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EMPLOYEES GRIEVANCE BOARD**
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ICY E. MILLS

v.

Docket No. 41-86-313-4

RALEIGH COUNTY BOARD OF EDUCATION

JOY E. ACCORD

v.

Docket No. 41-86-319-4

RALEIGH COUNTY BOARD OF EDUCATION

JAMES L. FURROW

v.

Docket No. 41-86-320-4

RALEIGH COUNTY BOARD OF EDUCATION

LONNIE C. ADKINS

v.

Docket No. 41-86-321-4

RALEIGH COUNTY BOARD OF EDUCATION

DECISION

These grievances come before the West Virginia Education Employees Grievance Board on appeal from a written waiver of participation at level three. A level two hearing was held wherein these grievances were consolidated.

A notice was duly issued setting the grievances for hearing on November 25, 1987. Subsequently, the parties jointly agreed to a continuance and thereafter waived their right to an evidentiary hearing at level four. Following the presentation of oral argument and filing of proposed findings of fact and conclusions of law the grievances were submitted for decision upon the record.

In each of these grievances it appears that the grievant is a regular full time custodian employed by the respondent board and each was assigned regular overtime hours through the calendar year 1985. At different times during the calendar year 1986 the grievants had their overtime hours eliminated.

The grievants seek reinstatement of their overtime hours and back pay for those hours which they would have worked since 1986.

The testimony was, for the most part, uncontroverted and revealed that:

(1). Grievant, James L. Furrow, was a Custodian III employed by the Raleigh County Board of Education and was assigned to Mabscott Elementary School. Since his employment in 1976, grievant Furrow has been assigned to work 11 hours per day (55 hours per week). On September 8, 1986, grievant was verbally informed by his principal that he would no longer be permitted to work overtime.

(2). Grievant, Icy Mills, was a Custodian III employed by the Raleigh County Board of Education and was assigned to South Creek Elementary School. Beginning shortly after her employment in 1983, grievant Mills was assigned to work 10 hours per day (50 hours per week). Her overtime was eliminated in 1986.¹

¹ The record does not reveal how or when in 1986 grievant Mills was informed that she would no longer work more than eight hours per day.

(3). Grievant, Lonnie Adkins, was a Custodian III employed by the Raleigh County Board of Education and assigned to Cranberry-Prosperity School. Grievant Adkins has been employed for 21 years and during that time his overtime hours have been periodically reduced from as many as twenty hours per week (prior to 1970) to 11 hours during 1985. His overtime hours were completely eliminated in 1986.²

(4). Grievant, Joy E. Accord, is a Custodian III employed by the Raleigh County Board of Education and assigned to the Raleigh County Vocational School. Prior to the calendar year 1986 grievant Accord was assigned to work 3 hours 29 minutes each Saturday in addition to his regular 40³ hour week. This overtime assignment was eliminated in 1986.

Based upon the foregoing facts the grievants argue that the respondent board has violated W.Va. Code, 18A-4-8, 18A-4-8a, 18A-2-7 and W.Va. State Board of Education Policy 5300.

² Respondent's Exhibit #7 was the only evidence introduced which would fix the date of the elimination of overtime hours for custodians. This exhibit was a letter/memo to "All Principals" from Ronald B. Cantley, Superintendent and was dated April 30, 1986. Among other things this letter/memo reflects that Superintendent Cantley instructed John Hurtzog to work with the principals and toward reduction and elimination of this (overtime) unnecessary expense.

³ See footnote #2, above.

In pertinent part W.Va. Code, 18A-4-8 provides:

.. No service employee, without his written consent, may be reclassified by class title, nor may a service employee, without his written consent, be relegated to any condition of employment which would result in a reduction of his salary, rate of pay, compensation or benefits earned during the current fiscal year or which would result in a reduction of his salary, rate of pay, compensation or benefits for which he would qualify by continuing in the same job position and classification held during said fiscal year and subsequent years...

In pertinent part W.Va. Code, 18A-2-8 a provides:

.. No service employee shall have his daily work schedule changed during the school year without his written consent, and his required daily work hours shall not be changed to prevent the payment of time and one-half wages or the employment of another employee.

In pertinent part W.Va. Code, 18A-2-7 provides:

.. The superintendent, subject only to approval of the board, shall have authority to assign, transfer, promote, demote or suspend school personnel and to recommend their dismissal pursuant to provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before the first Monday in April if he is being considered for transfer or to be transferred. Any teacher or employee who desires to protest such proposed transfer may request in writing a statement of the reasons for the proposed transfer. Such statement of reasons shall be delivered to the teacher or employee within ten days of the receipt of the request. Within ten days of the receipt of the statement of the reasons, the teacher or employee may make written demand upon the superintendent for a hearing on the proposed transfer before the county board of education. The hearing on the proposed transfer shall be held on or before the first Monday in May. At the hearing, the reasons for the proposed transfer must be shown.

In pertinent part West Virginia State Board of Education Policy 5300 provides:

- (6) (b): Every employee is entitled to "due process" in matters affecting his employment, transfer, demotion or promotion.

The respondent board in denying any violation(s) offered evidence via its seven exhibits containing facts which were undenied by the grievants. These exhibits stand as proof for the following:

2. The grievant, Joy Accord, executed an original Contract dated August 18, 1978, which provided an income of Six Hundred Thirty and 00/100 Dollars (\$630.00) per month for ten and one-half (10½) months, which was computed on straight time.

3. The grievant, Lonnie Adkins, executed an original Contract dated July 26, 1970, at an initial rate of One and 45/100 (\$1.45) per hour which was elevated to One and 60/100 Dollars (\$1.60) per hour effective February 1, 1971, which was computed on straight time.

4. The grievant, James Furrow, executed an original Contract on October 8, 1979, at a salary of Six Hundred Ninety-two and 00/100 Dollars (\$692.00) per month, for eight (8) hours per day, or forty (40) hours per week, straight time.

5. The grievant, Icy Mills, executed a Probationary Contract dated April 16, 1985, providing for income in the amount of Ten Thousand Five Hundred Sixty-three and 00/100 Dollars (\$10,563.00) for two hundred ten (210) days per year employment, compensating her for straight time.

6. By letter dated April 30, 1986, all principals of Raleigh County, West Virginia, were notified that full-time custodians were employed at forty (40) hours per week with schedules to be arranged by the principal to provide for efficient and productive operation of the school. The letter advised that overtime was not a condition of a contract and should not be a planned amount each week. This letter has been admitted into evidence as Respondent's Exhibit No. 7.

7. By letter dated August 18, 1986, Ronald B. Cantley, Superintendent of Schools of Raleigh County, West Virginia, requested an interpretation from Dr. Thomas McNeel, State Superintendent of Schools, relative to the application of the law concerning changing overtime hours with service employees. This letter has been admitted into evidence as Respondent's Exhibit No. 1.

8. By letter dated August 27, 1986, Dr. Thomas McNeel, State Superintendent of Schools, replied to Mr. Cantley's letter and advised that school employees have no legal right nor expectation to be assigned overtime hours, and, therefore, a county board of education is not required to notify employees of a diminution in overtime hours to be worked in a school year. Dr. McNeel further advised that due process applies only in cases where individuals are being deprived of some liberty interest, or a legal or contractual right. Dr. McNeel further advised that West Virginia Code, 18A-4-8a does not require that employees be paid the same income as was generated the year before by the assignment of massive overtime hours. (This letter was incorporated as part of the level two response/decision.)

9. That personnel policy regarding working conditions for service personnel of the Raleigh County Board of Education dated April 27, 1971, and revised September 28, 1982, entitled GCR-R, provides that, "Unless otherwise directed, all service employees who are on a full-time basis are expected to work a maximum of forty hours per week." Said personnel policy has been admitted into evidence as Respondent's Exhibit No. 6.

Therefore, the respondent argues, that since overtime was not expressed as a condition of employment in the grievants' contracts, overtime is not a requirement unless the employee agrees thereto. In support of this argument the respondent asserts that in pertinent part W.Va. Code, 18A-4-8 provides:

No service employee, without his agreement, shall be required to report for work more than five days per week and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

Thus the above portion of W.Va. Code, 18A-4-8 read in conjunction with county board policy GCR-R makes it clear that overtime was not a part of the daily required work hours making up the grievant's schedule.

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

FINDINGS OF FACT

1. The grievants, Icy E. Mills, Joy E. Accord, James L. Furrow and Lonnie C. Adkins are all classified as Custodians III and employed by the Raleigh County Board of Education.

2. Each of the grievants entered into a written contract of employment. None of the contracts made overtime a condition of employment.

3. The assignment of overtime was made by the principal and was altered from time to time as the need arose.

4. The salaries of each of the grievants was set forth in their respective contracts and was based on straight time, i.e. 8 hours per day/40 hours per week.

5. After the elimination of the grievant's overtime hours they remained employed as regular full time Custodians III.

6. No evidence was offered to show that any of the grievants entered into any written agreement altering their daily work schedule.

CONCLUSIONS OF LAW

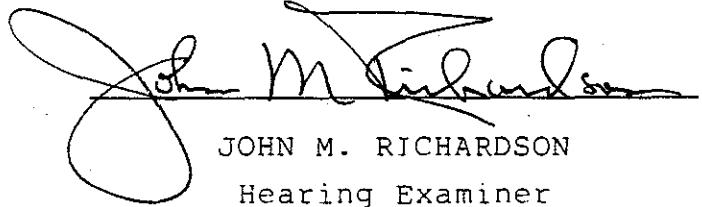
1. According to the facts presented in this case the elimination of overtime hours did not amount to a change of assignment, transfer, promotion or demotion as contemplated by W.Va. Code, 18A-2-7 or State Board of Education Policy 5300(6)(b).

2. The grievants failed to prove by a preponderance of the evidence any violation of W.Va. Code, 18A-4-8 or W.Va. Code, 18A-4-8a.

3. It is incumbent upon the grievant(s) seeking relief pursuant to W.Va. Code, 18-29-1, et seq. to prove the allegations constituting the grievance by a preponderance of the evidence. Mullins v. Kanawha County Board of Education, Docket No. 20-86-352-1; Marling v. Marshall County Board of Education, Docket No. 25-86-368-3 and Gidley v. Preston County Board of Education, Docket No. 39-86-343-2.

Accordingly, the grievances are DENIED.

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



JOHN M. RICHARDSON
Hearing Examiner

Dated: May 15, 1987