No. 25054 - Sheila Stapleton, et al. v. Board of Education of the County of Lincoln, et al.

Maynard, Justice, dissenting:

The court of Fussbudget, Peeves, and Quarrels is again in session; Judge Maynard presiding. I am fussing today, and I dissent because, contrary to the majority, I do not believe that our decision in *Ewing* is applicable here. *Ewing* applies to teacher complaints concerning hiring decisions. The instant case, on the other hand, concerns a situation where innocent third parties, the school children, are impacted by the Board of Education's action.

First, let me make clear that I agree with this Court's holding in *Ewing.* Because teachers are afforded two remedies when they are affected by a board of education's hiring decision, it only makes sense that the course of relief chosen at the outset must be followed through to finality before teachers can avail themselves of the other remedy. In hiring cases, the

aggrieved teacher is normally the only party personally involved with the board's decision and the resulting legal processes.

This is factually distinguishable from the case *sub judice.* Here, a hiring decision is not involved but rather a condition of employment which affected hundreds of school children. While the procedural devices and timetables of the Education Employees Grievance Board may suffice to redress the wrongs done to a teacher, they are plainly not adequate when innocent third parties are involved. These poor school children suffered for over a year with teachers who were not afforded planning periods. These planning periods are a crucial part of the teachers' workday. As stated in the statute, they are needed "to complete necessary preparations for the instruction of pupils." W.Va. Code § 18A-4-14(2) (1993), in part. In fact, a single planning period per day is generally not enough time for teachers to prepare class, grade papers, and complete other necessary paperwork. Teachers, because they are dedicated professionals, often work at night, on their own time, in order to complete their tasks. Because these teachers were not afforded necessary planning periods, they were not

as well-prepared as they would have been otherwise. As a result, irreparable harm was done to the education of hundreds of school children who were forced to wait an entire school year while this case slowly oozed through the thick muck of the administrative grievance process. This is a full year of tarnished education that cannot be given back to these school children.

In addition, I do not agree with the majority's conclusion that by reversing the decision of the circuit court, this matter will be resolved in a more efficient manner. The majority reasons that the grievance procedure provides an adequate remedy in this instance and will result in a more prompt resolution of this matter. This simply is not true. Look at the facts. On September 10, 1996, the teachers filed a grievance as provided for in the education employees' grievance procedure. It was not until August 12, 1997, over eleven months after the grievance was filed, that the Level IV hearing examiner rendered a decision denying the grievance. Meanwhile, almost an entire school year had come and gone and another school year was about to begin. On August 26, 1997, the circuit court correctly

granted mandamus relief.[1] Absent this relief, the teachers and their students simply would have been forced to wait until the circuit court ruled on the teachers' appeal from the Level IV decision.

All of this is even more frustrating when one considers that the teachers had the law on their side all along. Clearly, the teachers have an absolute right to a planning period during the course of each school day. The language of the statute clearly provides that "[e]very 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.*" W.Va. Code § 18A-4-14(2) (1993), in part (emphasis added). *See also Gant v. Waggy,* 180 W.Va. 481, 483, 377 S.E.2d 473, 475 (1988) (*per curiam)* ("In *W.Va. Code,* 18A-4-14, the Legislature has indicated that there will be at least one planning period within each regular school day[.] This Court believes that the plain meaning of this language is inescapable. Each teacher must be provided with at least one planning period of the length of the usual class period in the school[.]").

[1]The record indicates that the Lincoln County Board of Education now affords all Lincoln County teachers planning periods.

For the period of a year, the Board of Education wrongly denied teachers a statutorily mandated daily planning period. In a classic example of administrative lethargy and ineptitude, it took the Education Employees Grievance Board the same amount of time to conclude, in a Level IV decision, that the Board of Education was right! Not until the circuit court issued its decision granting mandamus relief was something correct done in this case. Now the majority reverses the only legally correct decision made here.

By failing to afford planning periods to the teachers in this case, the Lincoln County Board of Education not only violated a statute, but also did a great disservice to hard-working teachers and their students. The Education Employees' Grievance Board and now this Court perpetuates this disservice. Accordingly, I respectfully dissent.