputed facts are as follows.

1. Grievants are employed by LCBOE as elementary teachers at HE.

2. At a faculty meeting on August 27, 1993, prior to the start of the 1993-94 school year, Grievants were told that they would be responsible for instructing two combined classrooms to allow a planning period for another classroom teacher. Most of these exchanges would be within the same grade level, but not all.

3. One of the Grievants, Sheila Stapleton, went to the LCBOE board meeting on August 31, 1993 to ask them to reconsider this decision and to state her opinion that this practice would violate W. Va. Code §18-5-18a, which limits class size. The Board said they would check into it.

4. When school started on September 1, 1993 each teacher at HE was expected to assume responsibility for another teacher's class for half an hour each day. This combination would require each teacher to have approximately thirty-six to forty-five students in their classroom.

5. These duties rotated in five day segments. For example, during one five day period Teacher A would assume all of Teacher B's students for a morning half hour instructional time. That afternoon Teacher B would assume responsibility for all Teacher A's students during a half hour of "free time". After five days, Teachers A and B would exchange time slots.

6. The Grievants were willing to assume responsibility for another teacher's students during afternoon "free time" period and did not grieve this practice.

7. The teachers were directed that the morning class period was to be instructional and were given a list of suggested activities to incorporate. This instructional time was not to be graded.

8. During the morning instructional time the students were crowded into one classroom. There were not enough desks for all the children and some had to sit on the floor.

9. Throughout September and the first week of October, Grievants and their representative attempted to resolve this issue without filing a grievance. An informal conference was held with Principal Cummings of HE on or about October 8, 1993. Ten days later Principal Cummings responded he could not resolve the grievance. Shortly thereafter this grievance was filed. On October 21, 1993, after discussion with Assistant Superintendent Larry Pritchard, this policy ceased.

10. During the time the overages were taking place Grievants requested and received excess enrollment sheets to fill out to receive supplemental pay.

11. These forms were filled out and returned in the same way they had been completed in the past.

12. Principal Cummings was told by Superintendent Dallas Kelley not to sign these sheets and informed Principal Cummings that no teacher was to receive supplemental pay for the class overages. The teachers did not know until later that the overage sheets were not signed and forwarded to Payroll.

13. Due to bookkeeping errors, some sheets were forwarded to payroll unsigned, and some teachers received overage pay for the first five days they taught combined instructional classes. Others did not.

Discussion

W. Va. Code §18-5-18a says in pertinent part:

> The state board shall establish guidelines for the exceptions authorized in this section, but in no event shall the superintendent except classrooms having more than three

pupils above the pupil-teacher ratio as set forth in this section.

. . .

[A] teacher shall not have more than three pupils above the teacher/pupil ratio as set forth in this section. Any kindergarten teacher who has more than twenty pupils per session and any classroom teacher of grades one through six who has more than twenty-five pupils shall be paid additional compensation based on the affected classroom teacher's average daily salary divided by twenty for kindergarten teachers or twenty-five for teachers of grades one through six for every day times the number of additional pupils enrolled up to the maximum pupils permitted in the teacher's classroom. All such additional compensation shall be paid from county funds exclusively.

Respondent's contentions appear to be that since W. Va. Code §18-5-18a states that no teacher may have more than three students over the established guidelines, then it would be illegal for a school board to pay for any students over three. In other words, even though the Board required teachers to have students over the stated maximum, because it was forbidden by statute in the first place, they cannot be required to pay them. LCBOE has offered to pay the Grievants for three students over the maximum, but this offer has been rejected. Respondent also argues 1) since the practice has been terminated this grievance is resolved; and 2)since teachers on their own volition occasionally combined their classrooms, then LCBOE's practice of requiring teachers to combine classrooms should not have been a problem.

This Grievance Board has ruled on the issue of overages in the case of Tanzey and Mason v. Harrison County Bd. of Educ., Docket No. 17-87-258-2 (Apr. 25, 1988). In that case the Grievance Board found that "[w]hen teachers are forced to assume extra duties and responsibilities associated with class size which exceed the limits imposed by West Virginia Code §18-5-18a, said teachers are entitled to additional compensation for the total number of days said classes exceed the statutory limits." Id. at Conclusion of Law 4. Here, the grievants were forced to assume the extra duties associated with overages for half hour periods on a rotating schedule. The fact that these overages were over the number mandated by law does not excuse LCBOE from paying for each student over the mandated number. For LCBOE to say, "we broke the law by requiring you to have over the maximum allowed, but since it was illegal to require you to have over the maximum we cannot pay

you," is ludicrous. LCBOE's attempt to circumvent the consequences of their illegal act cannot be condoned. Grievants are entitled to payment for each student over the maximum.

The above discussion will be supplemented by the following conclusions of law.

Conclusions of Law

1. W. Va. Code §18-5-18a requires teachers to be paid additional compensation for each student over the maximum specifiedby law. Kindergarten teachers are reimbursed for each student over twenty, and classroom teachers in grades one to six are reimbursed for each student over twenty-five. Burdette v. Kanawha County Bd. of Educ., Docket No. 20-88-263 (Mar. 16, 1989).

2. Grievants have met their burden of proving they are entitled to remuneration for each student over the maximum specified in W. Va. Code §18-5-18a from the first day of school and up to and including October 20, 1993.

Accordingly, this grievance is **GRANTED**. Respondent is directed to pay each Grievant for their overages, less the amount already paid to some of the Grievants for a portion of these overages. The appropriate formula for calculating these overages is 1/20th or 1/25th of the daily salary, times the number of overages times 1/7 (to represent the half hour time period) times the number days overages occurred.

Any 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 Administrative Law Judges is a party to such appeal, and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

_____

JANIS I. REYNOLDS

Administrative Law Judge

Dated: October 20, 1994

Footnote: 1After this grievance was initiated the Grievants had a meeting with Assistant Superintendent Larry Pritchard

and the practice ceased on October 20, 1993, thus only the issue of payment for overages remains.