

**STEVEN CASTO, et al., .**

.

**Grievants, .**

.

**v. . Docket No. 95-20-567**

.

**KANAWHA COUNTY BOARD OF .**

**EDUCATION, .**

.

**Respondent. .**

### **DECISION**

This is a grievance by Steven Casto, Larry Chevalier, Richard Campbell, Jim Crawford, Sr., and Jim Crawford, Jr. (Grievants), alleging that "the Kanawha County pay scale for football coaches is not uniform and is discriminatory in violation of WV Code 18A-4- 5[a]." This grievance was initiated on October 17, 1995, and elevated to Level II where a hearing was conducted on November 30, 1995. The grievance was denied at Level II by the Superintendent's designee, Norman T. Richardson, on December 15, 1995. Grievants waived Level III in accordance with W. Va. Code § 18-29-4(c) and appealed to Level IV on December 20, 1995. Thereafter, the parties agreed to complete the record at Level IV by joint stipulation. Said stipulation was received by the undersigned on March 5, 1996, and this matter became mature for decision on April 4, 1996, upon receipt of Grievants' proposed findings of fact and conclusions of law.

### **DISCUSSION**

In order to prevail on claims of this nature, Grievants must prove the allegations in their case by a preponderance of the evidence. Williams v. Lincoln County Bd. of Educ., Docket No. 93- 22-386 (Mar. 7, 1994); Steele v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989).

W. Va. Code § 18A-4-5a provides, in pertinent part:

County boards of education in fixing the salaries of teachers shall use at least the state minimum salaries established under the provisions of this article. The board may establish salary schedules which shall be in excess of the state minimums fixed by this article, such county schedules to be uniform throughout the county as to the classification of training, experience, responsibility and other requirements.

Counties may fix higher salaries for teachers placed in special instructional assignments, for those assigned to or employed for duties other than regular instructional duties, and for teachers of one-teacher schools, and they may provide additional compensation for any teacher assigned duties in addition to the teacher's regular instructional duties wherein such noninstructional duties are not part of the regular school day. Uniformity also shall apply to such additional salary increments for all persons performing like assignments and duties within the county . . . .

This Grievance Board has consistently determined that the forgoing provision does not require school board employees who coach one sport to receive the same pay as employees who coach a different sport. See e.g., Earnest v. Brooke County Bd. of Educ., Docket No. 95-05-334 (Sept. 29, 1995); Eastham v. Brooke County Bd. of Educ., Docket No. 91-05-215 (Nov. 13, 1991), aff'd, Circuit Court of Kanawha County, No. 91-AA-253 (Sept. 18, 1992); Wray v. Mercer County Bd. of Educ., Docket No. 27-87-285-4 (Jan. 19, 1988). However, Grievants are all football coaches and are only comparing their salary supplements with the supplements paid to other similarly situated football coaches employed by KCBE. [\(See footnote 1\)](#) See Weimer- Godwin v. Bd. of Educ., 369 S.E.2d 726 (W. Va. 1988); Cunningham v. Logan County Bd. of Educ., Docket No. 89-23-698 (Jan. 31, 1990). Accordingly, Grievants have established that they perform "like assignments and duties within the county" as intended by W. Va. Code § 18A-4-5a. Thus, Grievants should receive uniform pay for their respective coaching positions, unless KCBE can establish a legal basis to excuse such payment.

As to Grievant Casto, KCBE established that he previously filed an individual grievance regarding the same issue. Further, he agreed to settle his grievance based upon KCBE's commitment to pay all football coaches uniformly by the 1997-98 school year. Grievant Casto alleges that KCBE violated that agreement. However, according to the uncontradicted testimony of Bill Milam, who negotiated the settlement on behalf of KCBE, an agreement was reached with Grievant Casto whereby all football coaches would be paid the same as the current highest paid coach in each category (e.g., head coach, assistant coach) within three years. Level II hearing transcript at 11-15 (hereinafter HT at ). Mr. Milam explained that KCBE implemented this agreement by paying coaches 60 per cent

of the top salary for their category in the first year, with 80 per cent to be paid in the second year, and 100 per cent in the third year. HT at 12-15. He noted that anyone who was already receiving 60 per cent or more of the top salary did not receive an increase in the first year. HT at 12. Grievant Casto fell in this category. At Level II, Grievant Casto testified that his "general impression was it was going to be a third and a third and a third. I just didn't do the mathematics . . . ." HT at 17.

The law favors and encourages resolution of controversies by contracts of compromise and settlement rather than by litigation; it is the policy of the law to uphold and enforce such contracts if they are fairly made and not in contravention of some law or public policy. McDowell County Bd. of Educ. v. Stephens, 191 W. Va. 711, 447 S.E.2d 912 (W. Va. 1994). See Acord v. Chrysler Corp., 184 W. Va. 149, 399 S.E.2d 860 (1990); Broughton v. W. Va. Div. of Highways, Docket No. 94-DOH-449 (Feb 28, 1995). Moreover, the Education Employees Grievance Procedure "is intended to provide a simple, expeditious and fair process for resolving problems at the lowest possible administrative level and shall be construed to effectuate this purpose." W. Va. Code § 18-29-1.

Therefore, to the extent Grievant Casto is alleging that KCBE has not complied with the terms of their earlier settlement agreement, his grievance is without merit. To the extent Grievant Casto now seeks to enforce his rights under W. Va. Code § 18A-4-5a, he is estopped from doing so by virtue of his prior settlement agreement, given that there has been no showing that the terms of the settlement were contrary to law or public policy.

As to the remaining Grievants, KCBE contends that by failing to intervene in Grievant Casto's previous grievance, they are bound by the terms of the settlement he reached with KCBE. Had the other Grievants joined Grievant Casto in his earlier grievance, this argument would have merit. However, the only employee bound by KCBE's settlement was Grievant Casto. There is no evidence that the remaining Grievants were aware of Grievant Casto's earlier grievance or that they had notice of KCBE's proposed settlement with Grievant Casto. Although these Grievants could have joined Grievant Casto's earlier grievance because they were similarly affected by a continuing violation of § 18A-4-5a, they did not have to file at that time. Likewise, they were not obligated to intervene in the earlier grievance under W. Va. Code § 18-29-3(u), as KCBE lacked authority to enter into a settlement which, by its terms, substantially and adversely affected the rights and property of an entire class of employees. See Martin v. Wilks, 490 U.S. 755 (1989).

The remaining Grievants are properly joined in this grievance as permitted by W. Va. Code § 18-

29-2(a), and are properly pursuing their individual rights to challenge KCBE's pay policy, not simply attempting to overturn Grievant Casto's prior settlement agreement. Accordingly, KCBE has failed to demonstrate any lawful reason for not paying these remaining Grievants in accordance with W. Va. Code § 18A-4-5a.

Finally, the record at Level II makes reference to certain financial constraints which influenced KCBE to adopt the current "phased-in" plan to attain equity in coaching salaries. However, KCBE did not demonstrate that a fiscal emergency or crisis exists which precludes payment of employees as required by applicable state law. See Randolph County Bd. of Educ. v. Scalia, 387 S.E.2d 524 (W. Va. 1989); Maynard v. Mingo County Bd. of Educ., Docket No. 94-29-580 (Jan. 30, 1995); Cunningham, supra. Therefore, KCBE's budgetary considerations do not exempt KCBE from complying with § 18A-4-5a as to the remaining Grievants.

In addition to the foregoing discussion, the following findings of fact and conclusions of law are appropriate in this matter:

### **FINDINGS OF FACT**

1. Grievants are employed by KCBE as teachers and football coaches.
2. Grievant Casto filed a grievance against KCBE during the 1994-95 school year contending that he was not receiving the same pay as one or more similarly situated football coaches in accordance with W. Va. Code § 18A-4-5a.
3. At the time of this earlier grievance, football coaches were paid an annual stipend based on a variety of historical factors, none of which directly related to their duties as coaches.
4. On behalf of KCBE, Bill Milam negotiated a settlement of Grievant Casto's earlier grievance whereby those coaches who were being paid less than their similarly-situated counterparts would be paid 60 per cent of the pay of the highest-paid coach in their particular category (e.g., head coach, assistant coach) in the first year (1995-96), 80 per cent in the second year (1996-97) and 100 per cent in the third year (1997-98).
5. After learning that he had not received any pay increase for the 1995-96 school year, Grievant Casto initiated the instant grievance on October 4, 1995. Grievants Chevalier, Campbell, Crawford, Sr., and Crawford, Jr., joined in this grievance which states:

The above grievants allege that the Kanawha County pay scale for football coaches is not uniform and is discriminatory in violation of WV Code 18A-45[a]. Grievants ask

that their salaries be increased to the level of the other coaches who perform like duties.

6. KCBE did not adjust its pay schedules for football coaches due to perceived financial constraints.

### **CONCLUSIONS OF LAW**

1. Grievants have the burden of proving each element of a grievance of this nature by a preponderance of the evidence. Stout v. Harrison County Bd. of Educ., Docket No. 93-17-081 (Apr. 12, 1994); Randolph v. Harrison County Bd. of Educ., Docket No. 17-88- 001-2 (June 30, 1988).

2. W. Va. Code § 18A-4-5a provides that teachers shall receive uniform pay when performing like assignments and duties within the county. Earnest v. Brooke County Bd. of Educ., DocketNo. 95-05-334 (Sept. 29, 1995); Miller v. Mason County Bd. of Educ., Docket No. 26-86-183-1 (Oct. 7, 1986).

3. Grievants perform like assignments and duties as the highest paid football coaches employed by KCBE within the meaning of W. Va. Code § 18A-4-5a.

4. The law favors and encourages resolution of controversies by contracts of compromise and settlement rather than by litigation; it is the policy of the law to uphold and enforce such contracts if they are fairly made and not in contravention of some law or public policy. McDowell County Bd. of Educ. v. Stephens, 191 W. Va. 711, 447 S.E.2d 912 (W. Va. 1994). See Acord v. Chrysler Corp., 184 W. Va. 149, 399 S.E.2d 860 (1990); Broughton v. W. Va. Div. of Highways, Docket No. 94-DOH-449 (Feb 28, 1995).

5. By virtue of a prior voluntary settlement agreement which was not based upon a violation of law or public policy, Grievant Casto is estopped from litigating his entitlement to uniform pay under W. Va. Code § 18A-4-5a in regard to his extracurricular duties as a football coach.

6. KCBE has not violated the terms of its prior settlement agreement with Grievant Casto.

7. KCBE has failed to demonstrate any lawful basis for failing or refusing to comply with W. Va. Code § 18A-4-5a as it pertains to the coaching salaries paid to Grievants Chevalier, Campbell, Crawford, Sr., and Crawford, Jr.

Accordingly, the grievance is **DENIED** as to Grievant Casto and **GRANTED** as to Grievants Chevalier, Campbell, Crawford, Sr., and Crawford. Jr. KCBE is hereby **ORDERED** to pay the prevailing Grievants uniformly for their extracurricular duties as football coaches, including backpay

retroactive to 15 working days before October 17, 1995, the date this grievance was filed.

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

**LEWIS G. BREWER**

**Administrative Law Judge**

**Dated: May 30, 1996**

---

[Footnote: 1](#)

*Grievant Casto is Head Football Coach and Grievants Chevalier and Campbell are Assistant Football Coaches at South Charleston High School. Grievants Crawford, Sr., and Crawford, Jr., are Assistant Football Coaches at St. Albans High School and Sissonville High School, respectively. Grievant Casto is seeking the salary of KCBE's highest paid high school head football coach while the remaining Grievants are seeking the salary of the highest paid high school assistant football coach.*