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DAVID WALDEN

v.

DOCKET NO. 89-BOR-89

WEST VIRGINIA UNIVERSITY

DECISION

Grievant, David Walden, is employed as a senior electrician assigned to the physical plant at West Virginia University (University). Mr. Walden filed a level one grievance on December 28, 1988 in which he alleged that he received no additional pay and only twelve hours of CTO (compensatory time off) when he worked the Thanksgiving holiday. The grievance was denied at levels one and two and was appealed to level four on March 13. Both parties agreed to submit the matter for decision primarily upon the record with supplementary testimony offered on May 8 and a written memorandum submitted by the University on June 30.

The parties are in agreement regarding the facts of this matter. November 23 and 24 were part of the University's Thanksgiving holiday. Due to an emergency situation the grievant worked thirteen and three-fourths hours on November 23 and four hours on November 24. The dispute

arises in the interpretation of Board of Regents Policy Bulletin No. 62 which addresses overtime and holiday compensation of employees. Section 3.01(a) provides:

When a classified employee is required to work on any designated Board or institution holiday, that employee shall receive regular pay for the number of hours worked on that holiday plus substitute time off at the rate of one and one-half (1-1/2) times the number of hours actually worked on the holiday.

The grievant interprets this policy to mean that he was to receive his regular wages for the paid holiday plus additional compensation at his regular rate of pay for the number of hours worked and one and one-half times the number of hours worked in CTO. It is the University's position that the policy requires only compensation normally awarded to the employee for the holiday with additional regular "straight" time pay for the six and one-fourth hours worked beyond his shift, plus one and one-half times the total number of hours worked in CTO. Accordingly, at level one the grievant's immediate supervisor determined that the grievant should receive twenty-six and three-fourths hours of CTO and an additional six and one-fourth hours of straight time pay (regular rather than overtime wages) for the hours worked beyond his usual shift on November 23. This interpretation was upheld by President Neil Bucklew at level two.

The University's interpretation of Policy Bulletin No. 62 is incorrect regarding pay for holiday work. Section

3.01(a) states that an employee shall receive regular pay for the number of hours worked on that holiday. This phrase will not permit the simple compensation of the usual daily pay received by everyone who did not work on that holiday. The policy does not state that the employee shall receive his regular daily pay but that he shall specifically be paid for the number of hours worked at his regular rate of compensation. An employee could work any number of hours, the grievant worked thirteen and three fourths hours. If the intent had been to offer no additional pay for holiday work there would have been no reference to the number of hours worked. While this compensation may seem unusually generous, it is the result of the simple application of the policy as written.¹

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 senior electrician assigned to the physical plant at West Virginia University.

¹The entire thirteen and three-fourths hours worked on November 23 are to be treated as holiday compensation without any special consideration given to those hours worked beyond the grievant's usual shift.

2. The grievant worked thirteen and three-fourths hours on November 23 and four hours on November 24, 1988, both days being part of the University's Thanksgiving holiday.

3. The grievant received only twelve hours compensatory time off and no additional pay for his holiday work.

4. At levels one and two the grievant was awarded twenty-six and three-fourths hours of compensatory time off and six and three-fourths hours of regular pay.

Conclusions of Law

1. Board of Regents Policy Bulletin No. 62 provides that employees who work holidays shall be paid their regular pay for the number of hours which they work plus receive compensatory time off at the rate of one and one-half times the number of hours actually worked. This compensation is in addition to the employee's regular daily pay.

2. In addition to his regular daily pay the grievant is entitled to additional compensation at his regular hourly rate for seventeen and three-fourths hours of work plus twenty six and three-fourths hours of compensatory time off.

Accordingly the grievance is **GRANTED** and the University is **ORDERED** to compensate the grievant in pay and CTO consistent with this decision.

Either party may appeal this decision to the Circuit Court of Monongalia County or to 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.

DATED:

August 29, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER