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**MARLENE REYNOLDS,  
CATHERINE WANDLING  
and ADRIAN LATHEY**

**v.**

**DOCKET NO. 26-87-204**

**MASON COUNTY BOARD OF EDUCATION**

**DECISION**

Grievants, Marlene Reynolds, Catherine Wandling and Adrian Lathey, are employed by the Mason County Board of Education as bus operators and also serve as officers of the Mason County School Service Personnel Association. A level one grievance was filed on June 3, 1987 in which they alleged that they had been improperly denied professional leave. Following an evidentiary hearing at level two the matter was waived by the board of education to level four. By agreement of both parties the matter was submitted for decision on the record supplemented with proposed findings and conclusions.

The grievants argue that the board denied them one-half day professional leave to attend the West Virginia School Service Personnel Association Spring Assembly on May 8, 1987 in violation of W. Va. State Board of Education Policy 5300 which provides that school employees are entitled to meet, form associations and work in concert to improve their circumstances and those of the schools. Second, W.Va. Code, 18-5-4a which permits a county board of education to approve the attendance of service personnel at association meetings held on school days, without a loss of pay, when the superintendent determines it to be necessary or desirable. Third, the board granted professional leave to other employees who traveled with students to New York in May 1987 resulting in a lack of uniformity of benefits, a violation of W.Va. Code, 18A-4-8b.<sup>1</sup>

The board argues that prior to the commencement of the 1986-87 year, a limitation had been placed on the use of professional leave for financial reasons. That policy which granted

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<sup>1</sup>These individuals were identified on the level four appeal form as a teacher and a coordinator assigned to the central office. That form also indicates that the teacher accompanied the speech team and the coordinator chaperoned the Wahama chorus.

professional leave for the purpose of supervising students in co-curricular or extracurricular activities but denied its use for the attendance of professional organization meetings had been applied consistently throughout the term. The board asserts this action to have been consistent with W.Va. Code, 18A-5-4a and Mason County Board of Education Policy 815 which provides that leave may be granted within the discretion of the superintendent and that the uniform denial of professional leave to attend association meetings was not an abuse of that discretion.<sup>2</sup>

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

#### Findings of Fact

1. Grievants are employed as bus operators by the Mason County Board of Education and serve as officers of the West Virginia School Service Personnel Association.

2. The grievants requested one-half day of professional leave on May 8, 1987 for the purpose of attending a professional organization meeting.

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<sup>2</sup>The grievants state they were allowed to take personal leave for that day. Proposed Findings of Fact No. 6.

3. Prior to the commencement of the 1986-87 school term Superintendent William Barker issued a directive to the effect that professional leave would be restricted to the supervision of children on a school related trip. Requests for professional leave to attend organization meetings, including those of the grievants, were denied.

4. Grievants were permitted to use personal leave time to attend the meeting.

#### Conclusions of Law

1. W.Va. Code, 18A-5-4a provides that a county board of education may approve the attendance of personnel at educational conventions, conferences or meetings held on school days when the superintendent determines it to be necessary or desirable.

2. The term "may" indicates the action to be discretionary rather than mandatory in nature.

3. The grievants have failed to show a lack of uniformity in that professional leave was granted to any other employee for the purpose of attending an organization meeting or that the superintendent engaged in any other abuse of his discretion regarding this matter.

4. It is incumbent upon the grievants to prove all of the allegations constituting the grievance by a preponderance of the evidence. Kirk v. McDowell County Board of Education, Docket No. 03-87-178; Parsons v. Cabell County Board of Education, Docket No. 06-87-067-1; Marling v. Marshall County Board of Education, Docket No. 25-86-368-3.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mason 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 March 28, 1988

Sue Keller

SUE KELLER  
HEARING EXAMINER