

CHARLES R. TETER, et al. and

OLIN R. HOOVER, et al.

v. Docket Nos. 95-36-178/179

PENDLETON COUNTY BOARD OF EDUCATION

DECISION

Grievants, eighteen professional employees of the Pendleton County Board of Education (Respondent), filed level one grievances in April 1994, in which they alleged violations of W.Va. Code §§18A-2-2, 18A-2-8, 18A-4-7a, and 18A-2-7, when Respondent voted to terminate their extended contracts and to re-employ them under terms reflecting reduced salaries, effective the 1995-96 school year. Grievants requested reinstatement of the terms set forth in their 1994-95 contracts. Following denials at levels one and two, the complaints were advanced to level four on May 8, 1995. The grievances were consolidated and a level four hearing was conducted on August 21, 1995. The matter became mature for decision on March 19, 1996, with the filing of post-hearing submissions.

The facts of this matter are as follows. Experiencing financial problems, Respondent was evaluating its needs and resources for the 1995-96 school year at least as early as August 1994, when the finance director made numerous recommendations to avoid a deficit. Two of those recommendations were to eliminate supplemental pay for certain positions and to reduce the annual contract terms of employees who worked more than 200 days. Facing an estimated deficit of \$250,000.00, Respondent requested budgetary assistance from the State Department of Education (SDOE). At a Board meeting held on December 5, 1994, David Stewart, who had reviewed Respondent's budget on behalf of the SDOE, made numerous budgetary recommendations including the reduction of all extended contracts and the revision of compensation for extracurricular assignments from a percentage to a flat fee.

Official minutes of the December 5 meeting reflect that following Mr. Stewart's presentation, the Board held an Executive Session to discuss the SDOE recommendations. When the open meeting

was reconvened, Respondent's Superintendent, Dr. Charles Smith,
recommended the following action be taken to reduce expenses for the 1995-96 school year:

Contracts for Professional Personnel:

Superintendent - reduce salary 7%

Associate Superintendent - eliminate 7% supplement

Assistant Superintendent - eliminate 7% supplement

FHS Vo-Ag Teacher - reduce contract 20 days

CHS Vo-Ag Teacher - reduce contract 20 days

FHS Home Ec. Teacher - reduce contract 20 days

CHS Home Ec. Teacher - reduce contract 20 days

Media Services Coordinator - reduce contract 10 days

FHS Principal - reduce contract 10 days

CHS Principal - reduce contract 10 days

FHS Band - reduce contract 5 days

CHS Band - reduce contract 20 days

FES Principal - reduce contract 5 days

Brandywine Principal - reduce contract 5 days

Upper Tract Principal - reduce contract 5 days

Seneca Rocks Head Teacher - reduce contract 5 days

FHS Guidance Counselor - reduce contract 3 days

Psychologist - reduce contract 3 days

Computer Consultant - eliminate supplement
Yearbook - reduce supplement to \$750 a school

Extracurricular Salaries be as follows:

Head Football	1500 .00 + 4 extra days
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Head Boys Basketball	1500 .00
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JV Boys Basketball	750 .00
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Head Girls Basketball	1500 .00
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JV Girls Basketball	750 .00
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Head Baseball	1500 .00
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Track	1500 .00
Volleyball	750 .00
Cheerleader Coach	1000 .00 + 4 days
Athletic Trainer	1500 .00 +4 days
Athletic Director	800 .00

On a motion by Mr. Vogel seconded by Mr. Evick the Board voted unanimously to approve the above personnel contracts as recommended by the Superintendent.

By letter dated March 8, 1995, Dr. Smith advised Grievants that he would be recommending the termination of their supplemental or extended contracts as part of a process by which the Board would implement cost cutting measures. Dr. Smith continued to state that he would recommend Grievants be re-employed in their current positions under the new reduced schedule of compensation. The employees were advised of their right to a hearing before the Board prior to a final vote on the recommendation.

Four Grievants, Charles Teter, Sam Yokum, Tom Mooney, and Gary Smith, requested hearings which were held on March 20, 1995. By letter dated March 21, 1995, Grievants were notified by Dr. Smith that the Board voted unanimously to terminate their supplemental or extended contracts, effective June 30, 1995, and approved their reemployment for the 1995-96 school term under the provisions of Policy P.2.5.1., with a less extended contract, or at a salary reduced by the elimination of a percentage supplement, depending on the position held.

Policy P.2.5.1., adopted by the Board at the March 20, 1995, meeting provides the following compensation for extracurricular assignments:

Football	2100 .00
Basketball	1500 .00
Baseball	1500 .00
Volleyball	800 .00
Track	750 .00
Cheerleading	1000 .00
JV Basketball	750 .00
Assistant Football	1450 .00

Assistant Baseball	600 .00
7th & 8th Grade Basketball	650 .00
Athletic Trainer	2100 .00
Yearbook Advisor	750 .00
Band Director	350 .00 + 1500.00*
Athletic Director	800 .00

*if the school has a marching band that participates in at least three local parades, etc.

Grievants argue that the Board's vote in December 1994, violated their statutory and constitutional rights to due process by prejudging their claims and depriving them of an opportunity to be heard prior to making a decision to reduce their contracts. In support of their position, Grievants note that on March 8, 1995, all of the persons holding positions identified in the December 5 minutes were issued notices that Dr. Smith would recommend the termination of their contracts and on March 20, 1995, they were notified that the Board had accepted the recommendation.

Grievants assert that eighteen employees who held extended contracts had their contracts reduced exactly as recommended and accepted by the Board on December 5, with only two exceptions. Further, the contracts of those employees who held extracurricular contracts were terminated and reinstated with reductions substantially similar to those voted on in December 1994. The main differences cited by Grievants between the December 1994 and March 1995 amendments were that the Board retained a junior varsity basketball coach, assistant football and baseball coaches, and seventh and eighth grade basketball coaches, which they had previously determined to eliminate.

Grievants argue that the Board violated W.Va. Code §18A-2-2 which requires that, prior to terminating the continuing contract of any teacher, the Board must provide the teacher written notice and an opportunity to be heard at a meeting prior to the action thereon. Grievants assert that they were denied that statutory due process when the Board voted to amend their compensation on December 5, 1994. Even if the December action is found to be tentative and subject to change, Grievants assert that the action put the Board on notice as to the positions and recommendations at least two and one-half months prior to the employees' receipt of notice, rendering the Board incapable of sitting as an unbiased tribunal.

Prejudgment is further established, Grievants argue, by the submission of revised Board of Education Policy P.2.5.1. for review by the Board on March 6, 1995. In considering whether to adopt this policy, which revised extracurricular salaries, the Board indirectly considered the recommendations regarding their employment which were not made until March 21, 1995. Grievants conclude that actions such as these have been specifically rejected in Farley v. Bd. of Educ. of County of Mingo, 356 S.E.2d 816 (W.Va. 1988) and Lavender v. McDowell County Bd. of Educ., 174 W.Va. 513, 327 S.E.2d 691 (1984). The Board concedes that the language of the minutes of the December 5, 1994, meeting, if taken alone and out of context, appears to state that the various reductions were approved at that time. The Board concedes the minutes were inartfully worded, but argues that they do not accurately portray the mindsets of the members. The Board characterizes the December action as part of an "ongoing assessment of need and personnel" which began for the 1995-96 term in August 1994, but was not finalized until March 1995. The Board insists that actions regarding personnel were only generally discussed in August, after which suggestions were shared with the public, news media, and school employees.

When the issue was again raised in December, the Board determined that it needed to get feedback from the community and particularly school employees regarding the suggestion. The Board asserts that neither the members, nor the Superintendent, understood that the Board was asked to vote, or did vote, to reduce Grievants' compensation in December. Rather, it asserts, the intent was to vote only to launch an open process by which alternatives might be developed, inform the community and school employees of Mr. Stewart's recommendations affecting pay and contracts, and to solicit any alternative ways to conserve funds and avoid those steps. The Board asserts that but for the "unfortunate language" of the minutes of the December meeting, the evidence wholly supports the position that there was no prejudgment, and the decisions regarding individual supplements and contract terms were made in March.

The Board argues that it was not wrong for it to face its financial predicament, warn the community and employees that few options were left, and to solicit any previously unidentified options. It asserts that no prejudgment was made, and the procedure did not offend Grievants' due process rights. Dissemination of the Stewart proposals and the revised Policy P.2.5.1. , meetings with employees, and solicitation of alternative suggestions as to how to save money, are factors which the Board cites to substantiate the fact that no decision was made prior to March 20.

In addition to the sworn testimony of Board members as to their actual intent on December 5, the Board relies upon the Grievants' own actions as evidence that no final action was taken or prejudgment made, in December 1994. For example, between the December and March meetings, coaches made a counter-proposal to the Board. Additionally, no grievances were filed until after the March 20 meeting. The Board suggests that if Grievants believed a decision had actually been made in December, a complaint would have been filed at that time.

As a final argument in support of its position, the Board notes that the personnel actions taken in March were not identical to the ideas suggested at the December meeting, but actually reflected some employee input received between the two meetings.

The minutes of the Board meeting held on December 5, 1994, are unequivocal. Further, they were read and approved as accurate. As the official record of the meeting, Grievants are generally entitled to rely upon the minutes to provide a reliable representation of the Board's actions. However, board minutes, like every other written record, are subject to error. Harman v. Mingo County Bd. of Educ., Docket No. 95-29-447 (Mar. 29, 1996). When taken in its entirety, the evidence is not supportive of Grievants' claim. Notwithstanding the Board minutes, it is clear that discussion regarding the changes in compensation and employment terms was ongoing. Grievants offered a letter dated December 19, 1994, directed to Dr. Smith, in which they stated their opposition to the reductions. The letter also refers to a meeting to be held on January 22, 1995, at which time the issue would be pursued. On February 1, 1995, Grievants submitted a counter-proposal for the extra-curricular positions. In March, several Grievants requested and received hearings. These actions indicate an understanding by both parties that the decision was not yet final.

The review of revised Policy P.1.5.2 in early March does not establish prejudgment in that it was not approved until March 20, and presumably, was subject to amendment until passage. Grievants were not re-employed under the reduced terms until after the policy was adopted. Most persuasive is the fact that Grievants did not file complaints until after the March 20 Board meeting. If they believed the Board had made the final decision in December, grievances should have been filed at that time.

Last, it appears that every employee with an extended contract, supplemental salary, or extra-curricular assignment, was subject to a reduction in salary. This action was not a matter of which coach to eliminate, or whose salary to reduce, it was applied across the Board, up to and including the Superintendent. It is also determined that the Board was not tainted by the actions so as to be

incapable of sitting as an unbiased tribunal. Although the issue of salary reductions was discussed on numerous occasions prior to March 20, it also appears that the Board had no other alternatives in their budget reduction, but was amenable to suggestions throughout the process.

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

FINDINGS OF FACT

1. Grievants, professional employees of the Pendleton County Board of Education, received a supplemental salary, held an extracurricular contract, or worked an extended term, during the 1994-95 school year.

2. Beginning in August 1994, the Board began planning the 1995-96 budget for which a considerable deficit was forecast. Cost cutting measures were discussed, including the reduction or elimination of extended contracts, extracurricular contracts, and supplemental salaries.

3. In December 1994, a representative of the State Department of Education made several suggestions to the Board regarding the financial projections. The same personnel recommendations were set forth at this meeting.

4. Board minutes for the December 5, 1994, meeting state that the Superintendent recommended, and the Board approved, stated reductions in personnel salaries.

5. The Board minutes were reviewed and approved at a subsequent meeting.

6. No grievance was filed in December; however, Grievants and the Board engaged in ongoing communications regarding the personnel cutbacks throughout the year.

7. Grievants were provided notice that Dr. Smith would recommend the reduction of their contracts to the Board at the March 20, 1995, meeting. Four of the Grievants requested and received a hearing on that date.

8. The Board adopted a revised Policy P.1.5.2., which set the salaries for extra- curricular positions, on March 20, 1995, prior to rehiring Grievants under the reduced terms.

CONCLUSIONS OF LAW

1. In nondisciplinary matters Grievants are required to prove the allegations of their complaint by a preponderance of the evidence. Bowen v. Mingo County Bd. of Educ., Docket No. 95-29-488

(March 29, 1996).

2. Grievants were provided with notice and an opportunity to be heard prior to the Board voting on the recommendation to reduce or eliminate supplemental, extended, and extracurricular contracts, in compliance with W.Va. Code §18A-2-7.

3. Grievants failed to prove that actions which occurred during the planning process resulted in any prejudgment by the Board or rendered it a biased tribunal.

Accordingly, the grievance is **DENIED**.

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

Date: September 4, 1996 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE