LESLIE EARNEST and LINDA TARR

v. Docket No. 95-05-334

BROOKE COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants, employed by Respondent Brooke County Board of Education (BCBE) as teachers at a middle school (grades 5-8), filed a claim in June 1995 to protest their "classification" and salary as volleyball coaches pursuant to an extracurricular contract. Grievants assert they are not classified and paid the same as middle school coaches for other sports in violation of the uniformity provisions of W.Va. Code 18A-4-5a. BCBE con tends Code 18A-4-5a applies to regular employment contracts, not extracurricular contracts under W.Va. Code 18A-4-16, and that, in any event, the salary schedule for athletic-related extracurricular contracts is fairly structured to reflect the nature of the particular sport and the work involved. The case, submitted to level four for a decision based on the record below, became mature for decision on September 20, 1995, the designated last day for receipt of fact-law proposals/rebuttal. There is no dispute with respect to the underlying facts in this case. Based on all matters of record, the following findings of facts are made.1

Findings of Fact

1. BCBE has established a salary schedule for extracur ricular coaching and sports-related positions which reflects a wide range of salaries for the various positions, according to the sport and degree of responsibility involved. The duration of the "playing season" or number of games/matches for each particular sport was not a primary factor in assigning salaries.

2. The coaching salary schedule contains fifteen salary grades (pay grade or PG). In addition to the base salary amount (zero year's experience) for specific coaching jobs within each PG, the schedule also contains within-grade yearly increments for up to twenty (20) years' experience.

3. The 1994-95 athletic/coaching salary schedule contains starting salaries for PG 1 through 5 as follows:

(1) Head football coach $2938

(2) 1st Ass't football coach $2026

(3) Football coordinator, Scout, Freshman $1883

(4) Varsity football $1835

(5) Middle School head football, Freshman football, Equipment manager $1643

A second distinct set of salaries follows for PG 6 through 9:

(6) Head Basketball, Head wrestling $2429

(7) 1st Ass't basketball, Wrestling, Head cheerleader $1686

(8) Middle School faculty manager all sports, J.V. basketball $1433

1The record consists of the grievance pleadings, the lower-level adverse decisions and a copy of the transcript and exhibits of the July 11, 1995, level two hearing.

(9) Freshmen: Basketball, Wrestling
Middle School: Ass't Football, Boys Basketball, Girls basketball, Wrestling $1338

Two more distinct sets of salaries follow, for PG 10 and 11 and PG 12 and 13, respectively:

(10) Head baseball, Track, Softball $1579

(11) Middle school Cheerleaders

Assistant: Baseball, Softball, Track,

Brooke High Cheerleaders $956

(12) Head soccer, Golf, Tennis, Swim,

Volleyball, Cross Country $1341

(13) Assistant: Cross country, Golf, Soccer,

Swimming, Tennis, Track, Volleyball $776

BCBE Ex. 2.2

4. If the coaching salaries/positions were rank ordered

by decreasing salaries, the salary schedule would be configured:

$2938, Head football coach

$2429, Head Basketball, Head wrestling

$2026, 1st Ass't football coach

$1883, Football coordinator, Scout, Freshman

$1835, Varsity football

$1686, 1st Ass't basketball, Wrestling, Head cheerleader

$1643, Middle School head football, Freshman football, Equipment

manager

$1579, Head baseball, Track, Softball

$1433, Middle School faculty manager all sports, J.V. basketball

$1341, Head soccer, Golf, Tennis, Swim, Volleyball, Cross

Country

$1338, Freshmen: Basketball, Wrestling

Middle School: Ass't Football, Boys Basketball, Girls

basketball, Wrestling

$956, Middle school Cheerleaders

Assistant: Baseball, Softball, Track, Brooke High

Cheerleaders

$776, Assistant: Cross country, Golf, Soccer, Swimming, Tennis,

Track, Volleyball

2This grievance does not concern PG 14 and 15, salaries also found on the scale for athletic trainer and assistant athletic trainer.

5. Assistant Superintendent Phillip Darmelio explained why BCBE's present salary scale was devised. After the incep tion of football at the middle school level, BCBE paid middle school coaches a flat rate each year. Eventually, a decision was made to treat middle school coaches the same as high school coaches by providing an annual salary increment for each suc ceeding year of service. In addition, an approach for correlat ing coaching salaries was devised, based upon recognizing an "all-inclusive" athletic program, grades seven through twelve, instead of by strictly distinguishing between "middle school" sports and "high school" sports. T.36-37. Thus, a "head" football coach for grades 7-8 (middle school) is paid at PG 5, the same as a "freshman" football coach, grade 9 (high school); an assistant football coach for grades 7-8 is paid at PG 9, the same as a basketball coach for grade 9; a cheerleader coach for grades 7-8 is paid at PG 11, the same as an assistant cheerlead er coach for grades 9-12; and a volleyball coach for grades 7-8 is paid at PG 13, the same as an assistant volleyball coach for grades 9-12. In order for the salary schedule to be perfectly accurate, it should also include and/or state at PG 13, "Middle school Volleyball."3

3It also appears that the schedule erroneously lists

"Assistant" Track twice, once at PG 11 and again at PG 13. Based on the logic of the salary schedule as a whole, PG 11 appears to be the correct placement for Assistant Track as it correlates with PG 10 for "Head" Track. Assistant Track at PG 13 must be an error because, but for the erroneous entry of "Track," all of the "Head" coaches in PG 12 correlate with the "Assistant" coaches at PG 13.

6. Grievants, teachers at Wellsburg Middle School (WMS), applied for and received extracurricular positions and contracts as girls' volleyball coaches at WMS for the 1994-95 school year. Grievants' extracurricular contracts for the school year do not state the maximum number of hours for their assignments. BCBE Ex. 3.

7. Grievants' coaching salaries were derived from PG 13 ($776 base), based on their years of experience. Grievant Earnest was paid $1004.00 for the 1994-95 school year after thirteen years' volleyball coaching experience had been credit ed. T.30.

8. Grievant Earnest's 7th grade girls' volleyball team has approximately fifteen players. The 1994-95 volleyball season started in November 1994 with a required meeting about rule changes. Grievant subsequently met with her team for approximately fourteen pre-season practice sessions beginning in late November 1994. The actual playing season began on January 17, 1995, and there were two matches per week until the season ended on March 6, 1995. T.10-11. The record is largely silent about Grievant Tarr's extracurricular volleyball coaching position, but it is presumed she is WMS' 8th grade girls' volleyball coach and had a season similar to Grievant Earnest's.

9. One wrestling coach, an assistant football coach, two

boys' basketball coaches and two girls' basketball coaches at WMS are paid at PG 9 ($1338 base).

10. The various teams at WMS are comprised of between a dozen to perhaps twenty-two players. During the 1994-95 school year, the boys' basketball team played thirteen regular games, including nine away games, as well as three (away) days of tournament play, January 30 through February 1; the girls' basketball team played fourteen games, including seven away games; the wrestling team met for a total of twelve matches, including nine away matches, one being tournament play on February 4; the girls' volleyball team played eleven games, including six away games; and the football team played eight games, half of them away games. GR Exs. 1-5.

11. Projections for the 1995-96 school year indicate that WMS' girls' volleyball practice season was to begin August 1995. The playing season includes fifteen regular matches, held from September 7 to October 16, with tournament play scheduled at WMS from October 23 to October 26, 1995. GR Ex. 6.

12. At some point during the 1994-95 school year, Grievants talked to other coaches in their school, and only then discovered the salary difference between their salary and that of the other coaches. They initially contacted Superintendent William Harvey about the matter by letter dated February 2, 1995, and stated they were being underpaid, relative to the salaries of other middle school coaches. They sent a follow-up letter on April 6, 1995. GR Exs. 7, 9.

13. By letter dated May 8, 1995, Grievants formally requested that they be upgraded from PG 13 to PG 9, the same as WMS' assistant football coaches, boys and girls basketball coaches and the wrestling coach. BCBE "tabled" their request at

a May 22, 1995 meeting. GR Exs. 10-11.

14. Grievants initiated a grievance on the matter of their coaching salaries on or about June 26, 1995, and sought a salary upgrade to PG 13 for the 1995-96 school year and back wages for the 1994-95 school year. GR Ex. 1.

Discussion

Grievants contend that they should be placed on the salary schedule at PG 9, the designated spot for "middle school" coaches, because the scope of their duties and the duration of their coaching season is comparable to that of other coaches at WMS, namely, the assistant football, boys' and girls' basketball and wrestling coaches. Grievants claim it is simply unfair that they are paid considerably less than the other coaches, although they spend as much time performing their coaching duties as the others.4 Grievants also point out that, because their jobs are not listed on the coaching salary schedule, it is arbitrary and capricious for BCBE to set their salary without a written policy in place. Finally, Grievants suggest that their sport, volley ball, is somehow devalued, and that coaching salaries should not be predicated upon value judgments about and comparisons among the various sports. See, T.44.

BCBE's position is that it met all of the requirements set forth in W.Va. Code 18A-4-16 with respect to the

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4At the level two hearing, T.44, and in his level four fact/law proposals, Grievants' representative claimed Grievants earned 72% less than the coaches at PG 9, "Level 9 rate [$1338] divided by the level 13 rate [$776] equals 1.72 or 172%." GR Brief at 2. Actually, Grievants earn approximately 58% less

than the PG 9 coaches ($776 divided by $1338 = .579 or 58%).
extracurricular assignments at issue. According to BCBE,
Grievant Earnest even agreed at the level two hearing that BCBE
had met all of the requirements of Code 18A-4-16, pursuant to
her 1994-95 extracurricular coaching contract, and that she
could exercise her free will to reject any extracurricular
coaching assignment and coaching contract with which she was not
satisfied.5

In order for Grievants to prevail upon allegations that
W.Va. Code 18A-4-5a has been violated, as regards their extra
curricular salaries, they bear the burden of proving by a
preponderance of the evidence that they perform "like assign
ments and duties" as the coaches who receive higher wages.
Brown v. Greenbrier County Bd. of Educ., Docket No. 91-13-047
(May 22, 1991). Grievants failed to meet that burden.

While Grievants established that the volleyball season was
similar to that of certain other middle school sports, they
failed to prove that the scope of their duties, the degree of
their responsibilities and the actual time they spent on

5Pertinent provisions of W.Va. Code 18A-4-16 are as
follows:

(1) The assignment of teachers . . . to
extracurricular assignments shall be made only by
mutual agreement of the employee and the
superintendent . . . subject to board approval[.]

(2) The employee and the superintendent . . .
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 . . . shall be in
writing and signed by both parties.

volleyball coaching equaled that of the other middle school coaches who coached different sports. The only evidence Grievants produced in this regard was the playing schedules of various sports and some brief testimony that the wrestling team held practice sessions the same nights as the volleyball teams. No job description for any coach in any sport was submitted. Moreover, a mere showing that the various sports' playing seasons are similar will not support a finding that the coaches in each of those sports perform like assignments and duties as contemplated by Code 18A-4-5a. Eastham v. Brooke County Bd. of Educ., Docket No. 91-05-215 (Nov. 13, 1991). In Eastham, as here, the grievants believed that the value of the coach, and the coach's wages, should be measured by the time the coach spent on the job. As was determined in Eastham at 10:

That notion is rejected: If it were true that a
professional employee's worth should be measured by
the amount of time spent on the job, all things being
equal, teachers should earn as much money as princi
pals and other administrators. Surely, classroom
teachers are not "devalued" or "exploited" because
they are not compensated uniformly with administrators
even though on-the-job time may be equal, and surely
the salary differences between those two groups of
professional employees does not amount to "disparity
of treatment" in any legal sense.

In addition to the foregoing, the following conclusions of law are appropriate.

Conclusions of Law

1. W.Va. Code 18A-4-5a requires county boards of education to provide uniform salaries for employees performing like assignments and duties.

2. Grievants bear the burden of proving by a preponderance of the evidence that they perform "like assignments and duties" as other middle school coaches who receive higher wages. Brown v. Greenbrier County Bd. of Educ., Docket No. 91-13-047 (May 22, 1991).

2. "Grievants failed to prove that their coaching compensation 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. . ..'" Eastham v. Brooke County Bd. of Educ., Docket No. 91-05-215 (Nov. 13, 1991).

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

NEDRA KOVAL

Administrative Law Judge

Date: September 29, 1995