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

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LUTHER MARCUM, JR.

v.

Docket No. 50-88-167

WAYNE COUNTY BOARD OF EDUCATION

DECISION

Grievant, a custodian, filed this grievance in June, 1988, after he was notified that his employment with Respondent Wayne County Board of Education would be terminated until September. His supervisor held on June 30th that he had no authority to resolve the grievance. A hearing was held July 27, 1988, before the Level II evaluator, who ruled on August 8, 1988, "The evidence presented at your level II grievance hearing has been carefully reviewed and therefore is denied at level II." Respondent waived a Level III hearing. Upon appeal to Level IV the parties agreed that the decision should be decided upon the record. The submission of proposed findings of fact and conclusions of law from the parties was completed November 10, 1988.

Grievant contends that he was entitled to employment for 30 days' work between June and September to complete the 240 days employment he is entitled to under his continuing contract he was awarded in 1984. Respondent contends that the continuing contract was properly modified in 1985 under the procedures of W.Va. Code §18A-2-7 so that Grievant was entitled only to the 210 days' work already completed.

FINDINGS OF FACT

1. Grievant has been employed as a custodian with the Wayne County Board of Education since 1980 assigned to Wayne County Southern Vocational-Technical Center.

2. On June 18, 1984, Grievant was issued a continuing contract of employment, which was effective July 2, 1984, and provided for 240 days' annual employment. Grievant signed the contract June 29, 1984.

3. On March 22, 1985, Superintendent M. Joe Nolan notified Grievant that he was recommending that Grievant "be transferred from [his] present contract which calls for 240 days employment to a contract which provides for 210 days employment" with "an addendum providing for extended employment of thirty (30) days if students are enrolled and attending summer programs at the Wayne County Vocational-Technical Center and custodial services are needed." The letter also notified Grievant that he could request a

hearing, which would be held on or before the first Monday in May, 1985.

4. Prior to the first Monday in May, 1985, Grievant asked Mr. Nolan for a hearing and Mr. Nolan replied that it was not necessary because Grievant would be working 240 days under the modified contract. Accordingly, Grievant did not make any objection to the recommendation.

5. On May 1, 1985, Respondent Board of Education accepted Mr. Nolan's recommendation as specified in Finding of Fact 3.

6. On May 7, 1985, Mr. Nolan notified Grievant of the Respondent Board's vote and stated,

This contract will have an addendum providing for extended employment of thirty (30) days if students are enrolled and attending summer programs at the Wayne County Southern Vocational-Technical Center and custodial services are needed. This transfer will be effective July 1, 1985.

7. Respondent did not issue to Grievant any other contract or addendum after the continuing contract Grievant signed in 1984.

8. Grievant worked and received pay for extended employment in the summers of 1985, 1986, and 1987.

9. In 1988 the Wayne County Board of Education, due to lack of funds, did not conduct summer school programs at the Wayne County Southern Vocational-Technical Center. No students were present and no custodial duties were required.

10. Grievant was not provided extended employment for the summer of 1988. Grievant accordingly first suffered monetary loss from Respondent's actions in Summer, 1988.¹

CONCLUSIONS OF LAW

1. In order to modify the terms of employment such as the number of hours or days of employment in a continuing contract of a school service employee, the procedures of W.Va. Code §18A-2-6 must be complied with. Board of Education of Fayette County v. Hunley, 288 S.E.2d 524 (W.Va. 1982); Roach v. Mason County Board of Education, Docket No. 26-87-070 (Nov. 30, 1987). The procedures of W.Va. Code §18A-2-7 are not applicable thereto. See Hunley.

2. W.Va. Code §18A-2-6 provides, in part, that the continuing contract of a service personnel employee shall remain in full force and effect except as modified by mutual consent of the school board and the employee unless and until terminated with written notice to the employee by a majority vote of the full membership of the board before the first day of April of the then current year.

¹ Respondent has not contended that Grievant's filing his grievance in 1988 was untimely. Accordingly, any issue of timeliness is not herein considered. See Craig v. Kanawha County Board of Education, Docket No. 20-88-064 (October 26, 1988).

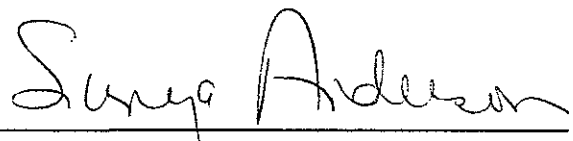
3. By not voting to terminate Grievant's continuing contract prior to the first April of 1985 Respondent failed to comply with W.Va. Code §18A-2-6.

4. Respondent also erred in failing to issue to Grievant any contract with an addendum, as agreed at the meeting of Respondent Board of Education of May 1, 1985.

5. Grievant's continuing contract of 1984, providing for 240 days' annual employment remains in full force and effect. See W.Va. Code §18A-2-6.

The grievance is accordingly GRANTED. Respondent is ORDERED to pay Grievant for 30 days of employment and provide any and all other benefits accruing to annual employment of 240 days.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wayne County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate court.



SUNYA ANDERSON
HEARING EXAMINER

Dated: November 28, 1988