LLOYD BENNETT

v. Docket No. 95-31-234

MONROE COUNTY BOARD OF EDUCATION

DECISION

The grievant, Lloyd Bennett, is employed by the Monroe County Board of Education as a Custodian IV assigned to Peterstown Middle School. He initiated this complaint at Level I March 24, 1995 alleging that the Board had improperly denied him a March 18, 1995 extra-duty assignment. His supervisor was without authority to address the matter and the grievance was denied at Level II following a hearing held March 31, 1995. The Board, at Level III, waived participation and appeal to Level IV was made June 13, 1995. The parties subsequently agreed that a decision could be issued on the record developed at the lower levels. The record and proposed findings of fact and conclusions of law were not received until November 3, 1995. (See footnote 1)

There is no dispute over the facts of the case. A general election was held November 8, 1994, and several of the Board'sschools, including Peterstown Middle, were used as polling places. Per past practice, the Monroe County Clerk's Office paid the grievant and others $25.00 each for performing various tasks related to preparing and closing those areas in the schools to be used for voting. The grievant opened Peterstown Middle, assembled and disassembled booths, and closed the school at the end of the day. Despite that he was of the opinion that the Board should have compensated him, and that he should have received overtime wages, the grievant accepted the payment and filed no protest. (See footnote 2)

On May 18, 1995, Monroe County held an excess levy election. While the Board, either by requirement or practice, pays the daily fee to workers in such elections, the County Clerk's office selects those workers. Prior to the election, County Clerk Donnie Evans and Superintendent of Schools Lyn Guy agreed, at least tentatively, that to cut costs, those workers overseeing the voting process could also open and close the polling places, and that Board custodians at a particular school could assemble and disassemble voting booths during their regular shifts. It appears that this may have been the practice in prior years at various schools.

The grievant, like other custodians performing similar tasks, did not receive any additional compensation for assembling thebooths at Peterstown Middle on March 17. (See footnote 3) Distressed that he was not able to work as he had on numerous prior elections, he filed this complaint.

The grievant asserts that the Board had a legal obligation to treat the tasks associated with opening, preparing and closing the polling place at Peterstown Middle as an extra-duty assignment within the meaning of W.Va. Code §18A-4-8b. (See footnote 4) The grievant apparently also asserts that he should have been selected for the assignment. The Board merely responds that the Circuit Clerk's office had complete control over the matter and that the statute is inapplicable.

It is clear from the record that while the Board was assuming the costs of the May 18, 1995 election, it had no control, beyond Ms. Guy's suggestions to the Circuit Clerk's Office, over how many or which workers would be used. Obviously, Code §18A-4-8b imposes no duty on a county board of education to designate as extra-duty assignments jobs which are the province of other government agencies. Further, while the grievant does not specifically assertthat it was improper to assign him or other custodians the chore of assembling and disassembling voting booths during their regular work shifts, the undersigned finds that the assignments did not constitute an abuse of the Board's discretion in personnel matters. The tasks were well within the definitions for the custodian class positions found in W.Va. Code §18A-4-8.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Monroe 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. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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JERRY A. WRIGHT

ADMINISTRATIVE LAW JUDGE

Dated: November 30, 1995

Footnote: 1It appears that there was no record made of the Level II hearing and that the parties agreed to present the same evidence at a Level III hearing. The decision herein is based on the record developed at that hearing. Despite that the Board heard the evidence, it did not issue a decision.

Footnote: 2The circumstances surrounding the November 8 election are set forth for background purposes only. In his original complaint, the grievant sought additional wages for his services on that date. He subsequently withdrew that portion of the grievance.

Footnote: 3The record reflects that the grievant's principal asked him to assemble the booths during his regular March 17 evening shift but that he was prevented from doing so by an extracurricular activity in the gymnasium which lasted until 12:00 a.m. He returned at 1:00 a.m. and completed the job on his own time. Following the Level II hearing, Superintendent Guy determined that the grievant should be paid overtime wages for any time worked beyond his shift. On appeal to Level IV, the grievant represented that he had received this pay.

Footnote: 4The statute, in relevant part, provides, "For the purpose of this section, extra-duty assignments are defined as irregular jobs that occur periodically or occasionally such as but not limited to, field trips, athletic events, proms, banquets and band festival trips."