

BUDDY JARRELL

v. Docket No. 95-41-478

RALEIGH COUNTY BOARD OF EDUCATION

DECISION

The grievant, Buddy Jarrell, is employed by the Raleigh County Board of Education (Board) as a teacher at Marsh Fork High School (MFHS). He filed this complaint August 28, 1995, alleging "No time for Athletic Director work." The grievance was denied at the lower levels and appeal to Level IV was made November 3, 1995. Several hearings were continued at the grievant's request, and on or about March 9, 1996, the parties agreed to submit the case for decision on the record developed at Level II. The record and the parties' proposed findings of fact and conclusions of law were received by April 18, 1996.

Background

There is little if any dispute over the facts of the case. For several years, the grievant has served and been compensated as MFHS Athletic Director under an extracurricular contract of employment. Generally, the Director is charged with administrative oversight of the various sports programs at a particular school. During the 1994-95 school year and several years preceding, the grievant and other Teacher/Athletic Directors in charge of senior sports programs were released from classes for one hour per work day to perform director duties. At least on occasion and perhaps more frequently, they also performed these duties during their fifty-minute teaching-related planning periods and/or lunch breaks. Jeff McClung, Assistant Principal and Athletic Director for Woodrow Wilson High School, was also afforded but usually spent more than an hour per day to tend to director responsibilities.

It appears that sometime during the 1994-95 school year, the Board decided to implement a "block" scheduling system for classroom instruction in many if not all its schools. Teachers were to

provide instruction during three ninety-minute periods instead of five fifty-minute classes. They were given a ninety- minute planning period.

There was at least one brief discussion during the summer of 1995 among various high school principals and Associate Superintendent of Schools Racine Thompson concerning the impact the scheduling change and increase in planning time might have on work day time for Athletic Directors. At some point, it was decided that each principal would determine whether it was feasible to provide such time at his or her particular school.

MFHS Principal David Severt ultimately notified the grievant that effective the beginning of the 1995-96 school year, he would not be released from teaching duties to perform Athletic Director functions. Principal Severt was primarily concerned that the academic program at the school would suffer if other teachers' schedules were altered to provide the grievant the additional time. He was also concerned about the "legality" of permitting the grievant to teach only two classes per day.

All other high school principals also decided to discontinue the practice of providing work day time for their directors. Nevertheless, Assistant Principal McClung continued to spend approximately one hour during the day on director duties, and the Teacher/Directors, including the grievant, continued using at least part of their planning periods and/or lunch periods for director duties.

When it adopted a pay scale for coaches of various sports for the 1990-91 school year, the Board apparently adopted or in some manner accepted an attached "advisory" which provided that, "If scheduling allows, it is recommended that the Athletic Director be scheduled for at least one period during the day to work with duties and responsibilities assigned to him/her. (Two periods for Athletic Director would be more feasible.)" It does not appear that the Board has otherwise addressed the matter via written policy.

Argument

The grievant's legal position is not entirely clear. At Level II, he argued that if Athletic Directors needed work day time to complete their duties, it was arbitrary for the Board not to provide it. At that level, he also suggested that it was improper to allow Mr. McClung to spend work day time on those duties and not permit other directors to do the same. At Level IV, he at least implies that since he performs director duties during his lunch and planning periods, the Board is denying him those periods in violation of W.Va. Code §18A-4-14. The Board disputes that the grievant is required to tend

to director duties during his planning and lunch time and maintains generally that the grievant has failed to show that it abused its discretion.

Analysis

W.Va. Code §18A-4-16 specifies that extracurricular duties must be performed under a written contract which is separate and apart from any teaching contract the employee may have with the county board of education. See, Cruciotti v. McNeel, 396 S.E.2d 191 (W.Va. 1990). There is no language whatsoever in the statute which mandates that coaching staff or administrators be provided time during the instructional day to complete such tasks; indeed, its definition of "extracurricular duties" suggests that academic and athletic duties should be as separate as the contracts which cover them.

W.Va. Code §18A-4-14 provides that unless they accept some other "compensation or benefit," teachers employed for more than one-half of the school day must be given duty free lunch and planning periods. The statute makes no mention of extracurricular contracts and to the extent that the grievant bases his claim for an "athletic director planning period" on its provisions, the argument is wholly without merit.

The grievant has also failed to show that the Board otherwise abused its discretion in denying him the time. He merely succeeded in demonstrating that he and the other Athletic Directors have a great many responsibilities and that it is convenient, efficient, and perhaps, in some cases, necessary for them to tend to certain of those responsibilities during the school day. The record, however, will not support that the Board was not aware of or ignored these practical concerns. Rather, it reflects that the high school principals most likely benefited from the availability of a director during school hours and that they reluctantly but reasonably concluded that the new "block" class arrangement and the size of their staffs did not permit release time for director duties. The undersigned finds their decision to be neither arbitrary nor capricious.

The grievant's claim that he has been deprived of duty free planning and lunch periods is specious. All evidence of record indicates that to the extent that he now performs Athletic Director functions during a planning or lunch period, it is by his own choice. On those occasions, the grievant has, in effect, agreed to forego that duty free time in exchange for the "compensation or benefit" provided under his extracurricular contract.

The grievant has also failed to show that the Board has favored Assistant Principal McClung in any way. The record is not well developed on this claim but Mr. McClung's testimony suggests that while he continues to spend approximately one hour per day on director duties, he most likely also uses his lunch time and perhaps other permissible break time for that purpose. Further, it is apparent that the duties of an Assistant Principal and Athletic Director overlap and that in a great many sports-related matters, Mr. McClung could be serving in either role. Because of the differences in their positions and general lack of evidence on Mr. McClung's use of time, the undersigned finds that the grievant has failed to prove any unfair disparate treatment.

Accordingly, the grievance is **DENIED**. Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Raleigh 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.

JERRY A. WRIGHT
ADMINISTRATIVE LAW JUDGE

Dated: April 30, 1996