CURTIS TATE, et. al,

v. Docket No. 96-41-067

RALEIGH COUNTY BOARD OF EDUCATION

DECISION

The grievants (See footnote 1) are employed by the Raleigh County Board of Education (Board) as teachers at the Academy of Careers and Technology (Academy). They filed a grievance at Level I, October 5, 1995, alleging that they were being denied uninterrupted planning periods in violation of W.Va. Code §18A-4-14. Their supervisor was unable to grant relief.

In a January 3, 1996 decision, the Level II evaluator found as follows. Effective the beginning of the 1995-96 school year, all high schools and the Academy adopted a scheduling arrangement whereby the instructional day would consist of four ninety-minute “block” periods. Since September 1995, those teachers at the Academy who were engaged in a “cluster” or team teaching approach, had received uninterrupted ninety-minute planning periods within the instructional day. The grievants, who were not team teachers,had been afforded three thirty-minute planning periods, two of which were during times when students were arriving at or departing from the school.

The evaluator concluded that per Code §18A-4-14, the grievants were only entitled to one thirty-minute planning period during the instructional day. In an apparent response to this ruling, Academy Principal Mary Ellen Vaught issued a schedule for the second semester of the 1995-96 school year which eliminated all ninety- minute planning periods at the school and assigned all teachers a thirty-minute planning period within the instructional day.

The grievants appealed to Level III on or about January 10, 1996; the Board declined to address the matter. Appeal to Level IV was made February 13, 1996, and the parties subsequently agreed to submit the case for decision on the record developed at the lower levels. Proposed findings of fact and conclusions of law were received by April 10, 1996.

Subsequent to a review of the record and legal argument, the undersigned advised the parties

that the relief sought, a realignment of daily work schedules, was unavailable so late in the 1995-96 school year. The grievants acknowledged that changes in their schedules would be disruptive to Academy students and agreed that they should not be implemented for the remainder of the 1995-96 year. They further responded that the planning period arrangement adopted by Principal Vaught subsequent to the Level II decision was also violative of Code §18A-4-14, and that a recently- issued 1996-97 Academy schedule had incorporated the samearrangement.

The Board subsequently confirmed that all Academy instructors would receive only one thirty-minute planning period during the instructional day for school year 1996-97. The Board did not object to allowing the grievants to amend their complaint to encompass the 1995-96 second semester schedule and the 1996-97 schedule. A Level IV hearing was held August 6, 1996, to supplement and clarify the lower level record.

Argument

The grievants' claim to an uninterrupted ninety-minute planning period is based on the following portion of W.Va. Code §18A-4-14,

> Every teacher who is regularly employed for a period of time more than one-half the class periods of the regular school day shall be provided at least one planning period within each school instructional day to be used to complete necessary preparations for the instruction of pupils. Such planning period shall be the length of the usual class period in the school to which such teacher is assigned, and shall be not less than thirty minutes. No teacher shall be assigned any responsibilities during this period, and no county shall increase the number of hours to be worked by a teacher as a result of such teacher being granted a planning period subsequent to the adoption of this section (March 13, 1982).

The grievants cite Gant v. Waggy, 377 S.E.2d 473 (W.Va. 1988), and Miller v. Kanawha Bd. of Educ., Docket No. 94-20-409 (Nov. 14, 1989), as supportive of their position.

The Board concedes that “strictly interpreted,” Code §18A-4-14 dictates that the grievants be given continuous ninety-minute planning periods within the Academy's instructional day. Essentially, the Board's position is that in promulgating thestatute, the Legislature contemplated a traditional sixty-minute class period, and could not have addressed the relatively new concept of ninety-minute block scheduling. Citing Hardman v. Kanawha County Bd. of Educ., Docket No. 95-20-249 (Oct. 12, 1995), the Board urges that application of the statute in the case include some consideration of the

unique configuration of the Academy's schedule, the interplay between the school's timetables and those of its “feeder” schools, and the probability that class offerings would be reduced by a loss of flexibility in assigning planning periods.

Findings and Conclusions

It seems clear that ninety-minute classes were not the norm when Code §18A-4-14 was enacted; it appears that the Legislature most likely contemplated one hour instruction periods. Although the cited provision explicitly links the length of the planning period to class length, it is reasonable to find some implicit limitation on the amount of time in a given school day which can be devoted to preparation for instruction. It is obvious that at some point, a minute for minute calculation of planning time dictates an impractical result. The undersigned declines to find the statute so restrictive of a county board's ability to arrange teacher and student schedules.

The Administrative Law Judge in Hardman also concluded that there were limits to the “one-to-one” ratio provided for in Code §18A-4-14. That case essentially holds that when a class period at a particular school exceeds the “usual” length of one hour, anaccommodation can be reached between the requirements of the statute and a county board's duty to run an efficient school system. This ”equity-based” ruling is affirmed and applied to the present case; the undersigned adds that it is the county board's burden to show that longer planning periods would significantly impair the operation of a particular school.

The Board's evidence fully supports that prior to and during the change to block scheduling at the Academy, the grievants and Board administrators, including Principal Vaught and Vocational Education Director Bill Grass, devoted a considerable amount of time and effort to developing a schedule which retained current class offerings and provided instructors uninterrupted ninety minute preparation periods within the instructional day. The record also reflects that all participants were concerned with maintaining recent, rather dramatic increases in the number and variety of classes offered at the school and a corresponding increase in student enrollment. The grievants do not dispute that as a result of these efforts, “cluster” teachers were afforded ninety-minute preparation periods; they do not take issue with the Board's assertion that the concept was not amenable to their respective teaching fields.

The evidence further establishes that by October 1995, it was concluded that additional

permanent instructors, substitute teachers, or additional compensation for the grievants were the only alternatives to reducing class offerings at the school. At some point, Ms. Vaught was advised that budget constraints wouldnot permit additional pay or staff. At least some instructors rejected outright the notion of eliminating classes. Finally, the record demonstrates that the Academy schedule is necessarily interwoven with and to a large extent dependent upon the schedules of the schools from which it receives its students and a bus schedule with numerous arrival and departure times. It is clear that even small changes in the Academy's timetables can and do necessitate changes in its feeder school and bus schedules. Mr. Grass' Level IV testimony in particular reflects that it would be very difficult to arrange an Academy teacher's schedule without simultaneously developing schedules for feeder school and transportation employees.

After reviewing all evidence of record, the undersigned is persuaded that the Board has conducted an exhaustive review of the alternatives to eliminating classes at the Academy, and that budget constraints and/or factors related to the school's unique role in the school system disallow those options. It is obvious that Academy students would not benefit from a reduction in class offerings, and the Board has shown that it would otherwise be a detriment to the school system.

The evidence, however, also establishes a need for more than the thirty minute planning time allotted for the 1996-97 school year. The undersigned concludes that a sixty minute planning period fulfills the requirements of Code §18A-4-14, and permits the Board sufficient staffing and scheduling flexibility.

Accordingly, the grievance is **GRANTED** to the extent that theRaleigh County Board of Education is hereby **ORDERED** to provide each of the grievants a sixty-minute uninterrupted planning period during the Academy's instructional day for the 1996-97 school year. Any party may appeal this decision to the Circuit Court of Raleigh County or the Circuit Court of Kanawha 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

ADMINISTRATIVE LAW JUDGE

Dated: August 30, 1996

Footnote: 1

Curtis Tate, David Hunt, Jim Campbell, Harry Rylant, Susan Rice, Lisa Smith, Peggy Truman, Deborah Bush, David Cole, Dennis Jordan, Kay Chastain, Michael Acord, Norman Booker, Antonio Reck, Buford Blevins, Dave Meadows, Clyde Lilly, Charles Underwood, Michael Burns, Karen Bledsoe, Jeff Lacy, Gwynn Hart, Rene Shiflett, and Charles Pack.