EVELYN SITLER,

Grievant,

v. **Docket No. 00-03-353**

BOONE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Evelyn Sitler, filed this grievance against her employer, the Boone County Board of Education ("BBOE"). The statement of grievance reads:

> Violation of WV Code 18-29-2(a) "any action[,] policy, or practice constituting a substantial detriment to or interference with effective classroom instruction, job performance, or the health and safety of students or employees.["] Grievant returned to work in the fall of 2000 and used the four additional employment weeks allowed to vocational teachers to prepare for teaching for the new year. Grievant continually told Vocational Director, Mr. Rodney Smith, that there were too many students registered for her classes. When school started and the numbers were in the 80s when Grievant is only supposed to have 10 students at a time as per state regulations, Grievant was told to change her curriculum and to teach the Allied Health Careers which is part of the schools to work movement. This change caused undue stress on Grievant, which resulted in high blood pressure, inability to sleep, tension, etc., Grievant refuses to just give a book and let students read while she develops curriculum needed in this program. There are state IGOs that must be followed and developing this curriculum needs time. As of 9/12/2000[,] Grievant has spent approximately 35 hours on evenings and weekends developing curriculum to stay ahead of students.

As relief Grievant sought:

> clerical help on a temporary basis to duplicate, collate papers, file, etc. In addition, Grievant seeks four additional weeks of salary to make up for the weekends and evenings she must spend on this curriculum. Grievant used the usual four weeks to prepare for the previous curriculum, which was wasted time since the first day of school, the curriculum changed. (See footnote 1)

The following Findings of Fact are made from the evidence presented at Levels II and IV.

FINDINGS OF FACT

1. Grievant has been employed by BBOE for 27 years. She is a Certified Nursing Assistant Instructor and a Certified Medical Assistant Instructor, and is employed as an Allied Health Instructor at the Boone Vocational Center. She has an extended contract, and is employed ten days past the end of the school year, and ten days before the beginning of the school year.

2. Rodney Smith, Principal of the Boone Vocational Center, is in charge of the Center's curriculum.

3. Prior to the 2000-2001 school year, Grievant was teaching Clinical Concepts and Applied Clinical Concepts. The Center was providing a two year course of instruction in one year, to students who were interested in working as Nursing Assistants. The clinical aspect involved working in a hospital setting.

4. During the summer of 2000, preliminary enrollment figures showed that 83 students were enrolled in first year Allied Health, a substantial increase over previous years, which usually was 30 to 35 students. Principal Smith did not talk to anyone during the summer regarding these figures, although he asked the counselor at the Vocational Center to talk to the counselor at the high school. The high school counselor was not available until late August, and she confirmed the accuracy of the numbers at that time. However, based upon his past experience, Principal Smith still did not believe the numbers were accurate. In the past, a number of the students from one school were listed on the Allied Health enrollment, when they had just signed up for lab, and these students did not end up in the Allied Health Program. Principal Smith told Grievant not to worry about the increased enrollment, because the figures had been wrong in the past.

5. The enrollment figures proved to be accurate, and the Vocational Center was faced with an unexpected number of students in the Allied Health Care Program at the beginning of the 2000-2001 school year. Clinicals could not be conducted with 83 students, and changes had to be made in the Program to accommodate the large number of students. The Program was changed to two programs: a one year program teaching the basics to students interested in a professional health care career, and a two year program with skills training for students interested in working in health care as aides.

6. There are four courses in the standard Allied Health Care Program. Prior to the 2000-2001 school year, Grievant taught the fourth course, most of course three, a little of course two, and a little of course one. During the first semester of the 2000-2001 school year, Grievant taught course one,

and during the second semester she taught course two.

7. The instructors at the Boone Vocational Center are responsible for developing curriculum as changes occur which require revisions, which is one of their duties during the extended contract period. They are also responsible for working with the high school teachers in creating their programs of instruction.

8. Grievant worked about 35 hours over Labor Day week-end planning her curriculum for the year. When she returned to school and began her instruction, she learned from the students that they had already been taught what she was planning to teach them during the year. She then checked with the person in charge of the Schools to Work program, and was given the curriculum for Introduction to the Majors, from which she determined that the students had already been taught what she had planned to teach them.

9. Grievant worked another 83 hours developing the curriculum for her courses. When she told Principal Smith how much time she was putting in, he told her she did not need to spend so much time developing the curriculum, and he did not want her to be working so many hours. He told her all she needed to do was to stay a chapter ahead. He felt it was a textbook course, as there was no skills training involved.

10. Courses one and two are preparing students for courses three and four. In addition to instruction from the textbook, Grievant also teaches skills, such as first-aid, CPR, and taking temperatures and pulses. Grievant did not believe she could simply prepare lesson plans each week from the textbook. She had adopted a new textbook for the 2000-2001 school year. She had to digest the entire textbook to understand where her students were going to be at the end of the book, and then work backward to determine how she was going to get them there, teaching skill building.

11. Principal Smith provided clerical assistance to Grievant. Principal Smith's secretary was directed to type anything Grievant requested, and the adult business instructor at the Vocational Center was asked to provide assistance to Grievant.

12. During the Spring and Summer of 2000, two teachers, Barbara Sloan and Nancy Bradberry, were paid by the Southern Consortium to develop curriculum Instructional Goals and Objectives (“IGO's”). They performed this work on Saturdays during the school year. The curriculum they developed is not currently being used by Boone County schools, but it could be used.

DISCUSSION

Grievant bears the burden of proving the elements of her grievance by a preponderance of the evidence. Tibbs v. Mercer County Bd. of Educ., Docket No. 96-27- 074 (Oct. 31, 1996). Grievant believed she should be compensated for all the time she put in developing the new curriculum for her course after the school year began, because this went above and beyond the extra hours a teacher must normally put in grading papers and preparing for class. She has an extended contract, and is paid for developing curriculum, among other things, during this period in the summer, and felt she should likewise be compensated for this task when she was required to put in extra time to develop curriculum during the school year. She believed Principal Smith should have been aware that changes would be necessary before the school year started, and had he determined during the summer that the program would have to be changed, she could have worked on the new curriculum then, and would not have been placed in the position of working so many extra hours during the school year. Grievant testified she was angry when she realized she had wasted her time preparing for the fall semester, because the curriculum would have to be changed; and then she was angrier after she prepared for her classes over the Labor Day week-end, only to learn she had again wasted her time because no one had told her what was being taught in Introduction to the Majors.

Respondent argued that in accordance with W. Va. Code § 18A-2-2, a teacher is employed under a contract which fixes her salary, which is the state minimum salary per Code § 18A-4-4 for vocational teachers, plus any county supplement. Respondent pointed out that Grievant had put in the hours she deemed necessary to proper preparation even though the principal of the vocational school told her he did not expect her to do this, and without any promise that she would be compensated. Respondent acknowledged that Grievant's dedication was commendable, but denied any duty to compensate her for the extra hours she put in developing the curriculum for her class.

While it is unfortunate that Grievant found herself wasting her time, working such long hours, and stressed by the situation, she has pointed to no statute, law, regulation, or policy by which she is entitled to additional compensation for her long hours.

> Teachers are salaried, professional employees and, as such, are not entitled to overtime compensation for hours worked beyond their regularly scheduled work day. See Smith v. Mingo County Bd. of Educ., Docket No. 95-29-530 (Mar. 18, 1996); Oblinger v. Lincoln County Bd. of Educ., Docket No. 89-22- 552 (Jan. 5, 1990).

Hussell, et al., v. Mason County Bd. of Educ., Docket No. 96-26-073 (July 26, 1996), footnote 3.

Further, as Respondent pointed out, although it certainly had to be done, Grievant took it upon herself to work additional hours developing curriculum with no promise of compensation for this task. She cannot now claim entitlement to compensation. Reed v. Kanawha County Bd. of Educ., Docket No. 99-20-111 (May 27, 1999); Toney v. Lincoln County Bd. of Educ., Docket No. 98-22-424 (Feb. 8, 1999); Anderson v. Gilmer County Bd. of Educ., Docket No. 95-11-197 (Aug. 1, 1995); Catron v. Mingo County Bd. of Educ., Docket No. 95-29-060 (July 11, 1995).

Grievant pointed to the fact that Ms. Bradberry and Ms. Sloan were paid additional compensation for developing curriculum; however, they were not paid by BBOE for this work. This situation is not the same as Grievant's, and BBOE cannot be required to pay Grievant for this task when it did not pay Ms. Bradberry and Ms. Sloan.

The following Conclusions of Law support the Decision reached.

CONCLUSIONS OF LAW

1. The burden of proof is upon Grievant to prove the elements of her grievance by a preponderance of the evidence. Tibbs v. Mercer County Bd. of Educ., Docket No. 96- 27-074 (Oct. 31, 1996).

2.

> Teachers are salaried, professional employees and, as such, are not entitled to overtime compensation for hours worked beyond their regularly scheduled work day. See Smith v. Mingo County Bd. of Educ., Docket No. 95-29-530 (Mar. 18, 1996); Oblinger v. Lincoln County Bd. of Educ., Docket No. 89- 22-552 (Jan. 5, 1990).

Hussell, et al., v. Mason County Bd. of Educ., Docket No. 96-26-073 (July 26, 1996), footnote 3. See also Smith, et al., v. Mingo County Bd. of Educ., Docket No. 95-29-530 (Mar. 18, 1996).

3. Grievant did not establish a violation of any statute, law, regulation, or policy.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Boone 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.

BRENDA L. GOULD

Administrative Law Judge

Dated: April 17, 2001

Footnote: 1

The grievance was filed on September 7, 2000, and originally asked for physical help for management issues, in addition to more money. Grievant's supervisor responded on September 11, 2000, that he and the custodian were in the process of moving items out of her room, he was unaware of any other physical requirements, he was willing to trade her up to five days off in June for the extra time she was working, and he recognized her dedication and abilities. Grievant appealed to Level II, stating at the time that she was enclosing the amended statement of grievance, and that her supervisor had agreed to provide temporary clerical help to her. A Level II hearing was held on October 30, 2000. A Level II decision denying the grievance was issued on November 6, 2000. Grievant waived Level III, appealing to Level IV on November 9, 2000. A Level IV hearing was held on December 13, 2000. Grievant was represented by Anita Mitter, and Respondent was represented by Timothy Conaway, Esquire. This grievance became mature for decision on February 13, 2001, upon receipt of the parties' written arguments. The Level II transcript was not provided until April 3, 2001, after an additional request was made.