

**GREGORY FOLEY,**

**Grievant,**

**vs.**

**DOCKET NO. 96-12-069**

**GRANT COUNTY BOARD OF EDUCATION,**

**Respondent.**

### **DECISION**

Mr. Greg Foley (Grievant) is employed as a school teacher by the Grant County Board of Education (Respondent). Grievant alleges that Respondent violated W.Va. Code §18A-4-5a because he did not receive the same amount of compensation for being the girls' head volleyball coach, as other head coaches employed by Respondent. Grievant also alleges that Respondent treated him differently than other head coaches by not paying him for days he coached outside of the employment term. As relief, Grievant seeks to be compensated on the same basis as other head coaches.

Grievant was unsuccessful in his grievance below. On April 4, 1996, a Level IV evidentiary hearing was held at the Grievance Board's office in Elkins, West Virginia. On May 1, 1996, the case became mature upon receipt of Respondent's Level IV post-hearing submission.

The following findings of fact were derived from the record.

### **FINDINGS OF FACT**

1. Grievant is a teacher at Petersburg Elementary School in Grant County.
2. Since 1983, Grievant has been employed by Respondent as head tennis coach.
3. On May 30, 1995, Respondent posted the girls' head volleyball coach position for the 1995-96

school year. Compensation listed for the position was "county supplement." (Level II, Gr. Ex. 1)

4. On June 2, 1995, Grievant applied for the posted position. (Level II, Bd. Ex. 1).

5. Grievant failed to inquire to determine what "county supplement" meant. He incorrectly assumed the salary for the girls' volleyball coaching position would be \$1,100 plus 1% of his teaching salary. Grievant was paid \$550 + 1% of his teaching salary.

6. Grievant's salary as head tennis coach for the 1995-96 school year was \$1,100 per year plus 1% of his teaching salary, a total of \$1,400.59.

7. Grievant's salary as head tennis coach is the same as other head coaches. The boys' football head coach, boys' varsity basketball coach, boys' baseball coach, boys' wrestling coach, girls' varsity basketball coach, and girls' and boys' track coach are all paid \$1,100 plus 1% of their respective teaching salary. The girls' volleyball coach is the only head coach which Respondent fails to compensate at the \$1,100 plus 1% salary rate.

8. On June 15, 1995, Superintendent Ray Woolsey notified Grievant by letter that Respondent voted on June 13, 1995, to employ him as girls' varsity volleyball coach. This letter did not mention salary. (Level II, Bd. Ex. 2).

9. Prior to Grievant's hiring, the athletic director scheduled the date(s) for tryouts and interscholastic competition. 10. Grievant's employment term as a teacher began on August 25, 1995. (Level IV, Gr. Ex. 1).

11. Grievant coached eight days prior to the beginning of his employment term.

12. In some instances, coaches are paid their respective full teaching salary for days worked coaching in excess of their extra- curricular contract. The boys' head and assistant football coaches, and both athletic trainers are compensated for an extra twenty days. The boys' junior high football coach is compensated for an extra ten days, and the cheerleading sponsor is compensated for an extra five days.

13. The volleyball season ended on November 11, 1995. Grievant received his coaching salary as part of his paycheck on November 15, 1995.

14. Grievant promptly contacted Mr. Abe Evans, Respondent's Treasurer, and spoke with Mr. Woolsey later, concerning the salary discrepancy. 15. On November 28, 1995, Mr. Woolsey recommended to Respondent that it make no adjustment in Grievant's volleyball coaching salary.

16. On November 30, 1995, Grievant received the contract for the girls' volleyball coaching

position.

17. The comparison evidence is also part of the record:

<b>Items compared:</b>	<b>Tennis</b>	<b>Volleyball</b>
Number of teams	2 (1 boys, 1 girls)	2 (1 varsity, 1 junior varsity)
Number of Students	15	29
Length of Season	59 days	58 days
Number of matches	12 regular season plus possible sectional and regional for a total of 14 days.	16 match days, multiple matches on some days.
Number of away matches	7	8
Number of practices	45	4 hours per day, for 8 days before school started, from 3:30 - 6:00 every day after that there wasn't a game until the end of the season.
Time spent	150 hours	185 hours inclusive of the eight sessions outside the employment term, 153 hours exclusive of those eight sessions.

18. The following first four items on the job descriptions [\(See footnote 1\)](#) for the head coaching positions for tennis (Level II Gr. Ex. 3), volleyball (Level II, Gr. Ex. 2), and track (Level IV, Gr. Ex. 4), are identical. Specified items include: "(1) Be responsible for [particular sport] program through completion of schedule; (2) Be responsible for scheduling games and officials, care of equipment, etc.; (3) Be responsible for health and safety of all players; and (4) Report all injuries to proper authorities." The volleyball job description under item one also adds "including tournament play," and contains the following fifth item on its job description: "(5) All other duties as assigned by the principal."

## **DISCUSSION**

Grievant's reliance on the "uniformity" provisions of W.Va. Code §18A-4-5b is misplaced. W.Va. Code §18A-4-5b provides, in pertinent part:

[U]niformity shall apply to all salaries, rates of pay benefits, increments or compensation for all persons regularly employed and performing like assignments and duties with the county . . . .

For Grievant to prevail upon allegations that W.Va. Code §18A-4-5a has been violated, concerning his extra-curricular salary, he bears the burden of proving by a preponderance of the evidence that he performs "like assignments and duties" as coaches who receive higher wages. Weimer-Godwin v. Bd. of Educ. of Upshur County, 369 S.E.2d 726 (W.Va. 1988); Canterbury v. Putnam County Bd. of Educ., Docket No. 40-86-325-1 (Jan. 28, 1987); Bumgardner v. Summers County Bd. of Educ., Docket No. 92-45-058 (Feb. 26, 1993).

The Grievance Board has consistently held that the duties of coaching different sports are inherently different. Brown v. Greenbrier County Bd. of Educ., Docket No. 91-13-047 (May 22, 1991); Wray v. Mercer County Bd. of Educ., Docket No. 27-87-285-4 (Jan. 15, 1988); Miller v. Mason County Bd. of Educ., Docket No. 26-86-183-1 (Oct. 7, 1986). [\(See footnote 2\)](#) For example, in Wray, a county board of education paid football and basketball coaches the same supplemental salary, \$1,100, but paid the football coaches an extra month's teaching salary for working during August while the basketball coaches received only three days extra pay for working during the Thanksgiving and Christmas breaks. The basketball coach alleged he should be compensated, like the football coach, an extra month's pay. The Administrative Law Judge stated that "the two sports are inherently different and to conclude the responsibilities of their[sic] coaches are like assignments and duties would be a disregard for a great many obvious variations in these two activities." Wray, at 4.

Wray also cited Markham v. Mason County Bd. of Educ., Docket No. 26-87-101 (Nov. 30, 1987), for the proposition that "a quantitative assessment of coaching duties for two different sports is not sufficient to prove they are like assignments as that term is used in W.Va. Code [§18A-4-5a] . . . ." In Markham, the county board of education established incremental salaries for only football coaches, and the basketball and baseball coaches grieved. Finding of Fact #7 states that "the sport of football is inherently and substantially different than baseball and basketball and, as such, requires different coaching duties and assignments, although all coaches presumably adhere to some common goals

and practices established for all sport activities which may appear on the various coaching job descriptions." Id. at 5.

In Earnest v. Brook County Bd. of Educ., Docket No. 95-05-334 (Sept. 29, 1995), middle school volleyball coaches alleged they were unfairly compensated because the duration of their coaching season, and the scope of their duties were comparable to the assistant football, boys' and girls' basketball and wrestling coaches. The volleyball coaches earned approximately 58% less than these coaches. Even though playing schedules and practice sessions established the volleyball season was similar to other sports, the grievance was denied because "like or similar duties" does not equal time spent performing a task.

This principle was elaborated upon in Eastham v. Brooke County Bd. of Educ., Docket No. 91-05-215 (Nov. 13, 1991). In Eastham, cheerleading coaches [\(See footnote 3\)](#) alleged that the county board of education was violating W.Va. Code §18A-4-5a because there were other coaches, with shorter seasons, being compensated at a higher rate. In denying the grievance, the Administrative Law Judge stated:

[w]hile grievants contend that the measure of a coach's worth should be based upon his or her duties, responsibilities and time spent performing coaching duties, the real thrust of their argument seems to be that a coach's worth should be measured solely by the time the coach spends on the job. [\(See footnote 4\)](#) 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 principals and other administrators. Surely, classroom teachers are not "devalued" or "exploited" because 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.

Eastham at 9-10.

In most cases when coaches allege a violation of W.Va. Code §18A-4-5a, duties are compared only in broad generalities. In Eastham, the Administrative Law Judge also addressed the lack of comparison of the "critical particulars" between the grievant's coaching position and coaching positions with allegedly like or similar duties. In the instant grievance, even though Grievant introduced the job descriptions for the volleyball, tennis, and track positions, there was not sufficient evidence produced on the "critical particulars." This evidence only broadly and vaguely compares the coaching duties, and does not address the inherent differences between these sports that Eastham requires.

Therefore, while it is apparent that Grievant and other coaches in Grant County share some

duties, e.g., overall responsibility for the prevention of injuries, it is clear that there are obvious inherent differences in the sports coached. Accordingly, Respondent was under no obligation to provide the same salary for the girls' volleyball coaching position. However, this is not to say that Grievant expends any less energy or time in the performance of his duties as volleyball coach, or that he has not performed admirably in this position. W.Va. Code §18A-4-5a simply does not require uniformity in the salaries of positions that are inherently different.

Furthermore, a basic tenet of contract law is that a contract cannot exist unless all parties agree to the terms. W.Va. Code §18A-4-16 incorporates this basic tenet, and further requires the agreement to be reduced to writing. See Mitchell v. Mingo County Bd. of Educ., Docket No. 95-29-331 (Apr. 30, 1996). In this case, Grievant saw the posting which stated compensation for the girls volleyball coach was the "county supplement." Grievant testified that he did not care what the salary was for the position, and that he failed to inquire to determine what "county supplement" meant. Therefore, Grievant contracted to coach girls' volleyball for the "county supplement."

It is unfortunate that Grievant was laboring under the mistaken assumption that the girls' volleyball coaching salary would be the same as his salary for coaching tennis. However, a prudent person would have asked his employer about a matter as important as one's salary.

In addition to the foregoing findings of fact and narration, it is appropriate to make the following conclusions of law.

### **CONCLUSIONS OF LAW**

1. In a nondisciplinary action, Grievant has the burden of proving his case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995).

2. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel; nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, in a manner which is not arbitrary and capricious. Webster County Bd. of Educ. v. Johns, 447 S.E.2d 599 (W.Va. 1994); Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

3. W.Va. Code §18A-4-5a provides that counties may fix higher salaries for teachers assigned duties in addition to regular instructional duties, but that uniformity shall apply to such additional compensation for all persons performing like assignments and duties. Rawson v. Mason County Bd. of Educ., Docket No. 25-86- 296-1 (Mar. 11, 1987).

4. The nature of the sports is inherently different. Therefore, a quantitative assessment of coaching duties for different sports is not sufficient to prove the duties are similar. See Brown v. Greenbrier County Bd. of Educ., Docket No. 91-13-047 (May 22, 1991); Wray v. Mercer County Bd. of Educ., Docket No. 27- 87-285-4 (Jan. 15, 1988); Markham v. Mason County Bd. of Educ., Docket No. 26-87-101 (Nov. 30, 1987); Miller v. Mason County Bd. of Educ., Docket No. 26-86-183-1 (Oct. 7, 1986).

5. Boards of education may establish different methods of compensation for each group of coaches, and such methods may include higher pay for a particular type of coach. See Wray, supra; Miller, supra.

6. Grievant failed to show a violation, misapplication or misinterpretation of any statute, policy, rule, regulation or written agreement relative to his extra-curricular girls' volleyball coaching contract.

Accordingly, the grievance is **DENIED**.

Any party may appeal this DECISION to the Circuit of Kanawha County or to the Circuit Court of Grant 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.

DATED: July 26, 1996 \_\_\_\_\_

JEFFREY N. WEATHERHOLT  
ADMINISTRATIVE LAW JUDGE

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[Footnote: 1](#)

*Superintendent Ray Woolsey testified that these are Respondent's official job descriptions.*

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[Footnote: 2](#)

*In this case the doctrine of stare decisis is applicable. Stare decisis is a latin phrase which means to abide by, or adhere to, decided cases.*

*Under [this] doctrine, when [a] point of law has been settled by decision, it forms precedent which is not*

*afterwards to be departed from, and, while it should ordinarily be strictly adhered to, there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. The doctrine is a salutary one, and should not ordinarily be departed from where decision is of long-standing and rights have been acquired under it, unless considerations of public policy demand it. Colonial Trust Co. v. Flanagan, 344 Pa. 556, 25 A.2d 728, 729.*

*Black's Law Dictionary, 1979, Fifth Edition, at 1261. Accordingly, prior decisions of the Grievance Board are followed unless a reasoned determination is made that the prior decision was clearly in error.*

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[Footnote: 3](#)

*According to the West Virginia Secondary Schools Athletic Commission (SSAC), cheerleading is a sport with a season which encompasses the first and second school semesters.*

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[Footnote: 4](#)

*"Grievant Eastham indicated that, in her opinion, her time was not any less valuable than the other coaches' time. She also requested a double salary, that is, \$3454, \$1727 for football season and another \$1727 for basketball season."*

*Eastham at 10.*