JAMES SIZEMORE

v. Docket No. 96-41-418

RALEIGH COUNTY BOARD OF EDUCATION

DECISION

The grievant, James Sizemore, is employed by the Raleigh County Board of Education (Board) as a Custodian assigned to Institute Elementary School (IES). He filed a grievance on August 12, 1996, alleging that the IES Principal had violated certain provisions of W.Va. Code §18A-4-8b during cleanup work asssociated with water damage at the school. His claims were rejected at the lower levels, and appeal to Level IV was made October 2, 1996. A hearing was held January 14, 1997, and the parties submitted proposed findings of fact and conclusions of law by February 18, 1997.

Background

There is no dispute over the facts of the case. The grievant and Ricky Dillard are the only Custodians employed at IES. Mr. Dillard, the more senior of the two, holds a 240-day contract which apparently begins in early August, and ends in mid-July. The grievant has a 210-day contract which begins on August 7, and ends at or near the close of the student's school year in June. Their contracts did not require them to work on the days in issue herein.

IES Principal Drema Dell was on vacation on Saturday, July 27, 1996, when Lynne Ware,a teacher and “principal's designee” at IES, received a call from a 911 operator at approximately 4:00 a.m., advising that firemen had discovered water pouring from a commode on the school's third floor. Apparently, the operator also informed her that there was extensive water damage to walls, carpet, and ceilings in a large portion of the building.

Ms. Ware called Assistant Superintendent of Schools Donnie Shupe, and was advised to do “whatever was needed” to repair the leak and begin the initial cleanup. She also contacted Gilbert Pennington, the Board's Director of Maintenance, and was given authorization to call out Board personnel, buy materials, and rent cleaning equipment.

Believing that Mr. Dillard's 240-day contract status made him the “summer custodian,” Ms. Ware directed him to report to IES. Before leaving for the school or shortly after arriving there, Ms. Ware called the grievant's home to see if he would assist in the cleanup, and was told that he was painting in the Board's central office. A plumber was called to repair the leak, and Mr. Dillard began removing water and debris.

Ms. Ware determined that Mr. Dillard needed help; at her direction, he went to the central office to see if the grievant could report to the school. The grievant explained that he had obtained the painting assignment earlier in the summer, and he had committed himself to work additional hours that day. The grievant and Mr. Dillard did not discuss the extent of the damage to the school or whether the cleanup would take more than one day. Ms. Ware then called Darrell Scales, a Custodian assigned to another school, and he agreed to assist.

Mr. Dillard and Mr. Scales worked the entire day on July 27, and were off on Sunday, July 28. Mr. Dillard worked the entire day on July 29, but Mr. Scales was required to report to his designated school on that date. Principal Dell returned that evening and was told that the grievanthad been contacted on July 27, but could not report because of his painting assignment. She either assumed that his painting job had not ended, or that it was not necessary to contact him again. Cleanup was then suspended for several days while teachers were allowed to retrieve personal belongings, and repairs were started on the school's electrical system.

With two substitute Custodians, Mr. Dillard resumed cleaning on August 5, and finished on August 6. The grievant reported to the school on August 7, 1996, the first day of his contract term, and discovered that the job had continued beyond July 27, and that substitutes had been used.

Argument

The parties agree that the custodial tasks associated with the cleanup at IES were “extra- duty,” as that term is used in W.Va. Code §18A-4-8b, and that the statute requires such assignments to be offered on a rotational basis to the employees in the classification needed for the job. (See footnote 1) They also agree that unless the cleanup was one “continuous” assignment, begun on July 27, and ending on August 6, the Board was obligated to offer the grievant employment on July 29, August 5, and August 6. The grievant maintains that there were four separate assignments. The Board contends that there was but one, and the grievant refused it.

Findings and Conclusions

In Stapleton v. Logan County Bd. of Educ., Docket No. 95-40-096 (Sept. 20, 1996), the Administrative Law Judge determined that construction of cabinets and other items was one extra-duty assignment despite that the work was accomplished over a period of several weekends. There is no meaningful distinction between the work at issue in that case and the work associated with the cleanup at IES. Both could fairly be characterized as distinct projects which required that employees perform the same or similar tasks each day until an overall objective was achieved. The record here reflects that the work performed at the school on July 27, was not different in any significant aspect from the work done on August 6.

Further, Stapleton recognized that all extra-duty assignments are not conveniently confined to a period of a day or less, and that it is more efficient to continue to use employees initially assigned to a job, if only because they have obtained familiarity with the tasks involved. It would be contrary to that principle and an otherwise restrictive interpretation and/or application of the pertinent portion of W.Va. Code §18A-4-8b, to adopt the grievant's view, i.e., that a new extra-duty assignment is created at each interval of a project which requires more than one work day. The undersigned concludes that the cleanup at IES was one extra-duty assignment, and that Ms. Ware's offer of employment to the grievant on July 27, satisfied the requirements of the statute.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Raleigh County and also Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code18-29-7. Neither with 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:

September 4, 1997

Footnote: 1 *The pertinent part of the statute provides:*

Notwithstanding any other provisions of this chapter to the contrary, decisions affecting such personnel with respect to extra-duty assignments shall be made in the following manner: An employee with the greatest length of service time in a particular category of employment shall be given priority in accepting such assignments, followed by other employees on a rotating basis according to the length of their service time until all such employees have had an opportunity to perform similar assignments. . . .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.