EVERETTE K. BAILEY AND CLAUDE E. HENRY

v. Docket No. 95-27-546

MERCER COUNTY BOARD OF EDUCATION

DECISION

Grievant Everette Bailey is employed by the Mercer County Board of Education (Board) as a soccer coach; grievant Claude Henry is employed as a teacher and volleyball coach. They filed a grievance at Level I, on September 11, 1995, alleging that the higher salaries paid to Board basketball and football coaches were violative of the uniformity in pay provisions of W.Va. Code §18A-4-5a. Their supervisors were without authority to grant relief, and the grievance was denied at Level II following an October 18, 1995 hearing. (See footnote 1) The Board, at Level III, affirmed the Level II findings and conclusions, and appeal to Level IV was made December 6, 1995. A hearing was held May 15, 1996; the parties declined to submit written legal argument.

Background

There is no dispute over much of the factual background of the case. Per W.Va. Code §18A-4-16, all Board employees who perform extracurricular duties, do so under contract. (See footnote 2) While their extracurricular contracts reflect only a “lump sum” payment for their coaching services, head and assistant football and basketball coaches receive additional compensation for those services in the form of additional days on their yearly teaching contracts. A football coach who conducts team practice from July 31 to August 30 of a given year receives his teaching salary for that month. The record is less clear with regard to basketball coaches, but it appears that they conduct team practice and receive their teaching salaries during at least a portion of the Christmas holidays. (See footnote 3)

The grievants also conduct practice sessions of their respective sports teams prior to the onset of the school year but do not receive pay over and above that provided for in their extracurricular contracts. They also receive lower lump sum payments under their contracts than football and basketball coaches. The grievants' contract salaries are, however, higher than those of the Board's

weightlifting, swimming, cheerleading, golf, and softball coaches.

Argument

The grievants' legal stance is somewhat inconsistent. They concede that there are differences between their coaching duties and those of football and basketball coaches, and that such differences justify the disparity in their “basic” or lump sum coaching salaries. They find a vaguely-defined distinction, however, between these salaries and the “teaching supplements” paid the basketball and football coaches. While they concede differences in duties for the purpose of establishing basic salaries, the grievants maintain that, for the purpose of awarding the supplements, soccer, volleyball, basketball and football coaches allperform “like duties and assignments” within the meaning of W.Va. Code §18A-4-5a. The statute, in relevant part, provides:

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 a part of the scheduled hours of the regular school day. Uniformity also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the County.

The Board responds that the grievants' claim is incongruous, and first argues that their concessions on the “basic” salaries are dispositive of the case, i.e., if they acknowledge differences in the duties of the various coaching positions in issue, they must acknowledge them for all purposes, including application of Code §18A-4-5a. Relying on Weimer- Godwin v. Bd. of Educ. of Upshur County, 369 S.E.2d 726 (W.Va. 1988), the Board also contends that, regardless of the inconsistencies in their position, the grievants have not shown that their duties are “substantially similar” to those of basketball and football coaches.

Findings and Conclusions

Ultimately, it is of little, if any, legal significance that the Board's basketball and football coaches receive part of their coaching salaries via extra days on their teaching contracts. That their total coaching compensation is higher than the grievants' is the operative fact in the case. The total compensation received by a football or basketball coachfor his or her coaching services is the

supplement addressed in Code §18A-4-5a. For the reasons discussed below, it is concluded that the grievants have failed to meet their burden in the case; it is not necessary to further reconcile the inconsistencies in their legal arguments.

Weimer-Godwin, supra, in essence, holds that in order to show that the assignments and duties associated with extracurricular positions are “like” for the purpose of the uniformity provisions of Code §18A-4-5a, an employee must show that the duties are substantially similar. Subsequent Level IV decisions have followed and, to some extent, supplemented that holding. See, e.g., Eastham v. Brooke County Bd. of Educ., Docket No. 91-05-215 (Nov. 13, 1991); Wray v. Mercer County Bd. of Educ., Docket No. 27-87-285-4 (Jan. 15, 1988).

The grievants' testimony regarding several duties of the positions in issue establishes that there are similarities in certain of those duties. These likenesses are, however, broadly drawn. The grievants' evidence does not address the significant, inherent differences in the nature of the sports themselves. The grievants appear to concede that while more general tasks such as scheduling and travel arrangements, and purchasing and/or maintaining equipment are common to all coaching positions, the “core” assignment of any coach, i.e., the preparation and instruction of a team in a particular sport, requires the application of skills and abilities which are unique to that sport.

Consistent with prior Level IV decisions, the undersigned finds that basketball, volleyball, soccer and football are not substantially similar sports; to a great extent, theirpopularity is dependent upon their dissimilarities. Simply stated, if their players are not involved in substantially similar activities, coaches are not performing substantially similar duties.

Moreover, even if it were accepted that coaches of different sports could perform substantially similar duties, the grievants' evidence would be insufficient to show that this is the case with respect to the Board's coaches. They presented only their brief testimony on the types of coaching activities which they believed to be common to their positions and those of the basketball and football coaches. This evidence falls considerably short of providing the type of detailed account of all duties performed by the various coaches that would be required for an in-depth analysis of the similarities and differences in those duties.

Foley v. Grant County Bd. of Educ., Docket No. 96-12-069 (July 26, 1996) specifically holds that volleyball, basketball, and football coaches do not perform “like assignments and duties” within the meaning of W.Va. Code §18A-4-5a. That holding is affirmed and applied here; the undersigned

extends it to encompass the duties of soccer coaches.

Accordingly, the grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or the circuit Court of Mercer County and such appeal must be filed within thrity (30) days of receipt of this decision. W.Va. Code, 18-29-7. Neither the West Virginia Education andState 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 intend to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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JERRY A. WRIGHT

ADMINISTRATIVE LAW JUDGE

Dated: February 28th, 1997

Footnote: 1

The transcript of this hearing is part of the record herein.

Footnote: 2

The statute provides:

(1) The assignment of teachers and service personnel to extracurricular assignments shall be made only by mutual agreement of the employee and the superintendent, or designated representative, subject to board approval. Extracurricular duties shall mean, but not be limited to, any activities that occur at times other than regularly scheduled working hours, which include the instructing, coaching, chaperoning, escorting, providing supportservices or caring for the needs of students, and which occur on a regularly scheduled basis.

(2) The employee and the superintendent, or a designated representative, subject to board approval, shall mutually agree upon the maximum number of hours of extracurricular assignment in each school year for each extracurricular assignment.

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

(4) An employee's contract of employment shall be separate from the extracurricular assignment agreement provided for in this section and shall not be conditioned upon the employee's acceptance or continuance of any extracurricular assignment proposed by the superintendent, a designated representative, or the board.

Arguably, since grievant Bailey is not employed in a teaching capacity, the statute does not apply to his coaching contract with the Board. Despite that his contract conforms to the above provisions, it appears that he holds it by virtue of W.Va. 18A-3-2a(4), which, subject to several specific limitations, authorizes the State Superintendent of Schools to "issue certificates for persons to serve in the public schools as athletic coaches." The enumerated limitations on the authority at least suggest that a "non-employee" seeking employment as a coach with a county board of education cannot obtain one of these certificates unless he demonstrates that he is qualified for or holds a valid teaching certificate and no "currently employed" professional of the county board has made application for the coaching post. See, Hanlon v. Logan County Bd. of Educ., Docket No. 93-23-502 (Dec. 29, 1994).

Code 18A-3-2a(4) and grievant Bailey's employment status with the Board raise other, perhaps more complex issues. A portion of the statute which specifically provides that coaches without teaching contracts "shall not be considered employees of the board for salary and benefit purposes other than as specified in the contract," raises concerns over his standing to even make the claims advanced herein. Fortunately, it is not necessary to resolve these concerns; rulings on the sufficiency of the grievants' evidence on the central issue presented are dispositive of all legal claims made in the case.

Footnote: 3

It appears that by providing a portion of these coaches' extracurricular pay through their teaching contracts, the Board is able to charge that part of their total coaching compensation to the state. Notice is taken that the State Department of Education (DOE), per statute, provides funding for county board of education teaching positions, but does not pay any portion of extracurricular salaries. The grievants did not show that the Board's practice was in contravention of DOE regulations.

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