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VIRGINIA RAIKES

v.

DOCKET NO. 17-87-086-2

HARRISON COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Virginia Raikes, is employed by the Harrison County Board of Education as a bus operator. On February 2, 1987 she filed a level one grievance alleging that bus operators are treated in a discriminatory manner as they are paid less than their regular salary for extracurricular assignments. The grievance was denied at levels one and two; an appeal to level four was received on April 13, 1987. After hearings scheduled for May 5, May 14 and July 14 were continued upon motions by the parties it was determined that the matter could be submitted for decision based upon the record supplemented by briefs filed on July 23 and August 10, 1987, respectively.

The grievant argues that school service personnel in other classifications receive their regular rate of pay for extra duty assignments while she is paid only six dollars an hour,

an amount less than her regular rate of pay. She asserts this action to be in violation of: (1) W.Va. Code, 18-29-2 (m) as it results in discrimination to pay one classification of service employees as a rate lower than that paid to other classifications; (2) W.Va. Code, 18A-4-8 as the rate of pay of school service personnel may not be reduced without the written consent of the employee. This written consent or waiver can only be effective if it is given voluntarily, with knowledge of the fact and intent to waive and if public policy does not prohibit such waiver. In this instance public policy would prohibit such a waiver as demonstrated by the salary schedule set forth in W.Va. Code, 18A-4-8 and 18A-4-8a, and (3) W.Va. Code, 18A-4-5b as the substandard rate of pay to bus operators establishes a salary scale lacking in uniformity.¹

The board argues that it annually sets a uniform wage to be paid all bus operators who apply for and are assigned extra-

¹The grievant cites two interpretations of the State Superintendent of Schools and a decision of the Ohio County Circuit Court in support of her position. The interpretations are irrelevant to this situation as they address overtime compensation. The issue in Terek v. Board of Education of the County of Ohio, Civil Action No. 85-C-87 was also whether a bus operator was entitled to overtime pay for all hours worked in excess of 40, including voluntary extra-duty assignments.

curricular trips. This rate of pay was set at six dollars per hour in April, 1985. W.Va. Code, 18A-4-16 provides that extracurricular assignments are separate and apart from the employee's regular contract of employment permitting the differing salaries. The board asserts that extracurricular work is voluntary, that the grievant was in no way coerced into accepting the terms of the employment and that as all bus operators are paid at the same rate all members of the employment classification are treated uniformly with no discriminatory action occurring. W.Va. Code, 18A-4-16 provides that an extracurricular assignment agreement shall be separate from the employees regular contract of employment and shall be made only by mutual agreement of the employee and the superintendent subject to board approval. In an interpretation cited by the grievant the State Superintendent has stated that extra duty assignment pay is negotiable.

Grievant's argument that the extracurricular salary paid to service employees lacks uniformity is flawed for two reasons. First, neither W.Va. Code, 18A-4-5b or 18A-4-16 requires uniformity of salary for extracurricular assignments. This is supported by the interpretation of the State Superintendent of Schools which states that these salaries are negotiable. Second,

the number of hours a bus operator works during a week is dependent on his assignment yet all bus operators are paid the same annual salary. Breaking down the annual salary into dollars per hour as the grievant argues should be done would create a lack of uniformity among bus operators for both their regular and extracurricular salaries. Under the present method all bus operators are paid uniformly for both their regular and extracurricular salaries.

When the grievant entered into a separate agreement for extracurricular assignments she requested to work at the salary offered. She had neither a reduction in her rate of pay nor has she been the victim of discrimination because employees in other classifications receive a different rate of pay.

In addition to the foregoing factual recitation, the following specific findings of fact and conclusions of law are appropriate.

Findings of Fact

1. Grievant is regularly employed as a bus operator by the Harrison County Board of Education.

2. Grievant contends that the rate of pay for extracurricular assignments is less than that received for her regular employment. Not only has the grievant failed to show any entitlement to a higher rate of pay but the evidence consistently establishes that extracurricular pay is negotiable and that the board of education has acted properly in establishing an hourly wage for extracurricular work.

Conclusion of Law

1. The grievant failed to prove the material allegations of the grievance by a preponderance of the evidence as a matter of law.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Harrison 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 September 18, 1987

Sue Keller

SUE KELLER

Hearing Examiner