



REPLY TO:  
101 Harper Park Drive  
Suite D  
Beckley, WV 25801  
Telephone: 255-6155

**Members**  
James Paul Geary  
Orton A. Jones  
David L. White

**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**  
**GASTON CAPERTON**  
Governor

**Offices**  
240 Capitol Street  
Suite 508  
Charleston, WV 25301  
Telephone: 348-3361

CAROL MORGAN, et al.

v.

Docket No. 55-88-155

WYOMING COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants, Carol Morgan, Vernon Short, Bruce Williams, Louise Stoutamyer, Gene Crotty, John Nolley, Kim Cook, Judy Bledsoe and Linda Lugar, are administrative and supervisory personnel employed by the Wyoming County Board of Education (Board) in its central office. In March 1988 they were informed the Board intended to reduce their employment terms from 261 to 240 days and their yearly salaries by five percent (5%). Pursuant to the provisions of W.Va. Code §18A-2-2, grievants requested and received a hearing before the Board in which they asserted that they were already 240 day employees and the reduction in pay without a reduction in number of days worked was improper. By letter dated April 15, 1988 grievants were informed their contract terms would be 240 days and their salary would be reduced by the recommended five percent (5%). They filed a grievance at

Level I on June 2, 1988 and Assistant Superintendent John Wilcox issued a decision which indicated he had no authority to grant the relief requested. A decision by Supervisor Gerald Short following a Level II hearing held July 14, 1988 also found a lack of authority to grant. Upon appeal to Level III, the Board issued the following decision on July 25, 1988:

That those service personnel and professional employees reduced in employment term from 261 days to 240 days be reinstated to 261 days and that they will be expected to work during Christmas week, Easter week and any other unpaid days for teachers with the exceptions of the paid holidays and the OSE days, if any, and that the professional personnel of the central office be reinstated the 5% deduction in their salary as stated in the grievance. This action will be made retroactive to July 1, 1988. Personnel may take vacation days or if they choose to be docked during Christmas, Easter or any other unpaid days mentioned they may do so.

Upon appeal to Level IV a pre-hearing conference was held September 12, 1988 and it was agreed the Level III decision had effectively rendered the dispute over the five percent (5%) reduction moot but had given rise to a new grievance. The parties disagreed on the necessity for another filing at Level I but representatives for the Board proposed that the matter be brought before the Board again for a clarification of its decision and the grievants assented and asked that Level IV proceedings be held in abeyance until that clarification was received. The request was granted and, after at least one subsequent request

for reconsideration, the Board affirmed its earlier ruling: After notification from the grievants' representative that Superintendent of Schools Frank Blackwell would again take the matter before the Board and subsequent correspondence indicating the same result had been reached, a Level IV hearing was held February 14, 1989.<sup>1</sup>

The parties agree that the central issue of the grievance is a factual one, namely, whether the grievants have been 240 or 261 day employees. Grievants contend they have always worked 240 days a year and the Board's decision requires them to now work 261 days a year without any additional compensation in violation of applicable law. Representatives of the Board maintain that pursuant to a proposal of Mr. Blackwell on April 17, 1984 and the grievants' assent thereto, they became 261 day employees. The evidence presented overwhelmingly supports the grievants' position.

Board minutes of September 22, 1977 (Grievants' Exhibit No.13) unequivocally show that at that time a 240 day employment term was established for central office administrative and supervisory staff. On November 8, 1983 a memorandum from Mr. Blackwell

---

<sup>1</sup>At this hearing the parties stipulated that the Board's action had substantially altered the original grievance and no new filing should be required. The undersigned accepted the stipulation and pursuant to the provisions of W.Va. Code §18-29-3(j), proceeded to hear the merits of the case.

(Grievants' Exhibit No.14) was issued to all central office employees, which in pertinent part provided:

As a clarification of our vacation practices we will use the following plan:

All employees will work 240 days. The remainder (which is 21 days) will be used for holidays and vacation. This will apply to all personnel in the central office, bus garage, and maintenance department. This will apply to all employees regardless of whether they are classified as 240 or 261 day employees.

This is not a new policy but rather a clarification of a procedure that has been in practice for a number of years.

Also, we wish to point out that it might be more advantageous for those people classified as 240 day employees to change to a 261 day classification since this does not increase the work calendar.

As you are aware, salaries of employees in the office was not predicated on the basis of a 240 or 261 day employment but rather upon the position that the individual was assigned. Therefore, an assignment of 240 or 261 days will not change your present salary; however, it could effect favorably any future increases provided by the state.

In the Board's minutes of a April 17, 1984 meeting (Grievants' Exhibit No.4), the grievants were designated "Central Office/ Administrative Staff (12 months)" while other employees in that office were referred to as "Secretarial - Clerical Staff, Central Office (12 months - 261 days)". The same differentiation is included in at least seven of the minutes of Board meetings held between July 9, 1984 and July 9, 1987 (Grievants' Exhibits No.5 through 9). Testimony of the grievants reveal they work

240 days between July 1 and June 30. This period encompasses the 200 day teacher employment term which includes the 180 instructional days for students, seven (7) paid holidays, thirteen (13) noninstructional days (continuing education and in-service) and forty (40) additional days. Grievants have not been required to work "break days" in Thanksgiving, Christmas, Easter vacations and have never been paid for those days. During the summer grievants are often required to work from thirteen (13) to seventeen (17) additional days for which they receive compensatory time which may be used at different times in their employment term. Grievants' testimony was unrefuted as was a copy of the Wyoming County School Calendar, 1988-89 (Grievants' Exhibit No.1), which clearly reveals they have worked only 240 days per year and pursuant to the Board's action, they will be required to work three (3) days during Christmas break, five (5) days during Easter break and thirteen (13) days during the month of June<sup>2</sup> for which they receive no additional pay.

The Board's position is primarily based on a memorandum from Mr. Blackwell, dated April 30, 1984 to central office employees (Board's Exhibit No.1), which in pertinent part provided:

As a clarification of our work scheduled, we will use the following plan:

All 12-months employees will work 240 days in accordance with the adopted school calendar. This will apply to all personnel in the central office, bus garage and maintenance department.

---

<sup>2</sup>These were the days previously compensated by the award of compensatory time.

. . .

The assignment of 240 or 261 days will not change present salaries, however, it could effect any further increases provided by the state.

In order to have consistency on the above plan, we would appreciate you signing at the bottom of this letter indicating your agreement to being assigned as a 261 day employee and to follow the work schedule and calendar for central office employees. Please sign and return.<sup>3</sup>

The Board apparently maintains grievants' assent to the provisions of this document placed them on 261 workday schedule.<sup>4</sup> Additionally the Board contends this schedule is evidenced by grievants' job descriptions and the manner in which their recent pay raises were calculated. The job descriptions (Board's Exhibit No.3) provide, under the heading "Term of Employment", "261 days of employment and salary as prescribed by the Wyoming County Board of Education". Salary computation sheets (Board's Exhibit No.4,5, 7,8 and 9) show grievants received a salary increase during their 1986-87 employment term and according to handwritten notations

---

<sup>3</sup>This memorandum had been presented to the Board on April 17, 1984 at which time it voted "to accept the foregoing work schedule, providing there is full agreement among the individuals involved" (Board's Exhibit No.2). That memorandum did not include the paragraph asking for employees' assent and signature.

<sup>4</sup>This position was not clearly stated at the Level IV hearing and since no proposed findings of fact or conclusions of law were submitted by the Board, the assertion is derived from the type of questions posed to grievants' by representatives of the Board.

the raise was computed by multiplying a \$3.00 a day increase by 261 days.<sup>5</sup>

The Board's characterization of Mr. Blackwell's April 30, 1984 memorandum as a document binding the grievants to a 261 day employment term is without basis. It clearly informed staff that they would only work 240 days during their employment terms and Mr. Blackwell's November 9, 1983 memorandum states as clearly that the 261 day designation would only be used for the purpose of calculating raises in state salary supplements.<sup>6</sup> The salary compensation sheets merely show that this was the case when pay raises were awarded in school year 1986-87. Moreover, the only grievants who actually signed the document were John Nolley and Carol Morgan and both gave unrefuted testimony that they were given verbal assurances that by doing so they were not agreeing to an extension of their employment term.

---

<sup>5</sup>According to the testimony of Gerald Short, Supervisor, he made these notations in preparation for the Level IV hearing. It is not entirely clear from the record but apparently teachers with 200 day contracts received a \$600.00 raise that year which amounted to a \$3.00 per day increase and grievants were accordingly given the same per day increase.

<sup>6</sup>There is no reason, other than the probability of obtaining greater state funding, for the 261 day designation discernible from the record. The propriety of listing employees who only work 240 days during their employment terms as 261 day employees for that purpose appears questionable at best.

Grievants assert the contract extension, without a corresponding increase in pay, is in contravention to a basic doctrine of contract law that holds one should not be unjustly enriched by the labor of another<sup>7</sup> and the provisions of W.Va. Code §18-5-15, which in pertinent part provide:

The employment term for teachers shall be no less than ten months, a month to be defined as twenty employment days exclusive of Saturdays and Sundays: Provided, That the board may contract with all or part of the personnel for a longer term.

Grievants correctly maintain that these provisions are applicable to their professional positions and implicit in the language "may contract with" is a requirement that any extension be a compensated one.

In addition to the foregoing, the following findings of fact and conclusions of law are incorporated herein.

---

<sup>7</sup>Grievants cite Nardi & Co., Inc. v. Allabastro, 20 Ill. App.3d 323, 314 N.E.2d 367; Swiftships, Montes v. Naismith v. Trevino Const. Co., Tex.Civ. App., 459 S.W.2d 691, 694, none of which was available to the undersigned and therefore could not be given a great deal of weight. It should be noted, however, that excerpts of these cases, contained in grievant's proposed conclusions of law, appear to strongly support their position.

### FINDINGS OF FACT

1. Grievants are employed by the Wyoming County Board of Education as supervising and administrative staff in its central office.

2. Since their initial employment, grievants have all worked 240 days per year.

3. Pursuant to a memorandum dated November 8, 1983, grievants were designated as 261 day employees for pay purposes but continued to work only 240 days per year.

4. On August 25, 1984 the Board voted to require grievants to work 261 days per year but provided no compensation for the additional 21 days.

### CONCLUSIONS OF LAW

1. Pursuant to the provisions of W.Va. Code §18-5-15 a county board of education can negotiate with its professional employees for extensions of their contract terms but such extensions must be compensated.

2. The Board's action of July 25, 1988 which extended the grievants' employment terms, increased the number of days they must work and provided no additional compensation and was a violation of W.Va. Code §18-5-15.

Accordingly, the grievance is GRANTED and the Wyoming County Board of Education is hereby ORDERED to reinstate the grievants to their previous 240 day employment terms and to compensate them for any days they may have worked over and above said term.

Either party may appeal this decision to the Circuit Court of Wyoming County or the Circuit Court of Kanawha 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 any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

  
\_\_\_\_\_  
JERRY A. WRIGHT  
Chief Hearing Examiner

Dated: April 20, 1989