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**WEST VIRGINIA EDUCATION
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DENNIS SHOEMAKER

v.

DOCKET NO. 14-88-028-2

HAMPSHIRE COUNTY BOARD OF EDUCATION

DECISION

Grievant, Dennis Shoemaker, is employed as a teacher by the Hampshire County Board of Education. Mr. Shoemaker filed a level one grievance on December 23, 1987 in which he alleged a violation of W.Va. Code, 18-29-3(f) when he was docked a days salary when he attended a level four grievance hearing on November 12, 1987. The grievance was denied at level two, the board of education waived participation at level three and the matter was appealed to level four on February 17, 1988. A level four hearing was conducted on March 23 at which time the grievant appeared in person and by his representative. Superintendent Grey Cassell advised the examiner that the board of education did not wish to appear but requested that it's position as stated on the record be considered.

The grievant argues that he was improperly denied leave to attend a level four greivance hearing at which he appeared as a witness and was acting as a representative of the Hampshire County Education Association. He notes that he has been granted administrative and/or professional leave in the past while acting in his capacity as an officer of the education association and requests compensation for the day of denied leave.

The board's position, as set forth in the level two decision, is that all employees are granted three personal leave days, without cause, each year and as the grievant had exhausted those days his claim for leave time was denied. The board cites an interpretation of the State Superintendent of Schools (not made part of the record) in support of its position. According to the level two decision that interpretation provides that a county board of education could grant administrative leave to individuals appearing as witnesses in grievance hearings, but that the Hampshire County Board of Education has determined that such leave will not be granted for the purpose of allowing an employee to testify against the board. The board requests that it be reimbursed for expenses plus attorney fees.

W.Va. Code, 18-29-3 (f) provides that an employee may have the assistance of one or more fellow employees in the preparation and presentation of the grievance. W.Va. Code, 18-29-3(o) provides that grievances processed on work time shall not result in any reduction in salary, wages, rate of pay or other benefits of the employee and shall be counted as time worked. Thus the use of the term "employee" must be interpreted to include witnesses and representatives appearing for both parties. To prohibit the release of employees to testify or act in a representative capacity could render the grievance procedure meaningless as a grievant would be impeded, if not prohibited, from proving the allegation(s) of the complaint.

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. Grievant is employed as a teacher by the Hampshire County Board of Education.

2. The grievant attended a level four grievance hearing in Elkins on November 12, 1987 and was subsequently denied leave and docked pay for that day.

3. The grievant appeared as a witness at the hearing on November 12. He states that he was also acting as a representative of the Hampshire County Education Association.

4. The grievant was denied leave as he had already used his three days of personal leave for that school term.

Conclusions of Law

1. An employee may have the assistance of one or more fellow employees in the preparation and presentation of the grievance. W. Va. Code, 18-29-3(f).

2. Grievances processed on work time shall not result in any reduction in salary, wages, rate of pay or other benefits of the employee and shall be counted as time worked. W.Va. Code, 18-29-3(o).

3. Witnesses and employees acting as representatives must be protected by the provisions of W.Va. Code, 18-29-3(o) or else the grievant would be so impeded in proving the allegations of his complaint that the grievance procedure would be rendered meaningless.

Accordingly, the grievance is **GRANTED** and the Hampshire County Board of Education is **ORDERED** to reimburse the grievant for his salary and any other benefits lost as a result of his absence from work on November 12, 1987.

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

May 19, 1988

Sue Keller

SUE KELLER

HEARING EXAMINER