

MARGARET CLARK, et al.,

Grievants,

v.

DOCKET NO. 00-50-134

WAYNE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants [\(See footnote 1\)](#), teachers and classroom aides at Crum Elementary, Fort Gay Elementary, and Fort Gay Middle School, filed this grievance against their employer, the Wayne County Board of Education ("Board"), alleging discrimination in regard to the length of their work day. Relief sought is to return to the work day schedules of the 1998-99 school year.

The grievance was denied at level one by Grievants' Principals, and a level two hearing was held on January 21, 2000. The grievance was denied by Grievance Evaluator, James J. Ross, by decision dated April 3, 2000. Grievants appealed to level four on April 11, 2000, and a level four hearing was held on May 18, 2000, before Administrative Law Judge Lewis Brewer. This grievance was reassigned to the undersigned Administrative Law Judge on June 5, 2000. This grievance became mature for decision on June 19, 2000, the deadline for the parties' proposed findings of fact and conclusions of law. Grievants were represented by Susan Hubbard, West Virginia Education Association, and the Board was represented by David Lycan, Esq.

SUMMARY OF EVIDENCE

Level Two Grievants' Exhibits

Ex. 1 -

Level one grievance documents.

Ex. 2 -

1999-2000 Bell Schedules for Wayne County Schools.

Level Two Board Exhibit

Ex. 1 -

Policy 2510, Work Day.

Level Four Grievants' Exhibits

Ex. A -

October 8, 1999 memorandum from Wilts Salmons to All Staff Members of the Tolsia High area Feeder Schools.

Ex. B -

Undated memorandum from Staffs of Tolsia area feeder schools to Wilts Salmons, with attached signature sheets.

Testimony

Grievants presented the testimony of Wilts Salmons, Glennda Brown, Brenda Bean, Wanda Copley, Patsy Marcum, Debra Bowen, and Bonnie Evans. The Board presented the testimony of Claudia Berlin, Laura Brown, Jerry Clark, Margaret Clark, Gary Clark, Marsha Conley, and Sherry Copley.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts.

1. Grievants are teachers and classroom aides at Crum Elementary, Fort Gay Elementary and Fort Gay Middle Schools in Wayne County. 2. Fort Gay Elementary, Crum Elementary, Fort Gay Middle School and Tolsia High School are all located in the southern section of Wayne County.

where the County is most rural and least populated and generally, longer bus routes are required.

3. Tolsia High School is located on Tolsia Highway, about halfway between Fort Gay and Crum, these two areas being approximately twenty miles apart. The school bus system in this southern area of Wayne County operates using Tolsia High School as its hub of transportation.

4. During the 1998-1999 school year, Tolsia High School, along with the other high schools in Wayne County, was on a block schedule, with each class during the day being ninety (90) minutes in length. However, for the 1999-2000 school year, the Board implemented a modified block schedule for all county high schools, with the new class schedule calling for eight (8) forty-five (45) minute class periods.

5. The above modified block schedule caused the high school administrators to add a few minutes of extra time to the school day to provide for the extra breaks between class periods. At Tolsia High School, this extra time amounted to approximately fifteen (15) minutes, for three (3) five (5) minute breaks between the extra periods. The Tolsia High School administrators and the County administrators attempted to come up with a plan to decrease the additional time but could not come up with a reasonable alternative.

6. Due to the above class scheduling change at Tolsia High School, buses within the southern area of Wayne County still arrived at the same time as before; however, the buses were delayed in leaving at the end of the school day by approximately fifteen (15) minutes at the two elementary schools and the middle school that serve this area. The bellschedule at these three schools could have remained the same as for the previous school year, but the principals at these schools, out of a concern for the students' safety, elected to extend the school day by approximately fifteen (15) minutes.

7. The Fort Gay Elementary and Fort Gay Middle School Grievants, even with this schedule change, were still within an eight-hour school day with regard to instruction and duty time. Some Crum Elementary Grievants' work day extended slightly beyond an eight- hour work day on days they had duty. The Crum Elementary teacher Grievants have their morning and evening duty on the same day, rather than broken up into separate days for each duty, as is the practice at other elementary schools in the County.

8. Due to the geography of the County and varying logistics of its bus routes, Wayne County's schools vary as to their bell schedules. A comparison of some of the school schedules follows:

Crum Elementary -

7:25 a.m. - 3:40 p.m. (last bus leaves)

Buffalo Elementary -

7:35 a.m. - 2:25 p.m.

Ceredo Elementary -

7:30 a.m. - 2:35 p.m.

Dunlow Elementary -

7:45 a.m. - 3:05 p.m.

East Lynn Elementary -

7:55 a.m. - 3:10 p.m.

Fort Gay Elementary -

8:00 a.m. - 3:10 p.m.

Kellogg Elementary -

7:40 a.m. - 2:40 p.m.

Kenova Elementary -

7:45 a.m. - 2:35 p.m.

Prichard Elementary -

7:15 a.m. - 2:30 p.m.

Buffalo Middle -

7:30 a.m. - 2:35 p.m.

Ceredo-Kenova Middle

7:40 a.m. - 2:39 p.m.

Crum Middle -

7:30 a.m. - 3:15 p.m.

Fort Gay Middle -

7:40 a.m. - 3:10 p.m.

Tolsia High School -

8:00 a.m. - 3:10 p.m.

G. Ex. 2.

9. Of the above schools, Crum Elementary, Dunlow Elementary, Fort Gay Elementary, Prichard Elementary, Crum Middle, and Fort Gay Middle all feed into Tolsia High School. With the exception of Prichard, which has its own bus, the feeder schools use Tolsia High School buses for transportation, and the bell schedules for those schools are determined based upon the schedule for Tolsia High.

10.

The rest of the schools listed above feed into Spring Valley High School.

DISCUSSION

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.

Grievants complain, with regard to the extended schedule this past school year, that (1) they are working a longer period of time each day than similar employees in other schools in the County, and (2) the extended length of the day is not conducive to the students' learning. The Board argues that Grievants have failed to prove any violation of statute, law, policy or practice with regard to their schedules.

W. Va. Code § 18-29-2(m) defines "discrimination" as "any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees." In order to establish a claim of discrimination, Grievants must establish a prima facie case of discrimination by a preponderance of the evidence. In order to meet

this burden, Grievants must show: (a)

that they are similarly situated, in a pertinent way, to one or more other employee(s):

(b)

that they have, to their detriment, been treated by their employer in a manner that the other employee(s) has/have not, in a significant particular; and

(c)

that such differences were unrelated to actual job responsibilities of Grievants and/or the other employee(s) and were not agreed to by Grievants in writing.

Smith v. W. Va. Bureau of Employment Programs, Docket No. 94-BEP-099 (Dec. 18, 1996);

Hendricks v. W. Va. Dept. of Tax and Revenue, Docket No. 96-T&R-215 (Sept. 24, 1996); Steele v.

Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989). Once Grievants establish a

prima facie case of discrimination, the burden shifts to the employer to demonstrate a legitimate, non-discriminatory reason for the employment decision. Smith, supra; see Tex. Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981).

Wayne County contains a wide range of variations in its geography and location of its residents.

The northern end of the County is far more populated and is more urban and suburban in nature.

Spring Valley High School serves the northern feeder schools. The southern end of the County is more rural with the population spread out. Tolsia High School serves the southern feeder schools, which include Grievants' schools.

As a result, the feeder elementary and middle schools vary somewhat in their individual schedules. For instance, in the northern end of the County, where students are located fairly close to their respective schools, the elementary schools tend to start anywhere from fifteen minutes to a half hour earlier than the schools in the southern end of the County; by the same token, these northern schools generally dismiss earlier than the schools in the southern end of the County. All schools in the County meet the minimum instructional time requirements that are required by the State, and all staffs at the schools are present at their respective schools for a similar amount of time, albeit not on the same exact schedule. The undersigned can find nowhere in Grievance Board opinions,

statutes, or Supreme Court opinions where it is required that all school class schedules have uniform times either throughout the State or throughout an individual county.

Rather, under West Virginia Board of Education Policy 2510 Section 5.28, the only uniformity required at the various schools is that the minimum instructional day shall be 315 minutes for K-4, 330 minutes for 5-8, and 345 minutes for 9-12. Under Section 5.52 of the same policy, the work day for schools in the State of West Virginia must not exceed eight (8) clock hours. Further, the Administrative Law Judge in *Hussell v. Mason County Board of Education*, Docket No. 96-26-073 (July 24, 1996), based upon a full reading of Policy 2510, found that "the definition of 'working day' in Policy 2510 was not meant to restrict the amount of time a professional educator can be required to work on a given day, but rather, is meant to limit the amount of time that students may be required to spend in the school for instructional purposes." Further, the Administrative Law Judge in *Hussell* also concluded that "bus duty is not part of the work day" as defined in Policy 2510.

It is clear from studying the various schedules at schools in Wayne County that while the schedules vary by perhaps a half hour from school to school as far as starting and ending bell schedules, the schools vary very little with regard to the length of each individual school day, the difference being only a few minutes. Grievants have failed to prove their claim of discrimination. With regard to Grievants' contention they are concerned for the students' welfare, while it is unfortunate that the students' day is extended, Grievants have failed to show that such a small extension has affected the students to any substantial degree. This issue has previously been addressed in *Maynor v. Kanawha County Board of Education*, Docket No. 96-20-008 (Mar. 7, 1996), as follows:

Finally, Grievants' claim that the length of the school day at their school is not conducive to the students' learning and request that Respondent restructure the bus routes for elementary students so as to lessen the time spent enroute to or from school. Even if Grievants were found to have standing to assert the rights of students to shorter transit time, Grievants have failed to meet their burden of proof on this issue. Grievants offered little or no evidence to prove that the bus routes inordinately extend the day for students in a harmful way, and they offered no expert testimony or valid studies to support their theory, which must be presented to prove such a case.

In the instant case, Grievants have also failed to prove by a preponderance of the evidence that the length of the instructional day at their schools has harmed their students in any substantial way.

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CONCLUSIONS OF LAW

1. There is no rule, statute, law or policy which dictates that all schools within a county adhere to the same bell schedule.

2. Grievants have failed to establish a case of discrimination pursuant to W. Va. Code § 18-29-2(m).

3. Grievants have failed to establish by a preponderance of the evidence that the length of the instructional day at their schools has violated any rule, statute, law or policy.

Accordingly, this grievance is **DENIED**. Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of the Wayne County. Any 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

MARY JO SWARTZ

Administrative Law Judge

Dated: July 7, 2000

[Footnote: 1](#)

Grievants are Margaret Clark, Jerry Clark, Glenda Brown, Jane McKee, Julie Pauley, Brenda Bean, Marsha Conley, Michael Robinette, Mary Ann Thomas, Laura Brown, Ellen Powers, Pamela Stevens, Carol Collins, Sherry Copley, Norma Frasher, Anita Peters, F.D. Courtney, Marilyn Perry, Claudia Berlin, Bonnie Evans, Linda McAllister, Sherri Brewer, Mary Wilson, Patsy Marcum, Mary Fluty, Charity Evans, Louella Dillon, Sylvia Bellamy, Maynard Hay, Linda Noe, Debra Bowen, Midge Jervis, and Laura Scott.