



**Members**  
James Paul Geary  
Orton A. Jones  
David L. White

**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

**ARCH A. MOORE, JR.**  
Governor

**Offices**  
240 Capitol Street  
Suite 508  
Charleston, WV 25301  
Telephone 348-3361

JAMES TAYLOR

vs.

DOCKET NO. 26-86-030

MASON COUNTY BOARD OF EDUCATION

DECISION

James Taylor, also referred to as the grievant, is employed by the Mason County Board of Education as a vocational education teacher assigned to Point Pleasant High School. The grievant contends that his duties and responsibilities are sufficiently similar to the duties and responsibilities of the administrative directors to warrant his receiving the same annual leave benefit, on a pro-rata basis.<sup>1</sup>

The board of education states the duties and responsibilities of directors are dissimilar to those

---

<sup>1</sup>Testimony offered by Superintendent Barker at the level four (prior procedure) hearing indicates that approximately forty service personnel employees are also classified as two hundred sixty-one day employees and receive vacation leave.

of a teacher in that they are required to manage resources, are responsible for budgetary matters, supervise personnel, are required to attend county, state and national meetings, develop curriculum and are required to possess training and experience beyond that of a classroom teacher.

Mr. Taylor points out that in the course of his two hundred and forty day employment term he orders materials, develops curriculum and assists students in job placement in addition to performing his instructional duties. The grievant does not believe the present vacation policy is fair in that those two hundred sixty-one day employees are required to work only six more days than he, (four and one-half days if the allocated sick leave is used), and yet they receive twenty-one days vacation time. Mr. Taylor believes that all employees who work in excess of two hundred days per year are entitled to pro-rated vacation time and has produced a proposal which he claims would result in no additional cost to the board of education.<sup>2</sup>

In support of his position, the grievant offers

---

<sup>2</sup>Mr. Taylor suggests that he could teach the regular two hundred day academic year plus six weeks of summer school (thirty days) which would allow ten days vacation time within the two hundred forty day term.

various documentation including: (1) an Attorney General's opinion dated January 3, 1983, which advised that employees holding the same job classifications and performing like assignments with the only difference being the number of days worked, would be entitled to vacation benefits;<sup>3</sup> (2) a decision of the State Superintendent of Schools which, based on the aforementioned Attorney General's opinion, held that an administrative assistant who worked two hundred forty days per year was entitled to pro-rated vacation time as another administrative assistant with a two hundred sixty-one day employment term had been granted vacation leave;<sup>4</sup> (3) documentation indicating that pro-rated vacation time has been adopted in other counties.

Evidence presented in this matter indicates Mr. Taylor's duties, responsibilities and job qualifications are not identical or even similar to those of the

---

<sup>3</sup>Assistant Attorney General Michael E. Froble, the author of this interpretation, notes that in the factual situation presented to him, no reason was given for the granting of this benefit to two hundred sixty-one day employees only. In the present case the board of education notes the differences in training and responsibilities of teachers and directors.

<sup>4</sup>Brisben v. Harrison County Schools decided July 11, 1985. Brisben was granted the vacation time even though the other assistants, in addition to working two hundred sixty-one days per year, had more responsibilities than she.

administrative directors who work a two hundred sixty-one day term. While the Mason County Board of Education could choose to extend the vacation benefit to other employees, and indeed have done so in the past, the current policy limits this benefit to only those employees hired under a two hundred sixty-one day employment term.

W. Va. Code, 18A-4-5a states that counties may provide benefits for teachers funded from local appropriations. The statute further permits a board of education to establish classes of employees based on a variety of factors and to treat the classes differently so long as all employees within a class are treated uniformly. The standard of uniformity does not require that all benefits be pro-rated. In addition to the foregoing it is appropriate to make the following findings and conclusions.

#### Findings of Fact

1. The grievant is employed by the Mason County Board of Education as a vocational teacher assigned to Point Pleasant High School.

2. The grievant's employment term is two hundred forty days per year as compared to the standard term for classroom teachers which is two hundred days per year.

3. Until the board of education amended its policy in 1977, the grievant received two weeks of annual leave per year.

4. Administrative directors and service personnel employees with two hundred sixty-one day employment terms are provided fifteen days of annual leave per year.

5. If allocated sick leave time is utilized, two hundred sixty-one day employees work only four and one-half days more than do employees with a two hundred forty day employment term.

6. Duties, responsibilities, training and experience required of directors, with whom the grievant compares himself, varies considerably from that of a classroom teacher.

7. Mr. Taylor did not seek a remedy for this matter until five years after he had lost the benefit.

#### Conclusions of Law

1. A county board of education may develop employee classifications determined by experience, responsibility and other requirements.

2. So long as all members of a class are treated consistently there is no violation of W. Va. Code, 18A-4-5a which requires benefits to be awarded uniformly.

3. It is incumbent upon all employees to seek a remedy to any dispute in a timely fashion.

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

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mason 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.

DATED: October 7, 1986

Sue Keller

SUE KELLER

Hearing Examiner