BETTY ANNE HALE,

Grievant,

v. DOCKET NO. 97-50-227

WAYNE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant Betty Anne Hale filed this grievance against the Wayne County Board of Education ("WBOE") on or about November 14, 1996. Grievant alleged WBOE violated W. Va. Code § 18- 5A-5, stating:

> **in regard to meetings of the faculty senate shall be held on a regular basis as determined by a schedule approved by the faculty senate and amended from time to time if needed. Schedule was to be changed by faculty senate, but schedule changes denied by sup[erintenden]t.**

She requested as relief that the Buffalo High School Faculty Senate be permitted to set and change its meeting schedule at its discretion. (See footnote 1) **The following findings of facts are made from the record developed at the Level II hearing.**

Findings of Fact

1. Grievant is employed by WBOE as a Library Media Specialist at Buffalo High School. She is also President of the Buffalo High School Faculty Senate.

2. As required by statute, WBOE had set aside a two hour period during instructional time for a November Faculty Senate meeting. This meeting was scheduled for 9:00 a.m. on November 26, 1996. Also scheduled for that day were a principal's meeting, in-service training, and faculty Focus Committee meetings. Students were not scheduled to attend school on this day, but it was considered instructional time.

3. The teachers at Buffalo High School signed a petition to change the date of the scheduled Faculty Senate meeting from the morning of November 26, 1996, to the evening of

November 25, 1996, due to the Thanksgiving holiday. This meeting would not have occurred during instructional time.

4. By letter dated October 30, 1996, Superintendent William Carman was notified of the request that the Faculty Senate meeting be changed from November 26 to after school on November 25, 1996. Superintendent Carman refused to allow the change in the two hour time period set aside by WBOE for the Faculty Senate meeting schedule. 5. The Faculty Senate could have met on the evening of November 25, 1996, without the approval of WBOE. However, faculty could not substitute this meeting in place of the two hour block of time set aside by WBOE for the November Faculty Senate meeting. That is, faculty would have been required to report to work as scheduled on November 26, 1996, or take leave time, as it was considered an instructional day.

Discussion

W. Va. Code § 18-5A-5 establishes a faculty senate "at every public school in this state, which shall be comprised of all permanent, full-time professional educators employed at the school." This statute goes on to state in paragraph (a), "[m]eetings of the faculty senate shall be held on a regular basis as determined by a schedule approved by the faculty senate and amended from time to time if needed." (Emphasis added.) It is this provision which Grievant contends WBOE violated by refusing to allow the Buffalo High School Faculty Senate to amend its meeting schedule.

Paragraph (b)(12) of Code § 18-5A-5 provides that the board of education shall provide:

> at least a two-hour per month block of noninstructional time within the school day: Provided, That any such designated day shall constitute a full instructional day. This time may be utilized and determined at the local school level and shall include, but not be limited to, faculty senate meetings.

While these two provisions seem somewhat contradictory, they can be read together to make sense, as Superintendent Carman did. Clearly, WBOE cannot tell the Faculty Senate when it may meet; so long as the meeting times do not conflict with teaching requirements. In fact, Superintendent Carman did not tell the Faculty Senate it could not meet on the evening of November 25, 1996. He told faculty they could not use the evening of the 25th as work time, and not report towork on November 26, 1996. The Faculty Senate could have held a meeting

on November 25, 1996, on the teachers' time, and then held another meeting during the block of instructional time provided by WBOE on November 26, 1996.

The testimony given by Grievant at the Level II hearing makes it clear that her real argument is that the Faculty Senate ought to be allowed to tell WBOE, in the middle of the school year, to change when this two hour per month block of time will be scheduled, including scheduling the time in the evening. The statute does not give the Faculty Senate control of deciding when this two hour block of time will be scheduled; the board of education schedules this block of time. Although Grievant stated the Faculty Senate would never change the meeting to some other instructional period, that is, it would never reschedule its meeting to 9:00 a.m. on another school day, Grievant's interpretation would allow this.

Grievant's testimony also made it clear that what the faculty wanted was essentially flex-time. They wanted to use the two hour period WBOE is required to set aside to meet in the evening, rather than coming to work on the 26th. WBOE is not required to allow such a flexible schedule, and if it did so, it would be violating the statute which requires it to provide this two hour period during instructional time.

Conclusions of Law

1. The burden of proof is on Grievant in this matter to prove all the allegations of her grievance by a preponderance of the evidence. Vance v. Logan County Bd. of Educ., Docket No. 92-23-045 (May 21, 1992). 2. W. Va. Code § 18-5A-5, which provides that the Faculty Senate shall schedule its meetings, does not allow the Faculty Senate to decide when the board of education will provide two hours each month during instructional time for the Faculty Senate to meet.

3. Grievant failed to prove the Wayne County Board of Education violated any law, statute, rule or regulation.

Accordingly, this grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wayne 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: August 5, 1997

Footnote: 1

Grievant's supervisor denied relief at Level I on November 15, 1996. A Level II hearing was held on December 16, 1996, and the grievance was denied at Level II on April 29, 1997. Level III was waived by Grievant, who appealed to Level IV on May 1, 1997. The parties agreed to submit this matter for decision on the lower level record. This matter became mature for decision on May 21, 1997, with receipt of Grievant's written argument. Respondent declined to submit writtenargument.