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JOSEPH BADGLEY

vs.

DOCKET NO. 54-86-064

PARKERSBURG COMMUNITY COLLEGE

DECISION

Dr. Joseph Badgley, also referred to as the grievant, is employed by the Board of Regents as an Associate Professor at Parkersburg Community College. The grievant functions as a full time, nine month faculty member. At issue is whether Dr. Badgley is entitled to annual leave, i.e. vacation time. Dr. Badgley interprets Board of Regents Policy Bulletin No. 35 and the P C C Answer Book, Policy IV-6A and IV-9A, to grant nine month faculty employees eighteen days annual leave per year.

In support of his argument Dr. Badgley cites Board of Regents Policy Bulletin No. 35, Section IV:

4.01 Accrual - It is the desire of the West Virginia Board of Regents that employees of the Board shall earn annual leave with the length of leave based on the level of position, responsibility, service, and other factors.

4.02 Eligibility and Annual Allowance - Except as otherwise provided herein, employees of the Board of Regents shall accumulate and receive annual leave with pay as follows:

4.02 (e) employees working more than one-half time on a regular and continuing basis shall accumulate annual leave on a pro-rata basis.

The grievant notes that while emergency, short term and part-time student employees were specifically exempted from receiving this benefit, there was no such exclusion for full time, nine month employees.

In conjunction with Policy Bulletin No. 35 the grievant cites the following sections from the P C C Answer Book:

3.01 It is the desire of the West Virginia Board of Regents that employees of the Board shall earn annual leave with the length of leave based on the level of position, responsibility, service, and other factors.

3.02 Except as otherwise provided herein, employees of the Board of Regents shall accumulate and receive annual leave with pay as follows:

3.02E Employees working more than one-half time on a regular and continuing basis shall accumulate annual leave on a pro-rata basis.

3.02F Annual leave shall not be accorded emergency or short-term employees or students employed on a part-time basis.

3.02J Annual appointment periods of nine months or more shall be credited for one year of service for annual leave calculation proposes.

Further, Policy IV-9A states that to be eligible for Parkersburg Community College benefits a person must

be a full-time employee as defined in Policy Bulletin No. 51. Faculty members are eligible for benefits if employed on a minimum nine month contract and hold a teaching assignment of no less than six semester credit hours, or the equivalent in research, public service and/or administrative responsibilities. Annual leave is a mandatory benefit for all eligible employees at a rate appropriate to the position, to be pro-rated if the employee's work load is fewer than 37-1/2 hours per week.

Dr. Badgley asserts these policies clearly grant him annual leave, the amount to be pro-rated from that awarded twelve month employees. Furthermore, the grievant believes he has unjustly been deprived of annual leave over a twelve year period and asks that the limitations on accrual of annual leave be waived and that he be credited with the leave earned during this time.

The Board of Regents responds by stating Policy Bulletin No. 35, Section 3.02 grants annual leave to individuals classified as major administrators, faculty with twelve month contracts and regular employees in classified positions only. Employees who fall outside of these three categories do not accumulate annual leave. The Board relies on the principle of statutory construction, expressio unius est exclusio alterius: the express mention of one thing implies the exclusion of others.

As the grievant is not an administrator, does not have a twelve month contract and is not a regular employee in a classified position, he has not been granted annual leave by the Board of Regents. An entitlement to this benefit cannot be created from a failure to specifically exclude this group of employees. Even when construing the policy strictly in favor of the employee, there is no basis on which to grant the requested relief.<sup>1</sup>

The second issue raised by the grievant concerns annual leave for the 1975-1976 academic year. Dr. Badgely was employed for an eleven month term during that year and apparently was promised annual leave. He now questions what amount of the annual leave earned that year remains credited to him. As neither party possesses any records from the 1975-1976 academic year relating to the grievant's annual leave and in consideration that Dr. Badgley has allowed ten years to pass before raising the issue, this part of the grievance will be denied.<sup>2</sup>

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<sup>1</sup>The institution argues the Board of Regents did not intend that annual leave be awarded to nine month faculty members as they are already free three months of the year and during the academic term receive twenty-two holidays per year and 1.5 sick days per month.

<sup>2</sup>Dr. Badgley offers no explanation as to why he has postponed for a decade seeking a resolution to this issue.

In addition to the foregoing, the following specific findings of fact and conclusions of law are appropriate.

Findings of Facts

1. Dr. Joseph Badgley is employed as an Associate Professor at Parkersburg Community College.

2. The grievant is a full time employee with a nine month employment term.

3. Neither the grievant nor any Board of Regents faculty member with an employment term of nine months presently receive annual leave.

4. Dr. K. Edward Grose, Vice-Chancellor for Administrative Affairs for the Board of Regents states through affidavit that he is responsible for the interpretation and administration of Policy Bulletin No. 35. Dr. Grose states that at no time has faculty members with nine month appointments been granted annual leave and that during his tenure (from 1981 to the present) no revisions have been made in Policy Bulletin No. 35 that would change this policy.

5. The Board of Regents Policy Bulletin No. 35 provides annual leave for major administrators, faculty members with a twelve month employment term and employees who work more than one-half time on a regular and continuing basis.

6. [T]he Parkersburg Community College Answer Book states that leave is accrued according to Policy Bulletin No. 35, but proceeds to explain the annual leave policy in a less than clear manner which allows interpretations such as the one presented by the grievant.

7. The grievant's contract of employment with the Board of Regents states: "there are subsumed into this contract all policies of the West Virginia Board of Regents and the Parkersburg Community College Answer Book, as those policies affect faculty and were in effect on the date of the signatures to this contract."

8. During the 1975-1976 academic year the grievant was employed for an eleven month employment term and appears to have been promised annual leave at the rate of 1.83 days per month.

9. Neither party has submitted any documentation compiled during that academic year to support or deny the grievant's claim of unused annual leave.

10. The grievant has allowed ten years to pass before pursuing this matter and offers no reason for this prolonged delay.

#### Conclusions of Law

1. Entitlement to a benefit must be specifically

granted and may not be devised indirectly through interpretation of a failure to specifically exclude any group from receiving said benefit.

2. There has been no misinterpretation or misapplication of Board of Regents Policy Bulletin No. 35 in denying the grievant annual leave.

3. It is incumbent upon all employees to timely pursue their rights through the grievance process. By delaying this action regarding annual leave earned during the 1975-76 academic year for ten years, the grievant has failed to seek a timely resolution to this issue.

Therefore, in consideration of the foregoing facts and conclusions and the record in its entirety, this grievance is denied.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wood County and such appeal must be filed within thirty (30) days of receipt of this decision. (Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



SUE KELLER

Hearing Examiner

DATED October 7, 1986