JUDITH SCHUDA, et al.,

Grievants,

v v.

Docket No. 99-40-018

PUTNAM COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, Judith Schuda, Randall Lemon, Jean Pitzer, and Cynthia Wandling, employed by the Putnam County Board of Education (PCBE) as teachers at Winfield High School (WHS), filed a level one grievance on or about November 6, 1998, in which they alleged a violation of W. Va. Code §18-5A-5 "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. Grievants request the faculty senate shall set [the meeting] time at time of regular starting school time."

WHS Principal Virgil Rice denied the grievance at level one, and, following an evidentiary hearing, the grievance was denied at level two. Grievants elected to bypass consideration at level three, as is permitted by W. Va. Code §18-29-4(c), and advanced the matter to level four on January 20, 1999. The parties agreed that a decision could be made based upon the lower-level record, supplemented with proposed findings of fact and conclusions of law. PCBE submitted no additional proposals, and the matter became mature with the receipt of Grievants' proposed findings of fact and conclusions of law on February 16, 1999. (See footnote 1)

The essential facts of this matter are undisputed and may be set forth as thefollowing findings of fact.

Findings of Fact

1. Grievants are employed by the Putnam County Board of Education and are assigned to Winfield High School (WHS).

2. Grievant Schuda serves as Chair of the WHS faculty senate.

3. Faculty senate meetings for the 1998-99 school year were scheduled on September 18,

October 16, November 20, and December 18, 1998, January 15, February 12, March 12, April 23, May 28, and June 8, 1999.

4. Those faculty senate meetings in October, December, February, and March, were scheduled to be held from 9:00 to 11:00 a.m. The remainder of the meetings were scheduled for the afternoons when students were given an early dismissal.

5. Three 1998-99 school calendars were developed by a committee and provided to all PCBE employees for consideration. The calendar selected by the employees included the faculty senate meeting schedule previously recited.

6. Sometime after the beginning of the school year, Grievants requested that the faculty senate meetings at WHS begin at 8:00 a.m., the starting time for an instructional day.

7. PCBE Superintendent Sam Sentelle issued a memorandum dated October 14, 1998, to all principals, assistant principals, and faculty senate chairpersons, advising them that they were expected to follow the meeting schedule outlined on the school calendar.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burdenof proving each element of their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6.

W. Va. Code §18-5A-5(a) 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. . . . 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.” It is this portion of the statute which Grievants claim PCBE violated. However, paragraph (b)(12) of that same provision states that a 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.”

The Grievance Board has interpreted these provisions to mean that a board of education may not tell the faculty senate when it may meet; so long as the meeting times do not conflict with teaching

requirements. Hale v. Wayne County Bd. of Educ., Docket No. 97-50-227 (Aug. 5, 1997). Hale also advised that employees must be present during the block of instructional time designated by the board for a faculty senate meeting.

Only two Grievants testified at the level two hearing. Ms. Schuda stated that she wanted to change the time of the meeting because the current schedule “takes the middle out of the morning” and it is “a more convenient time for people to start. That way, theycan get that out of the way and continue on with their day.” (Level II Trans., pp. 11-12.) Ms. Wandling indicated that she was interested in maintaining site management.

In response, Superintendent Sentelle testified that he had received criticism from members of the public who expressed concern that while they had to make alternative child care provisions, the faculty senate time was not being properly used because teachers were seen at the mall or elsewhere during that period of time. He went on to note a newspaper article had commented that “if you want to see teachers on faculty senate days, check out the local bars”. He explained it was in response to that type of criticism the faculty senate meetings were scheduled from 9 to 11 a.m. He also stated that the faculty senates could exercise some flexibility in conducting their meetings, and did not have to use the exact time period scheduled, but that the employees were being paid, and needed to be involved in some education-related activity at that time.

Of course, it is not Grievants' desire to hold a faculty senate meeting at 8:00 a.m., and still remain in the building until 11:00 a.m. As in Hale, Grievants essentially want PCBE to allow them flex-time. Unlike the teachers in Hale, Grievants only request that they be allowed to reschedule the meeting during the typical instructional day. The record does not indicate the number of professional personnel assigned to WHS, and there is no indication that the majority of them are in agreement with Grievants. Understanding Superintendent Sentelle's concern relating to public opinion, it would not be permissible for a faculty senate to meet in the evenings; however, because Grievants' request is limited to regular school hours, the change is permissible under the language of W. Va. Code §18-5A-5.

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

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of

proving each element of their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6.

2. W. Va. Code §18-5A-5(a) 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. . . 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."

3. Paragraph (b)(12) of Code §18-5A-5 requires that a 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."

4. Grievants have proven that their request to hold their faculty senate meeting one hour earlier, but within the regular instructional day, is permissible under the language of W. Va. Code §18-5A-5.

Accordingly, the grievance is **GRANTED**, and PCBE Ordered to allow the faculty senates to determine the schedules for their meetings so long as they are within theregular school day.
Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Putnam 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: February 26, 1999 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Grievants were represented by Susan Hubbard of WVEA, and PCBE was represented by John Grafton, Esq.