

SHIRLEY MILLER,
Grievant,

v. Docket No. 95-26-523

MASON COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

Grievant, Shirley Miller, states that during the 1994-95 school year, she had two supplemental contracts with the Mason County Board of Education ("MCBOE") to serve as coach for both the Spelling Bee/Math Field Day and Social Studies/Science Fair competitions. She states "[s]he made every attempt to fulfill th[ese] contract[s]. Due to inaction by the Central Office staff the[se] contract[s] w[ere] not fulfilled and therefore responsibility lies with said staff." As relief, Grievant requests full payment for the extracurricular contracts. This grievance was denied at Levels I and II and waived at Level III. Grievant appealed to Level IV, and a hearing was held on April 23, 1996. The case became mature for decision on June 14, 1996, the deadline for the parties' proposed findings of facts and conclusions of laws.

The majority of the facts in this case, although interpreted differently by the parties, are not in dispute and will be set out below.

Findings of Fact

1. Grievant is employed by MCBOE as a computer instructor.
2. During the 1994-95 school year, Grievant had two extracurricular contracts with MCBOE. One contract was as the Social Studies/Science Fair Coach, and the other was as the Math Field Day/Spelling Bee Coach. Each contract was for \$600, for a total of \$1,200 for the two contracts.
3. Grievant had served in these two positions for several years prior to the 1994-95 school year.

4. The duties of these positions are:

To plan, schedule and coordinate the Mason County Science and Social Studies Fair or the Math Field Day/Spelling Bee.

Responsibilities will include:

1.

Preparing documentation of guidelines and other pertinent information.

2.

Scheduling/coordination of school, county, district and state contests.

3.

Securing judge[s], establishing dates and location of contests.

4.

Processing necessary correspondence and paperwork to insure full implementation of program.

The coach of Science and Social Studies Fairs or Math Field/Spelling Bee will be under the direct supervision of the Curriculum Director.

5. During the first semester, Grievant performed some of the duties associated with these positions. She wrote several memos to the schools and organized the materials from previous years.

6. In prior years, Grievant's supervisor for her "coaching" positions had been Mr. Ken Evans, Curriculum Director for elementary education. During the Fall of 1994, Mr. Evans was frequently ill, and Grievant had some difficulty obtaining information from him.

7. On October 24, 1994, Superintendent Michael Whalen wrote Mr. Evans a memo indicating the annual Spelling Bee needed to be entered, that academic activities would need attention, and that Mr. Evans should immediately contact the schools and inform them they are to be "handled in-house" and this work was to come through his office.

8. On or about November 28, 1994, Grievant discussed various events associated with the competitions with Mr. Evans and sought advice from him about scheduling.

9. Because the discussion referred to in Finding of Fact 8 was less than fruitful, Grievant, on December 1, 1994, sent a memo to Mr. Evans, Mr. Richard Haycraft, secondary Curriculum Director, and Superintendent Whalen. In this memo she reviewed the actions she had taken thus far and indicated the newspaper had not yet received the necessary information from Mason County Schools for the Spelling Bee and needed to be contacted soon.

10. On December 5, 1994, Grievant requested a short-term leave of absence from her "teaching duties" to serve as a research analyst during the 1995 session of the

Legislature. 11. On December 12, 1994, Grievant talked to Mr. Haycraft about scheduling the competitions, and he indicated he had prepared a memo for her, but it had not been sent because of his secretary's illness.

12. MCBOE granted Grievant's requested leave of absence on December 13, 1994, and Grievant was on leave from January 9, 1995, to March 20, 1995.

13. Grievant never received Mr. Haycraft's memo and never asked him or his secretary about it.

14. Over Christmas break, Grievant compiled two tests for the County Math Field Day, but did not tell anyone that she had done so, and did not send a copy to Mr. Evans, Mr. Haycraft, or Superintendent Whalen.

15. During her leave of absence, Grievant did not contact anyone, at any time, or in any manner about the status of the various academic competitions and events.

16. On February 27, 1995, Grievant received notice that Superintendent Whalen would recommend termination of her extracurricular contracts "to return control of the program[s] to the school level." This recommendation was subsequently approved by MCBOE. Grievant did not grieve this termination.

17. After her return from her leave of absence on March 20, 1995, Grievant did not contact anyone in the Central Office about the competitions until May 2, 1995, when she sent a memo to Superintendent Whalen, Mr. Evans, and Mr. Haycraft. This memo stated: 1) Grievant was arranging for the delivery of all inventoried materials; 2) Grievant had made "all possible advanced preparations" prior to her leave of absence; 3) the assistance from Central Office staff was "invaluable and truly appreciated"; and 4) Grievant was available to attend state level mathematics and social studies competitions as well as local level science fairs.

18. Although Superintendent Whalen had told Mr. Evans and Mr. Haycraft to take charge of the academic competitions, “they did not.” Trans. Level II; Test. Superintendent Whalen at 53-54.

19. When Mr. Evans and Mr. Haycraft did not “take charge” of the academic competitions, Superintendent Whalen directed Suzanne Dickens, Coordinator for Math and Science to coordinate and organize these competitions.

20. On January 9, 1995, Superintendent Whalen assigned Ms. Dickens the responsibilities for the Math Field Day competitions. Ms. Dickens was assigned the duties for the Social Studies and Science Fair competitions in early March. The Spelling Bee competitions were arranged and coordinated by Mr. William Young, a teacher at Pt. Pleasant Middle School.

21. Grievant's memo of December 1, 1995, indicates Mr. Young had performed some work for the Spelling Bee competition prior to her leave of absence.

22. In December 1994, and January 1995, Mr. Young arranged for the date and place of the Spelling Bee competition. Mr. Young attempted to contact Grievant through her school principal to discuss awards. Failing to receive any information, he ordered trophies in January 1995. During February 1995, he communicated with school principals, faxed information to the “Huntington Herald”, confirmed judges, made up word booklets, and arranged for name tags. The County Spelling Bee was held on February 27, 1995, while Grievant was on leave of absence, to fit into the scheduled regional and state competitions. In March 1995, Mr. Young confirmed attendance for the regional competitions and sent awards to the winners. Grievant did not help at any time with this competition, never contacted Mr. Young, and was not present at any of the competitions.

23. Ms. Dickens, with the help of other teachers and staff, organized the Math Field Day competitions. These duties included scheduling the competition, compiling tests, communicating with schools, participants, parents, and newspapers, arranging for transportation to the regional meet, preparing certificates and awards, and arranging for proctors, monitors, and scorers. After rescheduling because of inclement weather, County Math Field Day was held February 15, 1995, and regional Math Field Day was held on March 21, 1995. Grievant did not participate in any of these activities and never contacted Mr. Evans, Mr. Haycraft, Superintendent Whalen, or Ms. Dickens at any time about these competitions.

24. After being assigned the duty of organizing and arranging the County Social Studies Fair competition in early March, Ms. Dickens obtained from the West Virginia State Department of

Education basic information about the competitions and communicated with the schools upon receipt of this data. After she received the school winners' names, Ms. Dickens wrote memos to the county participants and judges giving basic data about this event. The county competition was held on March 28, 1995, and the state competition was held on May 19 and 20, 1995. Ms. Dickens and her staff completely organized the county competition and arranged for the transportation and housing of the state participants, as well as providing them with additional necessary information. Ms. Dickens also disseminated data to the press about winners and their topics. Grievant did not participate in any way with these competitions.

25. The school science competitions were to be completed before Thanksgiving, thus allowing enough time to have county competition before the state competition, scheduled on April 9, 1995. Grievant gave no explanation why these competitions did not occur. Because there was not enough time to schedule school and county competitions prior to the state competitions, the county competitions were scheduled for May 9, 1995, and the participants could not advance to the state level. Ms. Dickens' and her staff's duties in arranging for this county competition were similar to those performed for the Social Studies competition. Again, Grievant did not participate in any way with this competition.

26. Grievant sent two memos after her May 2, 1995 memo, referred to in Finding of Fact 16. On May 16, 1995, she wrote Mr. Haycraft to make sure he had received the materials she had sent and referred to in her May 2, 1995 memo. On June 27, 1995, Grievant wrote Superintendent Whalen, Mr. Evans, and Mr. Haycraft reminding them she had not been paid for her extracurricular contracts.

As previously stated and as identified by the above numbered findings of facts, the majority of facts are clear from the record. However, several issues are the source of disagreement between the parties.

Grievant states she only requested a leave of absence from her teaching duties, and assured a board member at the meeting approving her leave, that the competitions were "on track" and she would complete these duties. Superintendent Whalen testified at Level II that Grievant did not volunteer to make sure the competitions were completed and taken care of, and that he appointed some one to do the work because much had to be completed prior to her return. Ms. Dickens and Ms. Elizabeth Mattox, Director of Personnel, both of whom attended the board meeting, do not remember Grievant stating she only wanted a leave of absence from her teaching duties, and that

she would continue to do the activities associated with the competitions.

The other issue in contention is Grievant's allegation she was "disabled" from performing her duties, and that the "Central Office had a plan other than the contract agreement." Grievant believes the October 24, 1994 memo cited in Finding of Fact 7 makes it clear Superintendent Whalen did not intend to allow Grievant to fulfill her contracts.

Issues

Grievant did not cite any specific violations in her statement of grievance, other than stating MCBOE violated W. Va. Code §18-29-2, which defines various terminology used in the grievance procedure.

At the Level II hearing, Grievant again alleged a violation of W. Va. Code §18-29-2, and stated MCBOE's failure to pay her was arbitrary and capricious, and that Grievant "tried to fulfill her contract[,] but due to inaction by the Board office she was disabled from doing so." Level II Trans. at 5. At the Level IV hearing Grievant's representative stated Grievant did not argue she had performed the duties, but argues that Superintendent Whalen removed her without authority from MCBOE, and she was prevented from carrying out her contracts. Respondent made two arguments. One, that Grievant was on leave of absence from all her duties, and Superintendent Whalen appropriately assigned other staff to carry out these duties in her absence. Two, if Grievant did not think she was on a leave of absence she had a duty, at least, to attempt to perform her duties. Respondent noted that the evidence demonstrated Grievant made no contact whatsoever with MCBOE during her leave of absence and did not contact the Board until approximately six weeks after her return to work. Respondent argues this behavior demonstrates Grievant consistently acted like an employee on leave of absence, because she thought she was.

Discussion

The key issues are: 1) was Grievant prevented or "disabled" from performing her duties; and 2) did Grievant request and receive a leave of absence from all her duties. ([See footnote 1](#))

It is clear Grievant did not perform the majority of the duties assigned to her as academic coach for these four competitions. Although she did complete some of the duties, such as developing the math tests and sending information indicating the school should have their science fairs in the Fall,

these activities were without value. Because no one knew of the math tests, they had to be developed from scratch, and the county science fair was not held until May 1995, thus preventing the competitors from progressing to the State competitions.

It is obvious, from the testimony, that there was some disagreement about who Grievant's supervisor was, and what role this person should play in organizing the competitions. Superintendent Whalen stated he tried to get both Mr. Haycraft and Mr. Evans, to work on the competitions, and they refused. Mr. Evans clearly knew Grievant was planning a leave of absence prior to the December 1, 1994 memo and saw this status report as an attempt to have him do her job. He also indicated Grievant could set dates and times herself without his approval or input. Mr. Haycraft indicated a willingness to work with Grievant, but neither he nor Grievant followed up on his memo after her leave of absence was approved.

Grievant's testimony is she repeatedly asked Mr. Evans, in particular, and the Central Office, in general, to give her the information she needed to complete her job. The facts do not support Grievant's contentions. Grievant's December 1, 1994 memo only indicates a need to act quickly to respond to the newspaper about Mason County's participation in the Spelling Bee. This same section indicates Mr. Evans did not request the information Grievant needed, but obviously he did not need to, as a teacher subsequently completed the necessary forms and filled out the data. It is unclear why Grievant did not do this.

This December 1, 1994 memo also speaks to the fall Science Fair and states a memo she had prepared about the fair was not received by "interested persons." Again, it is unclear what happened. The undersigned does not know if Grievant expected Mr. Evans to send this memo, if Grievant was expected to send this memo, or if principals received the memo and did not relay it to the appropriate teachers. Overall this memo, on which the Grievant greatly relies, only asks Superintendent Whalen, Mr. Evans, and Mr. Haycraft to do one thing - contact the newspaper about the Spelling Bee. All other communication is a status report and indicates everything is "on schedule and no problems are foreseen." Thus, Grievant did not ask for help or dates.

Although Mr. Evans did not give Grievant all the help she says she requested, and did not make her job any easier, that does not explain why she did not communicate with anyone during her leave of absence and after her return until May 2, 1995. If, indeed, Grievant thought she was still the academic coach, she was required to do something to attempt to perform her duties, as all these

academic competitions were still her responsibility. She made no attempt to perform them during her leave of absence. Grievant states she was “disabled” from performing her duties, and could not fulfill her contracts “[d]ue to inaction by the Central office staff.” This simply is not true. While Mr. Evans may have been less than helpful, he did not prevent Grievant from performing her duties, and his lack of response did not excuse Grievant from taking action to perform the duties for which she now seeks to be paid.

Grievant makes much of Superintendent Whalen's memo of October 24, 1994, and states this document is proof that the Superintendent intended to prevent her from completing her contracts. This interpretation of the memo just does not make sense for two reasons. First, Superintendent Whalen indicated he was having trouble getting the Curriculum Director to take an active part in the competitions, and this memo directed Mr. Evans to assume some duties. Second, Grievant did not treat this memo as a directive to stop work, as she continued to perform her duties until her leave of absence.

Grievant's testimony is clear - she did nothing during her leave of absence or after her return until May 1995, when she wrote a memo. The nature of her contracts required most of the duties to be performed from January to April, the time during which Grievant took no action. Thus, Grievant has failed to demonstrate she was “disabled” from performing her contract, she has only demonstrated she did not act.

“A board of education cannot compensate employees for work which the employees do not perform.” Conner/Moss v. Barbour County Bd. of Educ., Docket No. 01-88-261 (Aug. 31, 1989). Here, Grievant did not perform any duties on her two contracts from January to April 1995; the time the majority of the work was required. Additionally, some of the work Grievant did perform was of no use to MCBOE because her failure to share this work with those who followed in her footsteps required them to redo it.

However, because Grievant did perform some of the duties required of the position, she is entitled to some limited relief. An Administrative Law Judge may “provide such relief as is deemed fair and equitable in accordance with [the grievance procedure]” W. Va. Code §18-29-5(b). Because Grievant did partially complete her contract, and these duties were of benefit to her employer, she should receive some compensation. The relief must be tempered with the realization that the amount of duties Grievant performed were limited when viewing all the activities required by the two

contracts. Accordingly, in the interest of fairness, the undersigned grants Grievant the relief of \$100 per contract, for a total of \$200 for the duties she did perform.

The above discussion will be supplemented by the following conclusions of law.

Conclusions of Law

1. In a non-disciplinary action, Grievant has the burden of proving her case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995).
2. A board of education cannot pay an employee for duties they do not perform. Conner/Moss v. Barbour County Bd. of Educ., Docket No. 01-88-261 (Aug. 31, 1989).
3. Grievant failed to demonstrate MCBOE prevented her from carrying out the duties of her two supplemental contracts.
4. Grievant did partially perform a small portion of the duties included in her two contracts, and thus, is entitled to some relief.

Accordingly, this grievance is **GRANTED**, in part, and **DENIED** in part.

Grievant is to receive \$100 per contract for the duties she did perform for a total of \$200. Of course, MCBOE is expected to withhold the proper amounts required by law from this sum.

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

JANIS I. REYNOLDS

Administrative Law Judge

Dated: July 31, 1996

[Footnote: 1](#)

Because of the result reached in this Decision it is unnecessary to explore this second issue.