MARSHALL McCALLISTER,

Grievant,

v v.

DOCKET NO. 02-40-034

PUTNAM COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Marshall McCallister, filed this grievance against his employer, the Putnam County Board of Education ("Board") on September 18, 2001, alleging as follows:

> Violation of WV Code 18A-4-8b with regard to the rotating of over-time extra working assignments in a particular category of employment according to the length of service time until all such employees have had an opportunity to perform similar assignments.
>
> Relief sought: Back pay as of July 2001 for the highest overtime acquired in order to balance overtime benefits up to date and to be assigned overtime on a rotating basis.

The grievance was denied at level one on October 1, 2001, by Paul D. Callahan, Assistant Superintendent, and a level two hearing was held on November 14, 2001, before Hearing Examiner Harold "Chuck" Hatfield. Mr. Hatfield denied the grievance by decision dated December 19, 2001, the Board waived participation at level three, and Grievant appealed to level four on February 7, 2002. A level four hearing was conducted in the Grievance Board's Charleston, West Virginia, office on March 20, 2002, and this matterbecame mature for decision on April 15, 2002, the deadline for the parties' submission of proposed findings of fact and conclusions of law. Grievant was represented by Susan Hubbard, West Virginia Education Association, and the Board was represented by John A. Grafton,

Esq.

SUMMARY OF EVIDENCE

Level Two Joint Exhibit

Ex. 1 - Grievance forms and responses.

Level Four Grievant's Exhibit

Ex. 1 -

Payroll Attendance Reports July 2001 - February 2002.

Testimony

Grievant testified in his own behalf, and presented the testimony of Paul Callahan, Robert Erskine, Tommy Douglas, and James “Frank” Douglas. The Board presented the testimony of Paul Callahan and Robert Erskine.

FINDINGS OF FACT

After a careful review of the testimony and evidence of record, I find the following facts have been proven by a preponderance of the evidence.

1. Grievant has been employed by the Board as a full-time general maintenance worker since 1977.

2. There are currently approximately twenty-five (25) general maintenance workers employed by the Board.

3. Robert Erskine, the Maintenance Supervisor, assigns work orders and overtime as needed to the general maintenance workers.

4.

There is not a written rotation roster in the maintenance shop. 5. If there is to be scheduled overtime, Mr. Erskine will address all the workers together, and ask if anyone wants the overtime.

6. If overtime is needed on an evening or weekend, Mr. Erskine calls workers within the classification until he finds someone to work.

7. Although all the workers in the maintenance shop are classified as general maintenance workers, Mr. Erskine is familiar with each worker's individual skills and training, and will call those individuals whose skills best fit his needs at the time.

8. During the spring and summer months, or the “mowing” season, the workers who are assigned to mowing generally will stay on a particular job until it is done, even if it requires overtime work. Mr. Erskine does not require those workers to stop after eight hours, just so he can then call someone for the overtime work. It is more efficient to allow the workers who started the job to complete it. Mr. Erskine also follows this philosophy with other projects. Generally, when a team of workers has started a project, he allows them to finish it rather than go to other employees for the overtime.

9. At one point in the Fall of 2001, Mr. Erskine asked all of the workers in the shop if they were interested in getting overtime for mowing. No one accepted the offer. Later, Bob Bright came back and told Mr. Erksine he would do the overtime mowing. Thereafter, Mr. Bright was assigned that work.

10.

Mr. Bright is less senior than Grievant.

11. A less senior employee, Sonny Henry, worked a significant amount of overtime in August 2001. Mr. Henry is an HVAC (Heating Ventilation and Air Conditioning)worker. Mr. Henry works as a team with Robert Canterbury, and during that time, they were installing portable units and doing associated carpentry work in August.

12. Grievant is teamed with Danny Johnson. Mr. Johnson received 4 hours of overtime work in July 2001, which Grievant would have received, but he was on vacation at that time. G. Ex. 1.

13. Mr. Johnson received 5 hours of overtime in August, but Grievant turned down that overtime.

14. Grievant turned down overtime work on at least three occasions in the Summer of 2001.

DISCUSSION

Grievant has the burden of proving each element of his grievance by a preponderance of the

evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88- 130 (Aug. 19, 1988). See W. Va. Code § 18-29-6. Grievant alleges the Board violated W. Va. Code § 18A-4-8b with regard to the rotation and assignment of overtime work in the maintenance shop from July through August, 2001. Grievant wants the maintenance shop to post a rotation roster, and lost overtime for work he believes he should have received. The Board denies it violated the Code with respect to assigning overtime work.

Overtime work for school service employees is considered extra-duty work, and the assignment of extra-duty work is governed by W. Va. Code § 18A-4-8b, which provides for the manner of assigning extra-duty work as follows:

> An employee with the greatest length of service in a particular category of employment shall be given priority in accepting extra duty assignments, followed by other fellow 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.

Paul Callahan, Assistant Superintendent, confirmed there is no rotation list posted in the maintenance shop. While the above Code Section does not actually require a written rotation roster, it would clearly be beneficial for the employees to know when their turn is coming up for overtime work. Before this grievance, no one had ever complained to Mr. Erskine about the overtime rotation, and he believed the system was working.

Mr. Erksine testified that the major bulk of overtime work occurs during the Summer months, when the workers are mowing grass, performing general maintenance of the facilities, and installing portable classrooms for the upcoming school year. Grievant's own testimony makes it clear he was offered overtime by Mr. Erskine on at least three occasions, but turned it down each time because of scheduling conflicts. The payroll records for the time period in question show that his partner, Mr. Johnson, did receive overtime during the summer months, and had Grievant been available and willing, he would have received the same number of overtime hours.

Moreover, Mr. Erskine testified that when he asked the workers in the maintenance shop whether they wanted overtime work on mowing jobs, none of the workers, including Grievant, accepted the offer. Grievant cannot come back now and claim he was denied overtime for mowing. It is apparent that overtime work has not been consistently offered in rotation, and a written rotation roster is

recommended in order for the Board to ensure compliance with W. Va. Code § 18A-4-8b. However, Grievant has failed to prove by apreponderance of the evidence that he was denied any overtime work for which he was willing and available, and thus, he has failed to prove he is entitled to any compensation.

CONCLUSIONS OF LAW

1. Grievant has the burden of proving each element of his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88- 130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

2. Overtime work for school service employees is considered extra-duty work, and the assignment of extra-duty work is governed by W. Va. Code § 18A-4-8b, which provides for the manner of assigning extra-duty work as follows:

> An employee with the greatest length of service in a particular category of employment shall be given priority in accepting extra duty assignments, followed by other fellow 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.

3. Grievant has proven that overtime work in the maintenance shop has not been consistently offered in compliance with W. Va. Code § 18A-4-8b.

4. Grievant has failed to prove he was improperly passed over for any overtime work for which he was available and willing to work.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Putnam 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 Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit

court.

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MARY JO SWARTZ

Administrative Law Judge

Dated: April 23, 2002