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LUCIA BUTLER

V.

DOCKET NO. 01-88-137

BERKELEY COUNTY BOARD OF EDUCATION

**DECISION**

Grievant, Lucia Butler, is employed as a secretary III by the Berkeley County Board of Education (Board) and is presently assigned to the special education department at the central office. Ms. Butler filed a level one grievance on April 29 in which she alleged a violation of W.Va. Code §18A-4-8b when she was denied overtime work. The grievance was granted in part and denied in part following a level two hearing and was appealed to level four on July 9. Following a hearing on August 29 the grievant submitted proposed findings of fact and conclusions of law on September 27. The board of education accepted and submitted the findings and conclusions of the level two hearing officer.

The grievant argues that she submitted a written request for overtime work on February 29 and that she has been denied that request while substitutes who have been hired to replace absent personnel do work other than that assigned to the employee they replace or substitutes are hired to complete "extra work" when no regular employee is absent. She requests that she be assigned overtime work and that she be reimbursed for salary lost for time which she could have worked since February 29.

By its adoption of the level two decision the position of the board of education would be that the grievant is entitled to the opportunity to fill vacancies of absent personnel assigned to the same building or work station and employed within the same classification prior to the assignment being offered to a substitute employee but that she would not be entitled to compensation for work completed by substitute employees as they were not performing extra-duty assignments to which the grievant may have had a claim.

The grievant is correct that substitute employees should not be assigned on a temporary basis but is incorrect that the board may not hire substitute employees for absent personnel. Both situations are governed by W.Va. Code §18A-4-15 which requires a board to employ substitute service personnel to fill

vacancies by regular employees in six specific situations which do not include temporary employment. However, these arguments are not pertinent to the present issue which is whether the grievant is entitled to overtime work.

As noted by the level two evaluator the term "overtime" is statutorily referred to as "extra-duty assignments" which are defined as irregular jobs that occur periodically or occasionally. Examples of extra-duty assignments include, but are not limited to, field trips, athletic events, proms, banquets and band festival trips. W.Va. Code §18A-4-8b(b) Therefore, work completed by employees substituting for regular personnel would not be included within the definition of "extra-duty assignments". Work in excess of that routinely assigned to or completed by a regular employee may be offered to regular employees as extra-duty assignments; however, there is no statutory requirement that the board do so.<sup>1</sup>

It is the examiner's understanding of the grievant's testimony that she does not contend that she is capable of fulfilling all of the duties of other positions, but would simply like

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<sup>1</sup>This would appear to be one alternative available to the board; however, it is discretionary and other methods of completing the work may be utilized.

to do some extra typing or filing after her work day has been completed. To the extent that such work is offered to regular employees as extra-duty assignments it should be made available to the grievant and all interested, qualified personnel as provided by W.Va. Code §18A-4-8b i.e., on a rotating basis determined by seniority.

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 Berkeley County Board of Education as a secretary III assigned to the special education department located at the central office.

2. The grievant is a regular, full-time employee who on February 29, 1988 submitted a written request that she be assigned overtime work.

3. The board of education employs substitute personnel to replace absent regular employees and these substitutes are sometimes assigned duties other than those of the employee they are hired to replace.

4. The board of education has employed substitute personnel on a temporary basis to complete extra work. These individuals did not replace an absent regular employee.

5. The grievant did not establish that she could have performed all of the duties completed by the "temporary" employees; however, it did not seem to be her desire to work another or a second shift but rather to engage in limited secretarial duties, such as typing or filing, which she could complete after her work day.

#### Conclusions of Law

1. W.Va. Code §18A-4-15 provides that a county board of education shall employ substitute service personnel to fill the temporary absence of another service employee, to fill the position of a service employee on leave of absence or who is authorized to be absent from duty without loss of pay, to temporarily fill a vacancy in a permanent position caused by severance of employment by the regular employee, to fill a vacancy created by an employee's suspension or to temporarily fill a vacancy in a newly created position prior to the placement of a regular employee.

2. W.Va. Code §18A-4-15 does not permit the use of substitute service personnel as temporary employees.

3. The board may in its discretion offer additional work which cannot be completed by regular personnel during their work day to regular employees as "extra-duty" assignments.

4. Extra-duty assignments are to be awarded to interested, qualified, employees on a rotating basis in order of declining seniority until all such employees have had an opportunity to perform similar assignments. W.Va. Code §18A-4-8b(b).

5. It is incumbent upon the grievant to prove the elements of the grievance by a preponderance of the evidence. Romeo v. Harrison County Board of Education, Docket No. 17-88-013 (September 30, 1988); McDiffitt v. Preston County Board of Education, Docket No. 39-88-142 (October 31, 1988).

6. The grievant has failed to prove that the board was required to offer or that she was entitled to any extra duty assignments.

Accordingly, the grievance is **DENIED** as to the request for back pay and **GRANTED** only to the extent that if and when the board of education offers extra duty work it shall be assigned to the grievant and other employees in compliance with W.Va. Code §18A-4-8b(b).

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Berkeley 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 so named. Please advise this office of your intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

DATED: November 4, 1988

Sue Keller

SUE KELLER  
HEARING EXAMINER