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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

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DAVID HALL

v:

DOCKET NO: 25-86-027

MARSHALL COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a level three hearing and decision by the Marshall County Board of Education. Thereafter, the parties waived, in writing, the right to an evidentiary hearing at level four and requested that the matter be submitted on the accumulated record.

The grievant, David Hall, complains that during the 1984-85 school year, he accumulated four days of compensatory time and that due to calendar adjustments made by the Superintendent of Marshall County Schools, which affected the designation of snow days, instructional days and noninstructional days, he was required to work in excess of his 200 day contract. The grievant further alleges that the calendar adjustments made by the Superintendent of Marshall County Schools affected certain days after those days had been worked and therefore, should not be permitted.

The respondent, the Marshall County Board of Education, contends that in accordance with WV Code §18-5-15 and WV Code §18A-5-2, it acted appropriately and that the grievant did not work in excess of 200 days.

An examination of the record reveals that the parties do not contest that the grievant had accumulated four days of compensatory time and further that due to snow, school was closed for eight days during the 1984-85 school year. The apparent problem which has arisen is a result of the application and interpretation by the respondent of WV Code §18-5-15 and WV Code §18A-5-2. In pertinent part WV Code §18-5-15 provides:

The board shall provide a school term for its schools which shall be comprised of (a) an employment term for teachers, and (b) an instructional term for pupils.

The employment term for teachers shall be no less than ten months, a month to be defined as twenty employment days exclusive of Saturdays and Sundays: Provided, That the time between the beginning and closing dates does not exceed forty-three weeks.

Within the employment term there shall be an instructional term for pupils of not less than one hundred eighty nor more than one hundred eighty-five instructional days: Provided, That the minimum instructional term may be decreased, by order of the state superintendent of schools, in any West Virginia county declared to be a federal disaster area by the Federal Emergency Management Agency. Instructional and noninstructional activities may be scheduled during the same employment day.

The instructional term shall commence no earlier than the first day of September and shall terminate no later than the eighth day of June.

Noninstructional days in the employment term may be used for making up cancelled instructional days, curriculum development, preparation for opening and closing of the instructional term in-service and professional training of teachers, teacher-pupil-parent conferences, professional meetings and other related activities. In addition, each board may designate and schedule for teachers and service personnel a maximum of four days to be used by the employee outside the school environment. However, no more than seven noninstructional days, except holidays, may be scheduled prior to the first day of January in a school term.

Notwithstanding any other provisions of the law to the contrary, if the board has cancelled instructional days equal to the difference between the total instructional days scheduled and one hundred seventy-eight, each succeeding instructional day cancelled shall be rescheduled, utilizing only the remaining noninstructional days, except holidays, following such cancellation, which are available prior to the second day before the end of the employment term established by such county board.

For the purpose of resolving the dilemma in this grievance, it is necessary to consider the above portions of WV Code §18-5-15, in pari materia, with WV Code §18A-5-2 which in pertinent part provides:

Any school or schools may be closed by proper authorities on account of the prevalence of contagious disease, conditions of weather or any other calamitous cause over which the board has no control. Under any or all of the above provisions, the time lost by the closing of schools shall be counted as days of employment and as meeting a part of the requirements of the minimum term of one hundred eighty days of instruction. On such day or days, county boards of education may provide appropriate alternate work schedules for professional, auxiliary, and service personnel affected by the closing of any school or schools under any or all of the above provisions. Professional,

auxililary and service personnel shall receive pay the same as if school were in session.

Insofar as funds are available or can be made available during the school year, the board may extend the employment term for the purpose of making up time that might affect the instructional term. (Emphasis added)

While it is important that while WV Code §18-5-15 requires that county school boards reschedule lost time due to snow days in order to provide a minimum of 178 "instructional days," it is also necessary to apply WV Code §18A-5-2 to deal with the "employment term." By applying WV Code §18A-5-2, the result is that lost time due to snow/school closings are to be counted as days of employment, therefore negating any necessity to "make-up" snow days as they relate to the employment term. Because the respondent erroneously believed that after school had been closed for two days due to snow, any further school closings must be "made up." The result was that the grievant was required to work one day which could have been exchanged for compensatory time he had earned. (Emphasis added)

In addition to the foregoing, the following findings of fact and conclusions of law are incorporated herein.

#### FINDINGS OF FACT

1. The grievant, David Hall, is an employee/teacher of the Marshall County Board of Education.

2. Marshall County Board of Education did publish and distribute a "School Calendar for Marshall County 1984-85." This calendar set forth the 200 day employment period within the state

code guidelines; it also sets forth an instructional term of (180) days.

3. It was uncontested that the grievant did accumulate 24 hours of compensatory time or four days (six hours per day) by working evenings.

4. In the original calendar, February 22 was scheduled as a Continuing Education (CE) day and June 10, 11, and 12 as Records Days (RD), all of which could be exchanged for compensatory time earned by the grievant who had worked in the evenings. After the calendar was revised, June 10 became an instructional day; June 11 became a school closing day and June 12 became an outside school environment day.

5. School was closed due to snow (1984-85) on December 6, 1984; January 11, 17, 21, and 22, 1985; February 11, 13, and 14, 1985.

6. Teachers were notified to stay home on days school was closed, due to snow, except for February 13 and 14, 1985. On those two days, it was required that teachers report to work in accordance with Marshall County Board of Education Work Schedule, Section II, A-2-a.

7. Assistant Superintendent, Robert R. Eaton, Jr., did send a memorandum to all employees stating they would return to work after the sixth day school was closed due to snow.

8. In revising the calendar, after the grievant had earned four compensatory days, the respondent changed all but one of the

available noninstructional days for which the grievant could exchange his earned compensatory time, namely, June 12, 1986.

9. The grievant was permitted to utilize one compensatory day in exchange for June 12, 1986.

10. The grievant has been uncompensated for the three days of compensatory time he earned.

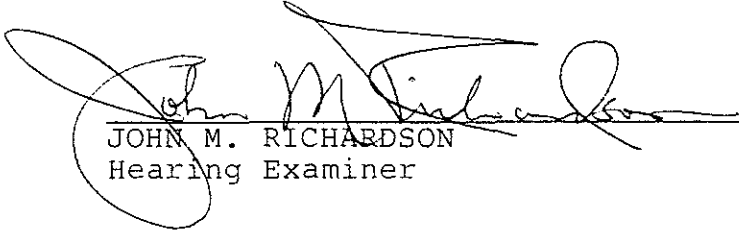
#### CONCLUSIONS OF LAW

1. Pursuant to WV Code §18A-5-2, the time lost by the closing of school shall be counted as days of employment. Professional, auxiliary and service personnel shall receive pay for the same as if school were in session.

2. A county board of education may be required to compensate an employee who has been required to work in excess of his/her contracted term pursuant to WV Code §18-29-5(b).

For all of the foregoing reasons, the grievance is granted and the Marshall County Board of Education is ORDERED to compensate the grievant for three days work at his regular rate of pay less any deductions that would normally apply.

Either party may appeal this decision to the Circuit Court of Marshall County or Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (WV 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.



JOHN M. RICHARDSON  
Hearing Examiner

DATED:

Dec. 9, 1986