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GREGORY DODD

v.

DOCKET NO. 20-87-196-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Gregory Dodd, is employed as a teacher by the Kanawha County Board of Education. Mr. Dodd filed a level one grievance on March 26, 1987 in which he alleged that he had been "...unlawfully denied use of a personal day by the administration's misinterpretation and misapplication of the law..." and favoritism. The grievance was denied at levels one through three and was appealed to level four on July 7, 1987. An evidentiary hearing was conducted on August 20, 1987.

The grievant argues that he is entitled to three days of personal leave per school year and that a request for this

leave may be denied only if three employees or fifteen percent of the school staff had been previously approved for such leave on the day requested; that denial of his request for leave on March 6, 1987 in anticipation of a WVEA strike when other employees were allowed to use personal leave on that date was unlawful, arbitrary, capricious and constituted favoritism.<sup>1</sup>

The grievant requests compensation for the day disallowed and a written policy expressly prohibiting a recurrence of this incident in the future.

The board of education concedes that the grievant had personal leave time at his disposal and that no other teachers at his school had requested personal leave for the day in question. However, it argues that denial of the leave request was proper and in accordance with W.Va. Code, 18A-4-10 in anticipation of a concerted work stoppage or strike.

In addition to the foregoing recitation the following shall serve as specific findings of fact and conclusions of law.

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<sup>1</sup>The grievant stated that his request, made on March 4, was not related to the walkout as he is not a member of WVEA and is inclined not to support the actions of that organization.

### Findings of Fact

1. Grievant is employed by the Kanawha County Board of Education as a classroom teacher assigned to Dunbar High School.

2. On March 4, 1987 the grievant requested personal leave for March 6, 1987, the same day on which WVEA had scheduled a teacher walkout.

3. The grievant's request for personal leave was denied in anticipation of this walkout.

4. No other teachers at that school had requested personal leave for March 6.

5. The grievant has failed to show that any other employees were granted personal leave on March 6.

### Conclusions of Law

1. W.Va. Code, 18A-4-10 provides that employees are annually permitted three days of leave which may be taken without regard to cause. Notice of such leave shall be given at least 24 hours in advance, except in sudden and unexpected circumstances when it shall be given as soon as reasonably practical. The leave may be denied if, at the time notice is given, either

15% or 3 employees, whichever is greater, under the supervision of the principal or immediate supervisor had previously submitted notification of their intent to use that day for such leave. Personal leave is not to be used in connection with a concerted work stoppage or strike.

2. As personal leave may not be used for purposes of a concerted work stoppage or strike and as neither 3 individuals or 15% of the staff had not requested annual leave for March 6, denial of the grievant's request was improper.

3. There has been no demonstration of preferential, exceptional or advantageous treatment of any other employees to constitute favoritism as defined in W.Va. Code, 18-29-2(o).

Accordingly, the grievance is **GRANTED**; however the requested relief must be denied as the grievant worked and was paid for March 6 and because personal leave is controlled by statute any written county policy is unnecessary.

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (W. Va. 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 November 13, 1987

Sue Keller

SUE KELLER

Hearing Examiner