G. RENEE TAYLOR, ET AL.,

Grievants,

v. Docket No. 96-20-406

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, Renee Taylor, Elizabeth Callaway, Amy Cottrell, Jean Disney, Linda Hughart, Jane Davis, and Kimberly Williams, allege they "ha[d] not received a planning period each and every day within the instructional day as mandated by W. Va. Code 18A-4-14(2)." (See footnote 1) The requested relief was "mutually agreed upon compensation for the days we did not receive a planning period." (See footnote 2) At Level I, Principal Michael Pack agreed Grievants should receive a planning period each and every day, but stated he did not have the authority to pay them for any missed planning periods. The Level II decision agreed Grievants had missed most of the time alleged, granted the majority of the grievance, and awarded Grievants compensatory time during the first semester of the 1996-1997school year. Grievants then appealed this holding to Level IV, seeking monetary payment for the time they allege they did not receive a planning period. The parties agreed to submit the case on the record below, and this grievance became mature for decision on November 11, 1996, the deadline for the parties' proposed findings of fact and conclusions of law.

Although the Level II Grievance Evaluator agreed with Grievants about the majority of times they missed their planning periods, he did not agreed with each and every incidence. Thus, one issue before the undersigned is whether Grievants should receive compensation for every alleged incidence. The other issue before the undersigned is what type of relief is appropriate to compensate a teacher for an occasionally missed planning period, when the parties cannot reach a mutual agreement. The uncontested facts are stated below.

Findings of Fact

1. Grievants are elementary school teachers at Bonham Elementary School("BES").

2. There had been occasional problems with planning periods during the school year.

3. Frequently, Principal Pack would cover the classrooms during planning periods, but he was not always able to do this.

4. In order to provide coverage for the classes while the teachers had a planning period, Principal Pack enlisted the aid of Mr. Murray, a Registered Nurse, from Shawnee Hills. Mr. Murray would come to the school and teach about the negative impact of drugs, and how students could deal with this issue.

5. Because Mr. Murray was not a certified teacher, Principal Pack asked Grievants to do their planning while they monitored their classrooms.

6. The three first grade teachers, Grievants Hughart, Disney, and Williams, were to rotate monitoring the students. One teacher was to remain with the students while the other two were to have their planning period elsewhere. Level II Trans. at 49. They stated they did not have a planning period on March 21, April 1, 22, 29, and June 5, 1996.

7. Grievants Hughart, Disney, and Williams did not think this was a safe practice (one teacher with sixty students and Mr. Murray), and chose to remain in the classroom. Id.

8. Grievant Cottrell testified she did not receive a planning period on April 1, 22, 29, May 15 (15 minutes of her thirty minute period), and June 5, 1996.

9. Grievant Taylor stated she did not receive a planning period on March 25, April 1, 22, May 20 (15 minutes of her thirty minute period), and June 5, 1996.

10. Grievant Davis testified she did not receive a planning period on April 1, 15, 17, 22, 29, and June 5, 1996 (only 15 minutes of her thirty minute period).

11. Grievant Callaway testified she did not receive a planning period on April 17, 1996.

12. Principal Pack agreed some Grievants did not have a planning period on April 22, 1996, because Mr. Murray called in sick, at the last minute, and Principal Pack had to go to a meeting and he could not cover the students.

13. Principal Pack agreed Grievants Davis and Calloway did not have a planning period on April 17, 1996, because the music teacher was ill, and he was unable to teach these classes during their planning periods.

14. Principal Pack agreed some Grievants did not have a planning period on June 5, 1996,

because it was near the end of school and all students were at awards day.

15. Principal Pack was not at school on April 29, 1996, but he recalls calling in and being told that Mr. Murray was there and performing his assigned duties.

16. The March 21 and 25, 1996 dates, listed by Grievants, are outside the fifteen day filing period allowed by W. Va. Code § 18-29-3 and time guidelines set by Grievants.

The other dates of April 1, 15, 29, and May 15, 20, 1996, were contested at Level II. Principal Pack states he provided coverage to Grievants Taylor, Cottrell, Davis, Hughart, Williams, and Disney on April 1 and 15, 1996. Grievants say he did not. Grievant Taylor states Mr. Murray did not stay the entire 30 minute period on May 20, 1996, and she should be compensated for the other fifteen minutes.

Grievants Hughart, Disney, and Williams had been instructed to rotate monitoring the class among the three of them, and they chose not to do so. Their decision not to follow Principal Pack's directions was based on their belief he had made the wrong decision to leave only two adults with sixty children. Although this decision may be understandable, Principal Pack's decision was not found to be incorrect, and Grievants' decision for all of them to remain is not compensable. Mr. Pack says Mr. Murray came on April 29, 1996, and Grievants agree, but argue that they still had to monitor the class; thus, they did not have a duty-free planning period.

Grievant Cottrell states that on May 15, 1996, half of her sixteen students returned fifteen minutes early from their library time, and she should be compensated for the fifteen minutes she lost from her planning period. Ms. Miley, BES's librarian, states she did not dismiss any students early as that day was the Book Fair, and they could not and would not have been finished early. No reason was given why Ms. Cottrell did not tell the students to return to the library.

Additional Findings of Fact

17. Grievant Callaway was denied a planning period on April 17, 1996.

18. Grievant Cottrell was denied planning periods on April 1, 22, 29, and June 5, 1996. She did not prove she missed fifteen minutes of her May 15, 1996 planning period, as she could have asked the students to return to their assigned area.

19. Grievant Davis was denied planning periods on April 1, 15, 17, 22, 29, 1996, and fifteen minutes of her planning period on June 5, 1996.

20. Grievant Taylor was denied planning periods on April 1, 22, 29, 1996, and fifteen minutes of her planning period on May 20, 1996.

21. Grievants Hughart, Disney, and Williams were each denied one planning period for the three dates of April 1, 22, and 29, 1996. Thus, these Grievants each missed one of the three alleged days in April. These three Grievants were also denied a planning period for June 5, 1996.

Discussion

The next issue, what is the appropriate relief for occasionally missed planning periods, is an interesting one, and one with many aspects. W. Va. Code § 18A-4-14(3) is not enlightening in this instance. This Code Section indicates a teacher is not prevented from exchanging his planning period for "any compensation or benefit mutually agreed upon by the employee and the county Superintendent . . .". Indeed, Grievants' requested relief is for mutually agreed upon compensation. Compensation is a broad term and is variously defined as "payment of damages; making amends; making whole; giving an equivalent or substitute of equal value. That which is necessary to restore an injured party to his former position." Black's Law Dictionary 147-148 (abr. 5th ed. 1983). Thus, if these parties had agreed that the remedy for these occasionally missed planning periods should bea monetary form of compensation it would be acceptable in light of the statutory language and would have met Grievants' request for relief.

Monetary compensation has been awarded in the past in grievances dealing with a county board's failure to give teachers their required planning periods. Dennis v. Wetzel County Bd. of Educ., Docket No. 95-52-166 (June 6, 1995); Hardman, et al. v. Kanawha Bd. of Educ., Docket No. 95-20-249 (Oct. 19, 1995); Smith v. Lincoln County Bd. of Educ., Docket No. 89-22-544 (Nov. 14, 1989); Ford v. Wood County Bd. of Educ., Docket No. 54-86-06-1 (Aug. 8, 1986). In the majority of these cases, county boards of education either failed to give the teachers the required planning periods or failed to give planning periods of an appropriate length. Both Dennis, supra and Hardman, supra state "[t]he appropriate remedy for a violation of §18A-4-14 is money damages." Dennis noted it would be nearly impossible to give "time credit" for the amount of missed planning time in the succeeding year. Likewise, Hardman also dealt with a failure to provide planning periods for the school year. Although relief was limited to fifteen days prior to the filing date, the number of missed planning periods was approximately 40 per grievant.

Both Dennis and Hardman cite Smith, supra, for the proposition that money damages is the appropriate relief. In Smith, the school principal repeatedly required a teacher to use her planning period to cover for absent teachers. This action occurred at least 37 times during the school year. The Administrative Law Judge found the board "violated [W. Va. Code] §18A-4-14 by requiring Grievant to give up her planning period and for failing to provide her compensation for the lost periods." Smith, while requiring compensation, does not mandate monetary compensation. Thus, the precedent on which Dennis and Hardman base their holding, requiring only monetary compensation, is of questionable value and is not seen as mandatory in a fact specific situation such as this one dealing with occasionally missed planning periods (See footnote 3) .

In Gant v. Waggy, 377 S.E.2d 473 (W. Va. 1988), the West Virginia Supreme Court examined the issue of failure to provide uninterrupted planning periods of the proper length to teachers in a Pendleton County school. The Court ordered the county board to provide planning periods of the proper length, but did not order any compensation for the teachers for their planning period. It is unclear if this compensation was requested at the Supreme Court level, but it was requested at Level IV of the grievance procedure. Gant, et al. v. Pendleton County Bd. of Educ., Docket No. 36-86-073 (Dec. 10, 1986). This Grievance Board did not grant the monetary relief requested. See Waggy, supra.

As stated previously, W. Va. Code § 18A-4-14(3) allows the parties to agree mutually upon the compensation. Here, when the parties cannot agree, the undersigned is required to examine the issue logically and fashion an equitable remedy that meets the requirements of the statute. W. Va. Code § 18-29-5(b). This remedy should not result in a windfall to either party, should promote the purpose of the statute (quality, planned educational experiences for our school children), and should place Grievants where they would have been, but for the missed planning time.

If this issue is examined logically, in a situation where there are occasionally missed planning periods due to unforeseen circumstances, the proper compensation is for teachers to receive the lost planning time. The teachers were paid for the full day, but they were not allowed their statutory timeto prepare; thus, it would seem what they are entitled to is the lost preparation time. It is realized that this time will come during a different school year, but the undersigned believes that the additional one or two hours granted here would be of benefit to the teachers and their students.

It must be noted that this situation differs from one where a teacher is intentionally denied the

statutorily mandated planning period either for the school year or a large portion of the school year. This grievance also differs from one where the school board consistently fails to give the teacher a planning period of the proper length for the school year. In those situations the more appropriate remedy might be a monetary one in order to "get the attention" of the school board and to clarify for them just how important the statutorily required planning time is. Further, it would still be appropriate for a school board to award monetary compensation to teachers in a situation similar to this one, as the statute allows for a mutually agreed upon solution.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. W. Va. Code § 18A-4-14 requires that all teachers receive a daily planning period. This Code Section does not "prevent any teacher from exchanging his . . . planning period . . . for any compensation or benefit mutually agreed upon by the employee and the county superintendent . . .". Id. at (3).

2. Teachers may not be required to perform any duty during their planning period. This includes monitoring students, as this is considered a "duty".

3. When a mutually agreed upon remedy for an occasionally missed planning period cannot be reached, the Administrative Law Judge is required to fashion an appropriate, equitable remedy. W. Va. Code § 18-29-5(b). This remedy should not result in a windfall to either party,should promote the purpose of the statute (quality, planned educational experiences for our school children), and should place Grievants in the position they would have been in, but for the missed planning time.

4. The decision of what compensation or relief should be granted in planning periods grievances should be fact specific.

5. Grievants have demonstrated they missed the above-identified planning periods and should be given additional planning time during the 1996-1997 school year equal to the time they missed.

Accordingly this grievance is **GRANTED**, in part, and **DENIED**, in part. The Kanawha County Board of Education is directed to provide planning time to the Grievants as identified in this grievance. The amount of planning time to be given to the individual Grievants is as follows:

Grievants Hughart, Disney, and Williams: 1 hour.

Grievant Callaway: 30 minutes.

Grievant Cottrell: 2 hours.

Grievant Davis: 2 hours and 45 minutes.

Grievant Taylor: 1 hour and 15 minutes.

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.

JANIS I. REYNOLDS

Administrative Law Judge

Dated: February 28, 1997

Footnote: 1

The original grievance indicated that the last date a planning period was missed was April 22, 1996. This grievance was later amended to include the other dates missed for the rest of the school year.

Footnote: 2

Grievants limited their requested relief to fifteen days prior to filing their grievance. This grievance was filed on April 24, 1996.

Footnote: 3

In the instant case, the number of missed planning periods varies from one to five and one half.