

BRENDA DAVIS, .

Grievant, .

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V. . DOCKET NUMBER: 95-29-499

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MINGO COUNTY BOARD OF EDUCATION, .

Employer. .

DECISION

Grievant, Brenda Davis, is employed by the Mingo County Board of Education (hereinafter Mingo) as a teacher. Currently, she teaches art classes for elementary students, children with behavioral disorders and high school students. For the 1995-1996 school year, Grievant was assigned to teach at both Matewan Middle and Matewan High School. These schools are connected to each other on the same campus.

Grievant filed a grievance in early October, 1995, pursuant to West Virginia Code §§18-29-1, et seq., complaining that neither her planning nor lunch period met the guidelines established in Code§18A-4-14, and that her sixth grade class at Matewan Middle School has more students assigned to it than allowed by Code §18-5-18a. She requests that she be given an uninterrupted planning period equal to one class period at Matewan Middle School, a duty free lunch period and a smaller sixth grade class with payment for the overage to the date of the change in number of students. Mingo argues that it has complied or substantially complied with Code §18A-4-14. It agrees that if Grievant's sixth grade class is larger than allowed, she is due some form of relief.

The grievance was denied at level one on October 6, 1995, and Grievant appealed to level two. A level two hearing was held on October 26, 1995, but a decision was not timely rendered. Therefore, pursuant to Code §18-29-3(a), she appealed to level four on November 14, 1995. An evidentiary hearing was held on March 20, 1995, at the Grievance Board's Charleston, West Virginia office. The record became mature for decision on that date.

The following facts have been deduced from the evidentiary record developed in the case:

Findings of Fact

1. Grievant teaches at Matewan Middle School (MMS) in the morning and Matewan High School (MHS) in the afternoon. Her designated home base is MMS.
2. Teachers are to arrive at MMS at 7:15 a.m. Classes at MMS start at 7:35 a.m.
3. The average class period at MMS is 40 minutes.
4. As of October 6, 1995, Grievant was given time for planning between 7:25 a.m. and 7:35 a.m., and 11:05 a.m. and 11:35 a.m. On Wednesdays, Grievant taught an extra class and her planning period started at 11:15 a.m. and ended at 11:35 a.m. Her lunch time was the same on all days.
5. Grievant teaches art from 7:35 a.m. to 9:35 a.m. She has a break between 9:35 a.m. and 9:45 a.m.
6. From September 6, 1995, the beginning of the school year, Grievant's lunch at MMS started at 11:35 a.m. and ended at 12:05 p.m.
7. At the beginning of the second semester, February 1, 1996, Grievant's lunch time was changed to 11:15 a.m. to 12:00 p.m. She was then assigned a 40 minute planning period at MHS.
8. Grievant's first class in the afternoon begins at 12:05 at MHS. Grievant takes approximately 07 minutes to go from MMS to MHS.
9. When school started, Grievant had 30 students in her sixth grade art class. Grievant has been assigned as many as 33 students in this class.
10. Grievant has also been assigned as many as 27 students during her fifth period class.
11. Grievant has not received payment for any students assigned to her class over 25.
12. In the afternoon, Grievant taught two 90 minute classes at MHS.
13. Teachers at MMS are excused at 2:15 p.m., and teachers at MHS are excused at 3:15 p.m. During the first semester of the school year, Grievant was required to stay at MHS until 3:15 p.m. Thereafter, she has been excused

at 2:15 p.m. because she does not teach during the last period.

14. At MMS, the teachers who teach there exclusively have two :40 minute planning periods, one individual and one group or team period.

Discussion

W. Va. Code §18A-4-14 states, in pertinent part, as follows:

(1) Notwithstanding the provisions of section seven [§ 18A-2-7], article two of this chapter, every teacher who is employed for a period of time more than one-half the class periods of the regular school day . . . shall be provided a daily lunch recess of not less than thirty consecutive minutes, and such employee shall not be assigned any responsibilities during this recess. Such recess shall be included in the number of hours worked, and no county shall increase the number of hours to be worked by an employee as a result of such employee being granted a recess under the provisions of this section.

(2) 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 no 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).

. . .

(3) Nothing in this section shall be construed to prevent any teacher from exchanging his lunch recess or a planning period . . . for any compensation or benefit mutually agreed upon by the employee and the county superintendent of schools or his agent: . . .

Further, Code §18-5-18a states, in part, as follows with regard to teacher-pupil ratios for teachers of sixth grade:

County boards of education shall provide by the school year one thousand nine hundred eighty-four-- eighty-five, and continue thereafter, sufficient personnel, equipment and facilities as will ensure that each third, fourth, fifth and six grade classroom . . . shall not have more than twenty-five pupils for each teacher of the grade or grades.

. . .

The state board shall establish guidelines for the exceptions authorized under 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.

The requirement for approval of an exception to exceed the . . . twenty-five pupils per teacher limit in grades one through six is waived in schools where the schoolwide pupil-teacher ratio is twenty-five or less in grades one through six: Provided, That a teacher shall not have more than three pupils above the teacher/pupil ratio as set forth in this section. . . . 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-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.

Grievant contends that :10 minutes of her planning period (7:25 a.m. - 7:35 a.m.) between September 6, 1995 and February 1, 1996, were outside of the instructional day. She also contends that she was entitled to an uninterrupted planning period of :40 minutes because that is the length of the class period at MMS. She avers that her lunch period during the first semester, while appropriate in length, was not duty-free because she was required to gather materials and go to MHS to be ready to start teaching at 12:05 p.m. She claims entitlement to additional salary for these errors in scheduling. Grievant further alleges she is entitled to additional compensation for the number of students she taught over 25 during her fourth and fifth period classes at MMS. Finally, she contends that those teachers who teach full-time at MMS are given 1:20 minutes planning time, and because MMS is her home base, she should also be given the same schedule they are assigned with regard to planning periods and quitting times.

The evidence establishes that Grievant was not provided with a duty-free, 30 minute lunch for the first semester of the 1995- 1996 school year. Grievant was allocated 30 minutes for lunch; however, she was required to use the last few minutes of that period to prepare for her first class of the afternoon at MHS. This situation was remedied at the beginning of the second semester, therefore, the question of appropriate remedy remains. Pursuant to Code §18A-4-14, teachers may give up a portion of their lunch period for pay or other benefit. In this case, it is equitable to conclude that Grievant should be paid damages represented by the value of seven minutes worth of her daily salary, multiplied by the number of days in the first semester.

Concerning Grievant's planning periods, it is determined that at the beginning of the first semester

she was entitled to a minimum of 40 minutes for planning, the length of the typical class at MMS. It is also concluded that the use of the term "period" in Code §18A-4-14 refers to the time that is allotted for one class at the school where the teacher is assigned and not simply a period of time throughout the day. Grievant was not given a sufficient planning period, even though she was given the minimum planning time throughout the morning. Again, because a teacher may trade-in her planning period for compensation, it is determined that lunch time and planning periods have value; therefore, Grievant should be awarded monetary damages in the amount of ten minutes worth of her daily rate multiplied by the number of days in the first semester.

With regard to her planning period for the second semester, she has been given a 40 minute period at MHS which has classes that typically last 90 minutes. However, according to Code §18A-4-14, she would not be entitled to a planning period at MHS if she did not work at MMS because she does not teach more than one-half of the class periods at MHS. In any event, she does not have a planning period while at MMS. While it is clear Grievant is entitled to a planning period, the language of Code §18A-4-14 does not specifically address schedules similar to Grievant's. A review of this statutory provision reveals that the Legislature intended teachers to have a planning period at the school where they teach, and for the same amount of time they are required to teach one class. Because Grievant teaches at two schools with different grades of students and different class lengths, it cannot be assumed, for practical purposes, that she uses her planning period for the preparation of instruction for the students at the school where her planning period is located. In this case, it seems equitable that Mingo have some discretion in determining where Grievant's planning period is to fall within her daily schedule. It also appears reasonable to have Grievant assigned to a planning period during the portion of her day she is the least busy, which is in the afternoon. Further, because the majority of the classes Grievant teaches are at MHS, the assignment of a 40 minute planning period is also logical. Grievant has not persuaded the Undersigned that she is either entitled to a 90 minute planning period at MHS or two planning periods during the day, one at each school. Finally, Grievant testified that teachers at MMS have two planning periods during the day because they have team planning. The evidence does not establish that Grievant is a member of any teaching "team." Therefore, she has not shown that she has been discriminated against because she also is not assigned two planning periods during the morning schedule.

In regard to the number of students Grievant has been assigned to teach at MMS, Mingo does

not deny that if she teaches over twenty-five students she is entitled to additional compensation. The evidence establishes that Grievant's fourth period, sixth grade art class has been assigned at least 30 students and often 33. Also, her fifth period, sixth grade class has been assigned as many as twenty-seven students. In West Virginia, the Legislature has made it clear that the maximum preferred student-teacher ratio in grades 1-6 is 25-1. However, teachers may be assigned up to twenty-eight students, provided they are paid additional compensation. Based upon the evidence presented, Mingo shall compensate Grievant, pursuant to the mandates of Code §18-5-18a, according to the numbers of students over the limit she has been assigned for the 1995-1996 school year. It is required to compensate Grievant based upon the number of students she has taught over twenty-five even though the maximum number of students allowed is twenty-eight. See discussion, Starr, et al. v. Lincoln County Bd. of Educ., Docket No. 94-22-125 (Oct. 20, 1994).

The foregoing discussion of the case is hereby supplemented by the following appropriate conclusions of law.

Conclusions of Law

1. Grievant bears the burden of proving her claims by a preponderance of the evidence. See, W. Va. Code §18-29-6.

2. Grievant has established by a preponderance of the evidence a violation of W. Va. Code §§18A-4-14 and 18-5-18a.

Therefore, this grievance is hereby **GRANTED IIN PART** and **DENIED IN PART**. The Mingo County Board of Education is hereby **ORDERED** to compensate Grievant consistent with the discussion above, plus interest. Further, it is also **ORDERED** to adjust Grievant's classroom teaching assignments to be consistent with the established teacher-pupil ratios set forth in W. Va. Code §18-5- 18a.

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

ALBERT C. DUNN, JR.
Administrative Law Judge

May 31, 1996