PHILLIP MITCHELL

v. **DOCKET NO. 95-29-331**

MINGO COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Phillip Mitchell filed this grievance against the Mingo County Board of Education ("MBOE") on or about June 15, 1995. He alleges a violation of W. Va. Code §§ 18A-2-1, 18A-4-1 and 18A- 4-16. He grieves that he was not paid for ten additional days for coaching girls' softball, as is set forth on a form contract for another MBOE employee who was an Assistant Boys' Basketball Coach, and seeks as relief payment for those ten days in the amount of $1,500.00. This matter became mature for decision on November 6, 1995, with receipt of the last of the parties' proposed findings of fact and conclusions of law. (See footnote 1)

The following Findings of Fact are properly made from the Level II and Level IV records.

Findings of Fact

1. Grievant is employed by MBOE as a teacher.

2. Grievant signed a contract in 1988 to coach girl's fast- pitch softball for MBOE, as Head Softball Coach at Burch High School, for a salary of $400.00 per year. He has held this position since 1988, and received $400.00 each year for his services, but has never signed another contract.

3. Grievant was paid $400.00 for his work as Head Softball Coach during the 1994-95 softball season.

4. Daniel Dean was hired as the Sr. High Assistant Basketball Coach for the 1994-95 school year. His form contract lists the compensation for Sr. High Head Softball Coach as $400.00 plus ten additional days.

5. The form contract signed by Mr. Dean contained a typographical error by listing the compensation for Sr. High Head Softball Coach as $400.00 plus ten additional days. The compensation should have been listed as $400.00.

6. Mr. Dean showed Grievant his contract, and Grievant then thought he would be paid $400.00 plus ten additional days if he coached girls' softball at Burch High School for the 1994-95 school year.

7. No representative of MBOE told Grievant he would receive compensation for ten additional days, nor did Grievant ever ask any MBOE representative whether his salary would be increased for the 1994-95 school year. 8. Other Head Softball Coaches in Mingo County received $400.00 for coaching during the 1994-95 school year.

9. Compensation for ten additional days for Grievant would amount to $1500.00.

Discussion

Grievant argued the contract received by Mr. Dean represented a resolution of MBOE adopting a new salary schedule. No evidence was introduced to support this proposition. Mr. Dean's contract is nothing more than that. It does not purport to be a MBOE resolution adopting a new salary schedule. It states it is a "Coaching Contract" entered into by MBOE with Daniel Dean for the performance of the extra-curricular duties of "Sr. High Asst. Boys' Basketball Coach".

Grievant further argued he had coached for the 1994-95 school year with the expectation he would be paid for ten additional days in accordance with what he believed was the salary schedule adopted by MBOE. MBOE argued the salary schedule in Mr. Dean's contract contained a clerical mistake when it listed the Head Softball Coach compensation at $400.00 plus ten additional days, and there was no meeting of the minds.

The undersigned can find no violation of W. Va. Code §§ 18A-2- 1, 18A-4-1 (See footnote 2) or 18A-4-16 as asserted by Grievant in his grievance statement. To the contrary, Code § 18A-4-16 specifically provides:

> extracurricular assignments shall be made only by mutual agreement of the employee and the superintendent, or designated representative, subject to board approval.

and,

> The terms and conditions of the agreement between the employee and the board of education shall be in writing and signed by both parties.

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. In this case, Grievant's contract was reduced to writing in 1988, and has not been amended by agreement of the parties. It is unfortunate that Grievant was laboring under a mistaken belief; however, the prudent person would have inquired of his employer regarding a matter as important as a nearly five- fold increase in salary to $1,900.00, rather than hanging his hat on the written contract of another employee who was not coaching the same sport.

Conclusions of Law

1. The burden of proof is upon Grievant to establish his allegations by a preponderance of the evidence. Canterbury v. Putnam County Bd. of Educ., Docket No. 40-86-325-1 (Jan. 28, 1987).

2. Grievant did not establish that MBOE had adopted a salary schedule which would entitle him to ten additional days' compensation, or that he had a contract with MBOE to receive more than $400.00 for serving as Head Softball Coach for the 1994-95 school year. 3. Grievant failed to demonstrate a violation of W. Va. Code §§ 18A-2-1, 18A-4-1 or 18A-4-16, or any other law.

Accordingly, this grievance is **DENIED**.

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.

BRENDA L. GOULD

Administrative Law Judge

Dated: April 30, 1996

Footnote: 1

The grievance was denied at Level I on June 15, 1995, and at Level II on July 25, 1995, following a hearing held on July 18, 1995. Level III was waived by Grievant to Level IV on July 28, 1995. The parties supplemented the Level II record at

a Level IV hearing held October 17, 1995.

Footnote: 2

This Code Section does not appear to be applicable to a coaching position.