**SUSAN H. ANDERSON,**

**Grievant,**

**v.**

**DOCKET NO. 02-13-309**

**GREENBRIER COUNTY BOARD**

**OF EDUCATION,**

**Respondent.**

## DECISION

In a grievance filed August 27, 2002, Grievant alleged Respondent improperly pays her less as Head Girls' Soccer Coach at Greenbrier East High School (GEHS) than it pays the Head Football Coach at the same school. As relief, she requests “equality in coaching pay scales . . . on the same ranking as the head high school football coach _ one month extended employment plus $900,” and “back pay at the same above level for my entire coaching career in Greenbrier County Schools.”

The grievance was denied at levels one and two, and level three was waived. A level four hearing was held November 14, 2002, at the Grievance Board's Beckley office. Grievant was represented by Rev. Jim Anderson, and Respondent was represented by Erwin Conrad, Esq. The matter became mature for decision on December 10, 2002, upon receipt of the parties' proposed findings of fact and conclusions of law.

I find the following facts have been proven by a preponderance of the evidence:

## FINDINGS OF FACT

1. Grievant is regularly employed as a classroom teacher at Frankford Elementary School and for four years also has had an extracurricular contract (See footnote 1) as the Head Girls' Soccer Coach at GEHS. In 2001, she was voted her region's Coach of the Year and her team posted a 16-3-

2 record.

2. All coaches in Greenbrier County are paid according to the same pay scale of extracurricular coaching salaries, but coaches of different sports receive different amounts. For high-school coaches, a Head Football Coach is given one month extended employment plus $900. High School Head Girls' Soccer Coaches receive a stipend of $1,400, but no extended employment contract. Of all the sports, only the Head and Assistant Football Coaches receive an extended contract in addition to a stipend; all other coaches receive a set dollar amount ranging from $2,900 for a head basketball coach to $400 for an assistant tennis coach.

3. Scheduling for the sports teams is standardized throughout the state by the West Virginia Secondary Schools Athletic Commission (WVSSAC). Based on the standardized calendar, (See footnote 2) the high school football and soccer seasons start on the same day. Although the football season is longer, soccer teams play about twice as many games.

4. Both football coaching and soccer coaching involve many of the same duties, such as supervision of assistant coaches, (See footnote 3) ensuring students are eligible, team photo sessions, conducting practices, traveling to games and complying with WVSSAC rules and requirements. 5. There are also significant differences between coaching soccer and football, such as the number of players (approximately 20 compared to over fifty) and different practice schedules, as well as the inherent differences in the sports themselves.

6. Respondent grants football coaches an extended regular employment con- tract based on the extra days they work as coaches outside the regular school year, but has no formal policy by which it calculates coaches' salaries.

## DISCUSSION

In non-disciplinary matters such as this, Grievant bears the burden of proving the facts entitle her to the relief she seeks. See, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21.

Under essentially identical facts, the Grievance Board has previously established the proper scope of review of Grievant's claim, and has found that the extracurricular pay discrepancies that exist between coaches of different sports do not violate the principles of pay equity. West Virginia Code § 18A-4-5a provides that counties "may provide additional compensation for any teacher assigned duties in addition to the teacher's regular instructional duties wherein such noninstructional

duties are not a part of the scheduled hours of the regular school day. Uniformity also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county[.]" In Bailey v. Mercer County Board of Education, Docket No. 95-27-546 (Feb. 28, 1997), the administrative law judge specifically stated:

> Foley v. Grant County Bd. of Educ., Docket No. 96-12-069 (July 26, 1996) specifically holds that volleyball, basketball, and football coaches do not perform “like assignments and duties” within the meaning of W. Va. Code [§] 18A-4-5a. That holding is affirmed and applied here; the undersigned extends it to encompass the duties of soccer coaches.

Grievant argues that she has proven that in her particular case and county, the duties of a soccer coach and a football coach are similar, but incongruously bases that contention in part on the requirements of the WVSSAC which standardizes those requirements throughout the state. She also points to the fact that Respondent has no policy identifying what differences there are between the sports as factors that go into setting the level of a coach's salary, but this lack of specific policy means there is no proof that football coaches are overpaid and should be paid at the soccer coaches' rate. Grievant presented no evidence that it is even proper for an employee's regular contract to be extended on the basis of extracurricular duties that are covered by a separate extracurricular contract.

Grievant places much emphasis on the fact that the soccer season and the football season start at the same time, and that football coaches receive an extended contract as well as a stipend, but she only receives a stipend. Bailey, *supra* also addresses that issue, finding: "Ultimately, it is of little, if any, legal significance that the Board's basketball and football coaches receive part of their coaching salaries via extra days on their teaching contracts. That their total coaching compensation is higher than the grievants' is the operative fact in the case. The total compensation received by a football or basketball coach for his or her coaching services is the supplement addressed in Code [§] 18A-4-5a."

(Emphasis in original.) That finding also addresses Respondent's suggestion that W. Va. Code § 18A-4-5a does not apply to extracurricular coaching contracts.

The undersigned is constrained to follow prior decisions unless they are shown to be in error or no longer applicable. "This Grievance Board adheres to the doctrine of *stare decisis* in adjudicating grievances that come before it [citations omitted]. This adherence is founded upon a determination that the employees and employers whose relationshipsare regulated by this agency are best guided

in their actions by a system that provides for predictability, while retaining the discretion necessary to effectuate the purposes of the statutes applied. Consistent with this approach, this Grievance Board follows precedents established by the Supreme Court of Appeals of West Virginia as the law of this jurisdiction. Likewise, prior decisions of this Grievance Board are followed unless a reasoned determination is made that the prior decision was clearly in error." Thomas v. W. Va. Dep't of Health and Human Resources/Div. of Personnel, Docket No. 01-HHR-385 (Nov. 20, 2001). Grievant has not shown that the duties of soccer and football coaches are so different in Greenbrier County than they are in any other county, such that her grievance should be decided differently.

While Grievant has not sustained her burden of proof sufficiently to grant her grievance, at least part of her requested relief merits further consideration. At the level two hearing, Grievant's representative suggested that a committee be formed to look at coaches' salaries and to come up with a methodology to ensure they are paid fairly. Respondent's representative concurred that that was a good idea that merits further consideration. Since there seems to be a consensus that the issue should be given more attention, I suggest that Respondent give it formal consideration. Although the undersigned may not order Respondent to do so on the basis of this grievance, there is no reason it may not voluntarily do as Grievant suggests.

## CONCLUSIONS OF LAW

1. This is a non-disciplinary grievance in which Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. See, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. “The preponderance standard generally requires proof that a reasonable person would accept as sufficient that acontested fact is more likely true than not.” Leichliter v. W. Va. Dep't. of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. Id.

2. West Virginia Code § 18A-4-5a provides that counties “may provide additional compensation for any teacher assigned duties in addition to the teacher's regular instructional duties wherein such noninstructional duties are not a part of the scheduled hours of the regular school day. Uniformity also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county. . . . ”

3. Soccer, volleyball, basketball, and football coaches do not perform “like assignments and

duties" within the meaning of W. Va. Code § 18A-4-5a. *See* Foley v. Grant County Bd. of Educ., Docket No. 96-12-069 (July 26, 1996); Bailey v. Mercer County Bd. of Educ., Docket No. 95-27-546 (Feb. 28, 1997).

4. "Ultimately, it is of little, if any, legal significance that the Board's basketball and football coaches receive part of their coaching salaries via extra days on their teaching contracts. That their total coaching compensation is higher than [Grievant's] is the operative fact in the case. The total compensation received by a football or basketball coach for his or her coaching services is the supplement addressed in Code [§] 18A-4-5a." Bailey, *supra*.

5. "This Grievance Board adheres to the doctrine of *stare decisis* in adjudicating grievances that come before it. Chafin v. W. Va. Dept. of Health & Human Resources, Docket No. 92-HHR-132 (July 24, 1992), citing Dailey v. Bechtel Corp., 157 W. Va. 1023, 207 S.E.2d 169 (1974). See also Belcher v. W. Va. Dept. of Transp./Div. of Highways, Docket No. 94-DOH-341 (Apr. 27, 1995). This adherence is founded upon a determinationthat the employees and employers whose relationships are regulated by this agency are best guided in their actions by a system that provides for predictability, while retaining the discretion necessary to effectuate the purposes of the statutes applied. Consistent with this approach, this Grievance Board follows precedents established by the Supreme Court of Appeals of West Virginia as the law of this jurisdiction. Likewise, prior decisions of this Grievance Board are followed unless a reasoned determination is made that the prior decision was clearly in error." Thomas v. W. Va. Dep't of Health and Human Resources/Div. of Personnel, Docket No. 01-HHR-385 (Nov. 20, 2001).

6. Grievant did not sustain her burden of proving that soccer coaches and football coached perform "like assignments and duties" in Greenbrier County.

For the foregoing reasons, this grievance is hereby **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Greenbrier 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

**Date: December 16, 2002** _____

**M. Paul Marteney**

**Administrative Law Judge**

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Footnote: 1

*Level four Grievant's Exhibit No. 3.*

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Footnote: 2

*Level four Grievant's Exhibit No. 1.*

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Footnote: 3

*Grievant has one assistant, the head football coach at GEHS has five plus one volunteer.*