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PETER McDIFFITT

v.

DOCKET NO. 39-88-142

PRESTON COUNTY BOARD OF EDUCATION

DECISION

Grievant, Peter McDiffitt, has been employed by the Preston County Board of Education for twenty-two years and is presently assigned as a custodian III at Kingwood Elementary School. Mr. McDiffitt filed a level one grievance on April 27, 1988 at which time he alleged a violation of W.Va. Code, 18A-4-8 when the board of education terminated the overtime work which he had been awarded for several years. A level four hearing was conducted on August 19 and proposed findings and conclusions were submitted by September 16.

The facts in this matter are undisputed. For the past several years the grievant has been awarded one hour per day

of overtime to assist with the school lunch program. Originally this hour was to transport lunches to the special classes at the county Educational Center and the early childhood classes at the county farm. For the past two years the hour was spent cleaning the lunch room at the elementary school.

By letter dated March 4, 1988 Superintendent Elmer Pritt advised the grievant that due to the opening of a new cafeteria at Central Preston High School the lower number of students to be served at the elementary school would not require him to be on duty throughout the lunch period. Accordingly, the one hour of overtime would not be offered for the 1988-89 school term.

The grievant argues that he must still clean the same area as before and that he cannot properly perform his duties without the extra hour per day. The grievant also cites W.Va. Code, 18A-4-8 which provides that no service employee may be relegated to any condition of employment which would result in a reduction of salary, rate of pay, compensation or benefits without his written consent. The board of education argues that there is no statutory or judicial mandate which would require that it continue the overtime when the employee's services are not required.

In addition to the foregoing narration it is appropriate to make the following specific findings of fact and conclusions of law.

Findings of Fact

1. The grievant is employed by the Preston County Board of Education as a custodian III assigned to Kingwood Elementary School.

2. For the past several years the grievant has been awarded one hour of overtime daily for the purpose of assisting with the hot lunch program.

3. Due to the opening of a new cafeteria at a high school which resulted in fewer students being served lunch at Kingwood Elementary School and lesser duties for the grievant, the overtime work was eliminated for the 1988-89 school year.

4. Neither the granting nor the withdrawal of the overtime work affected the grievant's regular contract of employment.

Conclusions of Law

1. W.Va. Code, 18-4-8 does not include overtime work and therefore the employee's written consent prior to its elimination is unnecessary.

2. The grievant has suffered no change in the condition of his regular employment as anticipated by W.Va. Code, 18A-4-8.

3. It is incumbent upon a grievant seeking relief pursuant to W.Va. Code, 18-29-1, et seq. to prove all of the allegations constituting the grievance by a preponderance of the evidence. Bulford v. Preston County Board of Education, Docket No. 39-87-203; Romeo v. Harrison County Board of Education, Docket No. 17-88-13.

4. The grievant has failed to prove that he is entitled to overtime work ad infinitum.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Preston 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

October 31, 1988

Sue Keller

SUE KELLER

HEARING EXAMINER