JOHN WILSON, PHYLLIS OWENS,

WAYNE HICKS, and PAMELA ENGLAND

v. Docket No. 94-33-103

McDOWELL COUNTY BOARD OF EDUCATION

DECISION

The grievants are classroom teachers employed by the McDowell County Board of Education (Board) and assigned to Mount View High School (MVHS). They filed a grievance at Level I January 10, 1994, alleging that they had been the victims of discrimination by MVHS Principal Barbara Hairston, in that she had assigned them duties not imposed on other teachers at the school. Ms. Hairston denied the grievance by decision dated January 24, 1994, and appeal was made to Level II where the grievance was again denied following a hearing held February 1, 1994. The Board, at Level III, affirmed the Level II findings and conclusions and appeal was made to Level IV March 24, 1994. The parties subsequently agreed to submit the case for decision on the record developed at Level II. The grievants submitted proposed findings of fact and conclusions oflaw by September 28, 1994. The Board declined to submit proposals. (See footnote 1)

FACTS

There is little if any dispute over the facts of the case. The record developed at Level II supports the following findings.

1) The workday for teachers at MVHS begins at 7:15 a.m. Students begin to arrive in intervals at approximately 7:17 a.m. and either proceed to their first period classroom or to breakfast in the cafeteria.

2) From 7:40 a.m. to 7:52 a.m., students and their first period teachers have what is termed a "Developmental Guidance" period in which the teacher might provide individual student instruction; collect assignments; take roll call; complete attendance reports; or complete other tasks necessary to begin the school day. "Cable One", a televised current events program, and school announcements are also aired in each classroom during this period. Regular instruction begins at 7:52 a.m.

3) Prior to the beginning of the 1993-94 school year it had been the practice at MVHS that

teachers with regular first period classes would generally report to their classrooms upon their arrival at MVHS and be responsible for their students from that time until the end of the first period. Teachers who were assigned "conference and planning" (C & P) periods during their first hour, (7:52 a.m. to 8:40 a.m.), had no students to supervise and werethus, free to use the 7:15 a.m. to 7:52 a.m. period for other duties, which, at least occasionally, included individual student instruction.

4) Because of a shooting incident involving two students, apparently during the 1992-93 school year, metal detectors were installed at MVHS at the beginning of the 1993-94 school year. Principal Hairston determined that teachers were required to operate the detectors each morning from approximately 7:17 a.m. to 7:40 a.m. She also determined that those students eating breakfast needed closer teacher supervision.

5) On the first day of the 1993-94 term Ms. Hairston announced to the faculty that all seven teachers assigned first period C & P for that year, which included the grievants, would be responsible for the operation of the metal detector and cafeteria supervision from 7:15 a.m. to 7:52 a.m. each morning.

6) On or about September 13, 1993, the grievants complained to Ms. Hairston that they found the metal detector duty stressful and suggested that it be rotated among all staff. Ms. Hairston agreed to the change and the grievants agreed to wait until October 1, 1993, for it to be implemented.

7) Beginning October 1, the grievants were only required to do metal detector duty on a rotational basis with all other teachers. On all other days, they reported at 7:15 a.m. to the classrooms of those teachers on detector duty on a particular day,where they were to carry out the assignments prescribed by the particular teacher. (See footnote 2)

8) On October 4, 1993, some dispute arose over whether one or more of the grievants had carried out the instructions left by teachers in MVHS's business department. On October 5, 1993, the grievants asked Ms. Hairston to clarify their roles on those days they were attending to the other teachers' classrooms. Ms. Hairston assigned this task to MVHS Assistant Principal Joseph Sparks but no response was forthcoming.

9) Having received no clarification by November 16, 1993, the grievants requested an informal conference with Ms. Hairston per W.Va. Code §18-29-4(a)(1). (See footnote 3) With the agreement of all involved, the conference was scheduled for December 10, 1993. On December 3, 1993, Ms. Hairston issued written memos to each grievant explaining that they were to supervise the

classrooms of those teachers on detector duty from 7:25 a.m. to 7:42 a.m. and then patrol a specified hallway area until 7:52 a.m.

10) During the December 10 conference, the grievants expressed dissatisfaction over having to report to other teachers'classrooms and suggested that the students of a particular teacher on detector duty be directed, per notes tacked on doors, to their classrooms instead. Principal Hairston agreed to this arrangement.

11) Later, concerns over the disruption that a number of students moving from one classroom area to another might cause to the school as a whole caused Ms. Hairston to conclude that the new arrangement should be implemented for a one-week "trial" period. By memorandum dated December 20, she so advised the grievants. She also advised that since the holiday season was imminent, the arrangement would not begin until January 3, 1994. The grievants considered these changes to be substantive alterations of their December 10 agreement with Ms. Hairston and, as previously noted, initiated a formal complaint on January 10, 1994. The new plan was never implemented.

ARGUMENT

The grievants claim that by requiring them to travel to other rooms and allowing teachers with regular first period classes to remain in their classrooms during those mornings on which they have no detector or cafeteria duty, Ms. Hairston engaged in discrimination. That term is defined in W.Va. §18-29-2(m) as "any differences in treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees." (See footnote 4) The Board maintains thedifference in treatment is directly related to the job responsibilities of the employees involved.

CONCLUSIONS

After a careful review of the parties' positions, the applicable statute and the foregoing findings of fact, the undersigned makes the following conclusions of law.

1) A grievant must establish the allegations in his or her complaint by a preponderance of the evidence. Black v. Cabell County Bd. of Educ., Docket No. 89-06-707 (March 23, 1990).

2) A preponderance of the evidence in the present case establishes that the sole reason for Ms. Hairston's decision to require the grievants to "travel" to other teachers' classrooms on mornings when those teachers had detector duty was her determination that it was less disruptive than having the students deviate from their normal routine of reporting to their regular first period classrooms. The

grievants have not shown that this determination was unfounded or unreasonable.

3) Inasmuch as the record establishes that Ms. Hairston's decision was based on reasons related to the work schedules of the grievants; the schedules of the other teachers at MVHS; and the best interests of the students, the difference in treatment which the grievants complain of was "related to the actual job responsibilities of the employees" involved. The grievants have, thereore, failed to show the Board engaged in discrimination as that term is defined in W.Va. Code §18-29-2(m).

Accordingly, the grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of McDowell 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.

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JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: April 11, 1995

Footnote: 1The Board's position, as set forth herein, is, therefore, derived from its Level II representative's opening and closing remarks.

Footnote: 2When the remaining three teachers with first period C & P were advised that they would have to "travel" to other classrooms, under the new "rotational" plan, they elected to retain their more "permanent" assignments to detector and cafeteria duties. They were not involved further in the negotiations with Ms. Hairston.

Footnote: 3"Before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based...the grievant or the designated representative shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress, or other remedy sought."

Footnote: 4The grievants' claim is based solely on this statutory provision. No charges of discrimination on the basis of race, sex, age or handicap were made.