

GARY G. GRAY,

Grievant,

v.

Docket No. 00-20-020

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

On October 28, 1999, Gary G. Gray (Grievant) initiated this grievance pursuant to W. Va. Code §§ 18-29-1, et seq., alleging that Respondent Kanawha County Board of Education (KCBE) had improperly compensated him for his extracurricular coaching assignment. Grievant's immediate supervisor did not have authority to grant the relief requested, and this matter was advanced to Level II where an evidentiary hearing was conducted on December 14 and 20, 1999. On January 5, 2000, the Superintendent's designee, Karen Williams, issued a Level II decision denying the grievance. Grievant appealed to Level IV on January 7, 2000, by-passing Level III as permitted under W. Va. Code § 18-29-4(c). After this matter was set for hearing at Level IV, the parties agreed to submit the grievance for decision on the basis of the record developed at Level II. Abriefing schedule was established, and this matter became mature for decision on February 25, 2000, when the parties' written arguments were received. ([See footnote 1](#))

Based upon a preponderance of the credible evidence contained in the record established at Level II, the following Findings of Fact pertinent to resolution of this grievance have been determined.

FINDINGS OF FACT

1. Grievant is employed by Respondent Kanawha County Board of Education (KCBE) as a teacher at John Adams Junior High School (JAJHS). HT Vol. 1, at 22. ([See footnote 2](#))
2. The student body at JAJHS includes students in the seventh, eighth, and ninth grades.
3. Donald Lahoda holds an extracurricular assignment with KCBE as Head Football Coach at

JAJHS. Mr. Lahoda was selected for this coaching assignment prior to the 1997 football season.

4. Grievant has been coaching football at JAJHS for eight years. HT Vol. 1, at 32. During the first three years, he was compensated by the JAJHS Athletic Boosters. Beginning with his fourth year, Grievant received an extracurricular assignment as an Assistant Football Coach at JAJHS, and his salary was paid by KCBE. 5. After Mr. Lahoda became JAJHS Head Football Coach in 1997, he asked Grievant to coach a team of seventh and eighth grade players who were to compete against students from other schools at the same level. HT Vol. 2, at 11. Prior to that time, JAJHS had a single "varsity" team which played against other junior high schools.

6. Under Grievant's leadership, the JAJHS seventh and eighth grade team competed in six games during the 1997 season, and seven games during the 1998 season. During the 1999 season, the JAJHS seventh and eighth grade team, along with a similar team from Stonewall Jackson Junior High School, were included in the local middle school conference consisting of nine teams. HT Vol. 2, at 5.

7. Prior to the 1997 season, Grievant's duties as JAJHS Assistant Football Coach included serving as the conditioning coach and line coach for the JAJHS football squad. HT Vol. 1, at 23.

8. Since the 1997 season, the JAJHS "varsity" football team has consisted primarily of ninth grade students. During the 1999 football season, one seventh grade student and one eighth grade student played for the JAJHS varsity team. HT Vol. 1, at 37.

9. As JAJHS Head Football Coach, Mr. Lahoda decides which seventh and eighth grade students, if any, will play with the varsity team. HT Vol. 2, at 18

10. When pre-season football practice begins in August, the seventh, eighth, and ninth grade students at JAJHS practice together as one team, under the overall direction of Mr. Lahoda. HT Vol. 2, at 18. Mr. Lahoda schedules the practices and determines what activities will be conducted during each practice, as well as the amount of time to be devoted to each activity. 11. Since 1997, Grievant has continued to function as the conditioning coach for the entire football squad. After Grievant directs the conditioning phase, or "warm-up exercises," at the beginning of each team practice, the football squad breaks up into two groups. At that point, Mr. Lahoda and his assistant coaches work with the varsity team while Grievant and an assistant coach work with the seventh and eighth grade team. HT Vol. 1, at 23.

12. As the JAJHS Assistant Football Coach over the seventh and eighth grade team,

Grievant's responsibilities at scheduled games include such matters as preparing a team roster for the public address crew in the press box prior to each game, determining whether to kick off or receive, and which goal to defend, depending on the outcome of the pre-game coin toss, calling offensive plays during the game, and supervising the assistant coach who calls the defensive formations and plays during the game. HT Vol. 1, at 24, 26- 28.

13. For home games involving the JAJHS seventh and eighth grade team, Grievant's responsibilities include making sure the playing field is properly marked and prepared for the game. For away games, Grievant is responsible for insuring that all required equipment, such as footballs, medical kit, shoulder pads, helmets, and uniforms are packed, and that the equipment and players are transported to the game site.

14. Grievant's duties with the JAJHS seventh and eighth grade team described in Findings of Fact 12 and 13 are substantially the same as the duties performed by the head coaches of the KCBE middle schools against which JAJHS competes in the middle school football conference. 15. In addition to the duties described in Findings of Fact 12 and 13 relating to the JAJHS seventh and eighth grade football team, Grievant continues to serve as conditioning coach and line coach for the JAJHS varsity team, and generally attends all home and away games played by that team.

16. On October 22, 1999, Grievant signed an extracurricular contract to serve as "Football Asst [Assistant] Coach Middle" at JAJHS. KCS Ex 1; HT Vol. 1, at 42-43. In accordance with the terms of that contract, Grievant was paid \$2400 for performing his coaching duties at JAJHS this past football season. G Ex 3.

17. The head football coaches at the middle schools in Kanawha County against which the JAJHS seventh and eighth grade team competes are paid \$2800 per season. HT Vol. 1, at 30; G Ex 3.

DISCUSSION

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

Grievant asserts he is not being paid the same for performing extracurricular football coaching

duties as other KCBE coaches performing like assignments in violation of W. Va. Code §§ 18A-4-5a and 18-29-2(m). W. Va. Code § 18A-4-5a provides that "[u]niformity . . . shall apply to . . . compensation for all persons performing like assignments and duties within the county." W. Va. Code § 18-29-2(m) defines "discrimination" to mean "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." Under this Board's holding in Steele v. Wayne County Board of Education, Docket No. 89-50-260 (Oct. 19, 1989), in order to establish a prima facie case ([See footnote 3](#)) of discrimination under W. Va. Code § 18-29-2(m), a grievant must demonstrate the following:

(a) that he is similarly situated, in a pertinent way, to one or more other employee(s);

(b) that he has, to his detriment, been treated by his 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 responsibilities of the grievant and/or other employee(s), and were not agreed to by the grievant in writing.

Steele, supra. Once a grievant establishes a prima facie case of discrimination under § 18-29-2(m), the employer is provided an opportunity to articulate legitimate, non- discriminatory reasons for its actions. Deal v. Mason County Bd. of Educ., Docket No. 96- 26-106 (Aug. 30, 1996); Conner v. Barbour County Bd. of Educ., Docket Nos. 93-01- 543/544 (Jan. 31, 1995). See Tex. Dep't of Community Affairs v. Burdine, 450 U.S. 248 (1981); Prince v. Wayne County Bd. of Educ., Docket Nos. 90-50-281/295/296/311 (Jan. 28, 1990); Steele, supra. Thereafter, Grievant may demonstrate that the offered reasons for disparate treatment are merely pretextual. See Tex. Dep't of Community Affairs, supra; Frank's Shoe Store v. W. Va. Human Rights Comm'n, 179 W. Va. 53, 365 S.E.2d 251(1986); Graley v. W. Va. Parkways Economic Dev. & Tourism Auth., Docket No. 91- PEDTA-225 (Dec. 23, 1991).

This Grievance Board has previously determined that W. Va. Code § 18A-4-5a requires a county school board to uniformly pay football coaches in accordance with the coach's status as head football coach or assistant football coach. Casto v. Kanawha County Bd. of Educ., Docket No. 95-20-567 (May 30, 1996). Grievant insists he should receive the same compensation as the head football

coaches for the middle schools that the JAJHS seventh and eighth grade football team plays. Immediately before, during, and after a football game, Grievant's duties are virtually indistinguishable from the duties performed by a middle school head football coach. Grievant is responsible for insuring the playing field is properly lined for home games. He must make sure all required equipment is packed for away games. He decides whether to kick off and receive, or which goal to defend, following the pre-game coin toss. During the game, he calls offensive plays, makes substitutions, and instructs the players when to call time out. While the game is in progress, Grievant is equally involved with his team as any head coach at the middle school level in Kanawha County.

However, JAJHS is not a middle school. Moreover, unlike the middle schools in Kanawha County, there is another coach at JAJHS, Donald Lahoda, who already holds the assignment of head football coach. Further, unlike the situation presented in Casto, KCBE has revised its extracurricular pay schedule so that all head coaches serving at the middle and junior high school level receive the same rate of pay. G Ex 3. Although Grievant may look like a middle school coach on game day, he is not similarly situated to the headcoaches at the middle schools his JAJHS seventh and eighth grade team plays. Simply stated, he is not the head football coach at his school. His opposing coaches at the middle school level do not have another coach who determines which seventh and eighth grade players will be elevated to play with a ninth-grade "varsity" team. Likewise, those opposing coaches set their own pre-season practice schedules. Grievant's practice schedule is set by Mr. Lahoda.

This record clearly shows that Grievant is an assistant football coach with a number of responsibilities, but he is not a head football coach. He is not similarly situated to the middle school head football coaches who receive more pay because he does not have overall responsibility for the football program at his school. Even if he were, for purposes of establishing a prima facie case of discrimination under W. Va. Code § 18-29-2(m), similarly situated to the middle school head coaches based on the duties he performs immediately before, during, and after each football game involving the JAJHS seventh and eighth grade team, KCBE articulated a legitimate, job-related basis for treating Grievant differently because his level of responsibility for the football program at his school is different. KCBE's extracurricular compensation plan does not contemplate having two head coaches in the same sport at the same school. Although the undersigned is sympathetic with Grievant's complaint because it appears he is devoting a tremendous amount of time and effort to coaching junior high football, considering the amount of compensation he receives, it would not be appropriate

to compel KCBE to pay Grievant \$2800 a season as if there are now two head football coaches at the same school. Consistent with the foregoing discussion, the following Conclusions of Law are made in this matter.

CONCLUSIONS OF LAW

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving 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-4-5a provides any additional salary supplements or compensation shall be uniform for all persons performing "like assignments and duties." See Weimer-Godwin v. Bd. of Educ., 179 W. Va. 423, 369 S.E.2d 726 (1988); Copley v. Nicholas County Bd. of Educ., Docket No. 97-34-027 (Aug. 18, 1997).

3. Discrimination is defined in W. Va. Code § 18-29-2(m) 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."

4. In order to establish a prima facie case of discrimination under W. Va. Code §§ 18-29-2(m), a grievant must demonstrate the following:

(a) that he is similarly situated, in a pertinent way, to one or more other employee(s);

(b) that he has, to his detriment, been treated by his 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 the grievant and/or the other employee(s) and were not agreed to by the grievant in writing.

Kirchner v. W. Va. Dep't of Educ., Docket No. 94-DOE-569 (Sept. 26, 1995); Webb v. Kanawha County Bd. of Educ., Docket No. 94-20-210 (Nov. 22, 1994); Steele v. Wayne County Bd. of Educ.,

Docket No. 89-50-260 (Oct. 19, 1989).

5. Grievant failed to establish a prima facie case of discrimination under W. Va. Code § 18-29-2(m), or a violation of the uniformity provision in W. Va. Code § 18A-4-5a, because he does not have overall responsibility for the football program at his assigned school, and he is thus not similarly situated to or performing like assignments and duties as those employees who serve as head football coaches at middle schools operated by the Kanawha County Board of Education. See Flint v. Harrison County Bd. of Educ., No. 25898 (W. Va. Sup. Ct. of Appeals Dec. 10, 1999); Copley, supra. See also Halstead v. Boone County Bd. of Educ., Docket No. 99-03-066 (Apr. 30, 1999)

Accordingly, this grievance is **DENIED**.

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. 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.

LEWIS G. BREWER

ADMINISTRATIVE LAW JUDGE

Dated: March 20, 2000

[Footnote: 1](#)

Grievant was represented by Perry Bryant with the West Virginia Education Association. KCBE was represented by its General Counsel, James W. Withrow.

[Footnote: 2](#)

The transcript of the Level II hearing will be cited as "HT Vol. 1, or 2 at ," with Volume 1 representing the transcript from December 14, 1999, and Volume 2 representing the transcript from December 20, 1999. Exhibits from the Level II hearing will be cited as "KCS Ex " for Respondent's exhibits, and "G Ex " for Grievant's exhibits.,

[Footnote: 3](#)

A prima facie case generally refers to a set of facts which, if not rebutted or contradicted by other evidence, would be sufficient to support a ruling in favor of the party establishing such facts. See Black's Law Dictionary 1353 (4th ed. 1968).