

**RICK CRAIG,**

**Grievant,**

**v.**

**Docket No. 00-49-034**

**UPSHUR COUNTY BOARD OF EDUCATION,**

**Respondent.**

### **DECISION**

Rick Craig ("Grievant") initiated this grievance on December 20, 1999, as a result of being required to work during his planning period on December 15, 1999. He seeks compensation for the lost planning period at his normal daily rate of pay. The grievance was denied at level one on January 12, 2000. Upon appeal to level two, a hearing was held on January 26, 2000. In a decision dated February 1, 2000, the grievance was partially granted, and Respondent was ordered to compensate Grievant in the amount of \$12.00 for the loss of his planning period. Level three consideration was bypassed, and Grievant appealed to level four on February 4, 2000. After a continuance granted for good cause shown, a level four hearing was held in the Grievance Board's office in Elkins, West Virginia, on June 26, 2000. Grievant was represented by William White of WVEA, and Respondent was represented by counsel, F. Thomas Rubenstein. This matter became mature for consideration upon receipt of the parties' fact/law proposals on July 28, 2000.

The following findings of fact are made from a preponderance of the evidence of record.

### **Findings of Fact**

1. Grievant is employed by Respondent Upshur County Board of Education ("UCBOE") as a classroom teacher at Buckhannon Upshur High School ("BUHS").
2. On December 15, 1999, the following situations created a shortage of teachers and administrators to cover classes at BUHS:
  - Four teachers were absent.

- There were not enough substitutes available to cover for all absent teachers.
  - The central office administrators were involved in dealing with an accident in which two teachers were injured.
  - BUHS Principal Bill Carman was attending an all-day meeting at the central office.
  - The assistant principal was involved in a large number of student discipline referrals.
3. In order to provide coverage for all classes, BUHS Vice Principal Dan Dolan comprised a schedule of teachers who would supervise students of absent teachers during their planning periods.
4. Grievant was advised at 7:30 a.m. on December 15, 1999, that he would be required to cover the sixth period class of an absent teacher. Grievant's normal planning period is during sixth period.
5. Grievant advised Vice Principal Dolan that he did not want to give up his planning period and would not do so voluntarily.
6. Grievant was required to supervise students while they worked on pre- assigned activities during his planning period on December 15, 1999.
7. On January 11, 2000, UCBOE adopted a policy whereby teachers can voluntarily relinquish their planning period in exchange for compensation at the rate of \$12.00 per class period.
8. Pursuant to UCBOE's new policy, the level two hearing grievance evaluator awarded Grievant \$12.00 for being required to relinquish his planning period on December 15, 1999.

### **Discussion**

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of his 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.

At level four, Grievant seeks only to be paid additional compensation for his missed planning period, contending that he is entitled to his daily rate of pay, which both parties have stipulated would be \$22.88 for one class period. Grievant argues that Respondent's policy, adopted on January 11, 2000, should not be applied to him retroactively.

W. Va. Code § 18A-4-14 provides as follows with regard to planning periods:

(2) Every teacher who is regularly employed for a period of time more than one-half the class periods of the regular school day shall be provided at least one planning period within each school instructional day to be used to complete necessary preparations for the instruction of pupils. Such planning period shall be the length of the usual class period in the school to which such teacher is assigned, and shall be not less than thirty minutes. No teacher shall be assigned any responsibilities during this period, and no county shall increase the number of hours to be worked by a teacher as a result of such teacher being granted a planning period subsequent to the adoption of this section (March 13, 1982).

Principals, and assistant principals, where applicable, shall cooperate in carrying out the provisions of this subsection, including, but not limited to, assuming control of the class period or supervision of students during the time the teacher is engaged in the planning period. Substitute teachers may also be utilized to assist with classroom responsibilities under this subsection: Provided, That any substitute teacher who is employed to teach a minimum of two consecutive days in the same position shall be granted a planning period pursuant to this section.

(3) Nothing in this section shall be construed to prevent any teacher from exchanging his lunch recess or a planning period or any service personnel from exchanging his lunch recess for any compensation or benefit mutually agreed upon by the employee and the county superintendent of schools or his agent: Provided, That a teacher and the superintendent or his agent may not agree to terms which are different from those available to any other teacher granted rights under this section within the individual school or to terms which in any way discriminate among such teachers within the individual school, and that service personnel granted rights under this section and the superintendent or his agent may not agree to terms which are different from those available to any other service personnel within the same classification category granted rights under this section within the individual school or to terms which in any way discriminate among such service personnel within the same classification category within the individual school.

Respondent does not dispute that Grievant was deprived his planning period in violation of the statute, for which he should be compensated. This Grievance Board has repeatedly held that, if a teacher is forced to relinquish his planning period in violation of W. Va. Code § 18A-4-14, he is to be compensated for that time period at his prorated daily rate of pay. See Collins v. Wayne County Bd. of Educ., Docket No. 99-50-535 (Feb. 23, 2000); Hardman v. Kanawha County 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); Cf., Taylor v. Kanawha County Bd. of Educ., Docket No. 96-20-406 (Feb. 28, 1997). Rather, Respondent contends that it must compensate Grievant at the \$12.00 rate provided for by its policy, or violate the portion of W. Va. Code § 18A-4-14 prohibiting any discriminatory means of compensating teachers for lost planning periods.

The undersigned disagrees with Respondent's analysis. UCBOE's policy was not in existence at the time of the incident which led to this grievance, and there is no indication that the policy is to be applied retroactively. Moreover, Grievant's loss of his planning period on December 15, 1999, was not the result of a voluntary agreement between himself and UCBOE officials, thus it would not violate the discrimination prohibition in the statute. This Grievance Board has specifically recognized that it is not discriminatory for a policy to be applied prospectively in cases where the grievant is denied a benefit afforded to employees whose situations occurred prior to implementation of the policy. See Williams v. Kanawha County Bd. of Educ., Docket No. 98-20-323 (Oct. 19, 1998). Similarly, in the instant case, Respondent has provided no reasoning whereby its policy should be retroactively applied to Grievant to deprive him of the compensation to which he is entitled. Grievant was involuntarily deprived of his planning period and should be compensated at his normal daily rate of pay, which the parties have agreed would be \$22.88, from which the \$12.00 he already received should be subtracted.

Grievant has also sought as relief a "directive from the Superintendent of Schools ordering that teachers in Upshur County will not be deprived of their planning periods against their will." It has been held that teachers cannot be required to give up their planning periods. Smith, supra; Bailes v. Nicholas County Bd. of Educ., Docket No. 89-34- 119 (Aug. 39, 1989). However, future emergency situations in which teachers are deprived of their planning periods will have to be assessed on a case-by-case basis, and a "blanket" directive at this time would be premature and inappropriate. ([See footnote 1\)](#)

Consistent with the foregoing, the following conclusions of law are appropriate.

#### **Conclusions of Law**

1. In a non-disciplinary matter, Grievant has the burden of proving each element of his 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 § 18A-4-14 requires that a teacher be provided an uninterrupted planning period within each school instructional day which is the length of the usual class period in the school.
3. Grievant has met his burden of proving that he was deprived of his planning period on

December 15, 1999, in violation of W. Va. Code § 18A-4-14.

4. If a teacher is forced to relinquish his planning period in violation of W. Va. Code § 18A-4-14, he is to be compensated for that time period at his prorated daily rate of pay. See Collins v. Wayne County Bd. of Educ., Docket No. 99-50-535 (Feb. 23, 2000); Hardman v. Kanawha County 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); Cf., Taylor v. Kanawha County Bd. of Educ., Docket No. 96-20-406 (Feb. 28, 1997).

Accordingly, this grievance is **GRANTED IN PART**, and Respondent is directed to compensate Grievant as discussed in this Decision.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Upshur 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. 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.

**Date: August 11, 2000**

**DENISE M. SPATAFORE**

**Administrative Law Judge**

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[Footnote: 1](#)

*Although these situations occur infrequently, the undersigned can imagine that situations are going to arise wherein the shortage of substitutes and unavailability of administrative personnel could necessitate the placement of teachers on planning periods to cover classes. If no other options are available, it would seem that the safety of the students and the efficiency of the educational process may sometimes dictate that a teacher be deprived of their planning period "against their will." However, such teachers will have to be compensated for the loss.*