



REPLY TO:
101 Harper Park Drive
Suite D
Beckley, WV 25801
Telephone: 255-6155

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
ARCH A. MOORE, JR.
Governor

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

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

PERCY GALLOWAY

v.

DOCKET NO. 41-87-043-4

RALEIGH COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a waiver of consideration at level three and a level two decision denying the grievant's requested relief.

A level four hearing was held before John M. Richardson, Hearing Examiner, and the matter was submitted for decision on May 8, 1987, following receipt of additional exhibits and the parties proposed findings of fact and conclusions of law.

For his grievance the grievant, Percy Galloway, a regularly employed custodian, complains that he was not offered overtime employment pursuant to the respondent board's practice of offering overtime to the most senior employee within the custodial classification at the particular school. This, the grievant alleges, is a violation of WV Code §18A-4-8b(b) and the County practice of offering overtime

to the most senior employee ahead of other employees.¹

By way of response, the respondent board denies any violation of WV Code §18A-4-8b(b) by asserting that overtime differs from extra-duty and is not governed by that section. The respondent further asserts that the principal, subject to the approval of the superintendent, has control of which employee is to be selected for overtime employment in accordance with Raleigh County Policy GCR-R.

The evidence reveals that the specific incident of failing to assign the grievant overtime employment occurred during the Christmas break of the 1986-87 school year. During that break, Robert Rash, the least senior of three custodians who worked at Sylvia Elementary School, was assigned a total of sixteen hours of overtime work. It is uncontested that the grievant was the most senior and that each of the custodians was well qualified and capable of completing the overtime work.

While the grievant insists that it was the practice within the County to offer overtime work to the most senior employee, the evidence in that regard is inconclusive in that the grievant testified that when certain sporting events were held at the school, the assignments were rotated. Also contradicting this practice was Respondent's

¹At the hearing, grievant's counsel abandoned the violation of WV Code §18A-4-8b(b) and asserted that the respondent board's actions were in violation of its practice and unwritten policy of offering overtime to the most senior employee.

Exhibit #1 (Raleigh County Policy GBR-R), which indicated that the building principal was responsible for providing the work schedule.

In any case, WV Code §18A-4-8b(b), in pertinent part, provides:

. . . Notwithstanding any other provisions of this chapter to the contrary, decisions affecting such personnel with respect to extra-duty assignments shall be made in the following manner: 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 according to the length of their service time until all such employees have had an opportunity to perform similar assignments. .

Thus, it would appear that since the overtime assignments were not asserted by either party as being covered by WV Code §18A-4-16 (extracurricular assignments), that they were in fact extra-duty assignments which occurred periodically, and therefore, should be assigned on a rotating basis as provided in the above-quoted portion of WV Code §18A-4-8b(b).

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

FINDINGS OF FACT

1. The grievant, Percy Galloway, is a custodian III employed by the Raleigh County Board of Education and assigned to Sylvia Elementary School.

2. The grievant is the most senior custodian of the three custodians assigned to Sylvia Elementary School.

3. The grievant was not offered the opportunity to work sixteen hours of overtime during the Christmas break of the 1986-87 school year.

4. Robert Rash, the least senior custodian, worked sixteen hours of overtime at the Sylvia Elementary School during the Christmas break.

5. The grievant had accumulated eight hours of overtime prior to the Christmas break; Michael Tarr (second in seniority) had accumulated five hours of overtime work prior to the Christmas break and Robert Rash had not accumulated any overtime prior to the Christmas break.

6. It was Robert Rash's turn to be called to assume overtime work.

CONCLUSIONS OF LAW

1. Pursuant to WV Code §18A-4-8b(b), overtime or extra-duty assignments shall be offered to the most senior employee first followed by the next senior employee on a rotating basis.

2. The grievant has failed to prove, as a matter of law, any basis upon which relief may be granted.

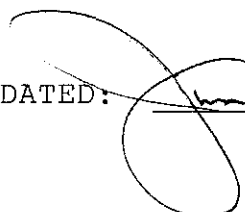
3. The grievant has failed to prove by a preponderance of the evidence that he is entitled to the relief requested.

Accordingly, the grievance is DENIED.

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



JOHN M. RICHARDSON
Hearing Examiner

DATED: 

June 24, 1987