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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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EVERETT E. YOHO

v.

Docket No. 25-86-073-2

MARSHALL COUNTY BOARD OF EDUCATION

DECISION

Grievant, Everett Yoho, is employed by the Marshall County Board of Education, State Classification, General Maintenance, and is permanently assigned to John Marshall High School. His grievance involves a long standing dispute with school officials regarding extra-duty assignments for overtime pay. Grievant alleges that overtime assignments are being improperly meted out among county maintenance employees and consequently, he has suffered monetary loss.

The basic facts of this controversy are not disputed. The maintenance department consists of approximately eleven employees and all but grievant are multi-classified and perform their duties on a county-wide basis. Grievant normally receives priority for all overtime work performed at his job site, but is excluded from county-wide assignments. On the other

hand, employees on the county-wide crew may be called to John Marshall High School for overtime work as well as county-wide assignments.

The respondent board did not present written policy but represented that it assigns overtime duties on the basis of seniority, according to law. However, it distinguishes grievant's site-based maintenance employment from county-wide maintenance employment. It argued that since grievant receives first priority for overtime at John Marshall High School he is not entitled to receive priority treatment for county-wide overtime assignments.

Grievant believes otherwise. For relief he asks that he not be limited to overtime assignments at John Marshall High School but also be included in the county-wide overtime assignments. Additionally grievant seeks back wages for overtime assignments improperly awarded to less senior maintenance employees.

Overtime work comes within the purview of W.Va. Code, 18A-4-8b(b) which in pertinent part regulates awards of extra-duty assignments:

An employee with the greatest length of service time in a particular category of employment shall be given priority in accepting such assignments, followed by other fellow employees on a rotating basis...

Provided, that an alternative procedure for making extra-duty assignments within a particular classification category

of employment may be utilized if the alternative procedure is approved both by the county board of education and by an affirmative vote of two-thirds of the employees within that classification category of employment.
(emphasis added)

The statute makes no provision for the allocation of overtime assignments which depend on an employee's site or job location. Rather it states that seniority within a particular category of employment shall determine who receives first priority. Alternatively, it provides that other procedures for overtime assignments may be utilized for employees within a particular classification category of employment when such alternative procedures have been duly approved by the school board and affected employees.

At the level two evidentiary hearing conducted in December, 1985, Richard Canestraro, general supervisor of Maintenance and Transportation testified that he knew of no approved alternative procedures which had been utilized by the maintenance department for the assignment of overtime duties. (T.43)

Grievant has proven his allegation that school officials have wrongfully assigned overtime general maintenance duties, both by his uncontroverted testimony that he observed less senior employees than he performing said duties, on weekends and at other times, and by respondent's admission concerning present practices not in compliance with law or approved alternative means.

Less clear is whether the respondent's actions have caused grievant monetary loss. A grievant is required to support all of his allegations. Grievant's testimony that his overtime hours had decreased significantly in the past year or so was insufficient evidence to determine whether other maintenance employees accumulated overtime hours in excess of his.¹

Following a brief level four hearing conducted September 15, 1986, the parties submitted proposed findings and conclusions. Those proposals and contentions have been considered and to the extent such are consistent with this decision, they are incorporated herein.

¹ The examiner can readily understand how difficult grievant's task may have been. However, the grievance procedure provides means, through issue of subpoena and subpoena duces tecum, or interrogatories, for a grievant to review appropriate administrative records in order to determine monetary loss if any.

FINDINGS OF FACT

1. Grievant is employed by the Marshall County Board of Education with a permanent job assignment at John Marshall High School.

2. Grievant's contract of employment defines his employment classification as General Maintenance, but he is designated Maintenance-A on the county salary schedule.

3. All ten other county general maintenance employees are multi-classified and are assigned to work on a county-wide basis.

4. The county-wide maintenance crew receives general maintenance overtime assignments at John Marshall High School and throughout the county but grievant only receives priority for overtime at his work-site, John Marshall High School, and is excluded from county-wide overtime duties.

5. School officials have not distributed general maintenance overtime assignments in compliance with school law nor are approved alternative procedures utilized.

6. Grievant produced no evidence that he suffered monetary loss due to the respondent's actions.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-8b(b) requires that extra-duty assignments for employees within a particular classification

of employment be rotated among said employees with first priority given the most senior employee.

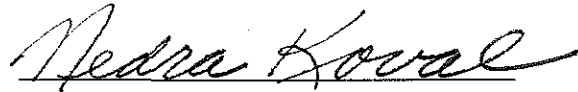
2. Alternative procedures than those provided by statute for assignment of overtime duties may be utilized if duly approved by the board of education and two-thirds vote of the affected employees. W.Va. Code, 18A-4-8b(b).

3. A grievant must prove entitlement to a monetary award. See, Evelyn L. Burton v. Boone County Board of Education, Docket No. 03-86-098, (Decided 9/18/86; Paul Cool, Jr. v. Webster County Board of Education, Docket No. 51-86-118-2, (Decided October 15, 1986); Brenda Hager v. Boone County, Docket No. 03-86-242-2, (Decided October 23, 1986).

4. School personnel laws and regulations are to be strictly construed in favor of the employee.

For all of the foregoing reasons and including the record in its entirety, this grievance is DENIED as to the award of back wages and GRANTED as to the issue of overtime duties among all general maintenance employees. Henceforth, school officials shall utilize the statutorily prescribed procedure for the distribution of overtime assignments falling within the scope of general maintenance duties.

Either party may appeal this decision to the Circuit Court of Marshall or to the Circuit Court of Kanawha County and such appeal must be filed within thirty 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.

A handwritten signature in cursive script, reading "Nedra Koval", written over a horizontal line.

NEDRA KOVAL
Hearing Examiner

Dated: 12/3/86