



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

**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
W. GASTON CAPERTON, III
Governor

Rec'd 2-24-89
REPLY TO:
101 Harper Park Drive
Suite D
Beckley, WV 25801
Telephone: 255-6155

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

VIRGINIA C. DIXON

v.

Docket No. 13-88-252

GREENBRIER COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Virginia Dixon, is employed by the Greenbrier County Board of Education (Board) as an Aide III. She filed a grievance at Level I on November 9, 1988, alleging the Board had improperly deducted pay for one-half ($\frac{1}{2}$) hour from her salary. Decisions at that level and Level II were adverse to the grievant and the Board waived Level III proceedings. Upon appeal to Level IV the parties indicated by letter dated January 13, 1989 that a decision could be rendered on the record of the Level II hearing. Proposed findings of fact and conclusions of law were received by February 7, 1989.

The facts giving rise to the grievance are undisputed. Grievant reports to work at Lewisburg Elementary School at 7:30 a.m.

and leaves at 4:00 p.m. and during that period of time has one-half ($\frac{1}{2}$) hour duty free lunch period. Prior to the pay period beginning September 12, 1988, grievant had always been compensated for seven and one-half ($7\frac{1}{2}$) hours according to her regular aide salary and one (1) hour at an hourly rate of pay.¹ Beginning on that date she was compensated for seven and one-half ($7\frac{1}{2}$) hours according to her regular salary and one-half ($\frac{1}{2}$) hour at the hourly rate. The reason for the timing of the reduction in pay is unclear but central office administrators apparently came to the conclusion that by adopting an official policy on May 22, 1975, which states "...cooks and aides will work a minimum of $7\frac{1}{2}$ hours per day", the Board intended to exclude the duty-free lunch period. Grievant contends the decision to discontinue pay for the lunch period is a direct violation of W.Va. Code §18A-4-14(1), which provides:

Notwithstanding the provisions of section seven [§18A-2-7], article two of this chapter, every teacher who is employed for a period of time more than one half the class periods of the regular school day and every service personnel whose employment is for a period of more than three and one-half hours per day and whose pay is at least the amount indicated in the "state minimum pay scale" as set forth in section eight-a [§18A-4-8a] of this article shall be provided a daily lunch recess of not less than thirty consecutive minutes, and such employee shall not be assigned any responsibilities during this recess. Such recess shall be included in the number of hours worked, and no county shall increase the number of hours to be worked by an employee as a result of such employee being granted a recess under the provisions of this section.

¹The record does not indicate whether or not this was an overtime rate or merely an hourly wage based on her regular salary.

The Board concedes these provisions are controlling but asserts that, since there is no work day length specified therein, it is free to compensate employees for seven and one-half (7½) hours actually worked and grant them an uncompensated one-half (½) hour lunch period for a total of eight (8) hours which is the allowable work day.²

It is obvious that the grievant's interpretation of W.Va. Code §18A-4-14(1) is correct. Those provisions clearly require a county board of education to grant school service employees a compensated duty-free lunch period within the then existing established work day in the county. That work day was established as seven and one-half (7½) hours by the Greenbrier County Board of Education in 1975 and could not be extended as a result of the enactment of W.Va. Code §18A-4-14(1). The Board has essentially extended the grievant's work day by requiring her

² This position cannot readily be discerned from the transcript of the Level II hearing but is found in the Board's proposed conclusion of law No. 2, which reads in its entirety:

Section 18A-4-14 of the Code of West Virginia does not specify the length of the regular work day. Rather, it states regarding the thirty minute duty free lunch that "such recess shall be included in the number of hours worked...." The grievant is being given credit for the 30-minute duty free lunch within the allowable eight-hour work day.

now to work one-half ($\frac{1}{2}$) hour without pay. Moreover, the Board's action is in direct contravention of W.Va. Code §18A-4-8, which in pertinent part provides:

No service employee, without his written consent, may be reclassified by class title, nor may a service employee, without his written consent, be relegated to any condition of employment which would result in a reduction of his salary, rate of pay, compensation or benefits earned during the current fiscal year or which would result in a reduction of his salary, rate of pay, compensation or benefits for which he would qualify by continuing in the same job position and classification held during said fiscal year and subsequent years.

Grievant obviously has not given her consent to the new method of compensation and it is clear that method relegated her to a condition of employment which reduced her salary.

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

FINDINGS OF FACT

1. Grievant, Virginia Dixon, is employed by the Greenbrier County Board of Education as an Aide III assigned to Lewisburg Elementary School.

2. Grievant reports to work at 7:30 a.m. and leaves at 4:00 p.m. and has a one-half ($\frac{1}{2}$) hour duty-free lunch period.

3. Prior to the pay period beginning September 12, 1988, grievant was compensated for seven and one-half ($7\frac{1}{2}$) hours at

her regular salary and one (1) additional hour at an hourly rate based on her regular salary.

4. At the beginning of the pay period beginning September 12, 1988, the Board reduced grievant's compensation for the one (1) additional hour by one-half.

CONCLUSIONS OF LAW

1. Pursuant to the provisions of W.Va. Code §18A-4-14 a county board of education must provide a compensated duty-free lunch period to all school service employees and cannot extend the established work day as a result thereof.

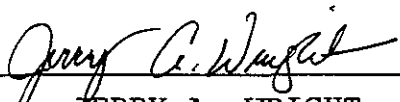
2. Absent a showing that a reduction in force of school service employees is needed and compliance with the provisions of W.Va. Code §18A-2-6, a county board of education may not relegate said employees to conditions of employment which would result in a reduction of their salary earned during the current fiscal year. Fayette County Board of Education v. Hunley, 288 S.E.2d 524 (W.Va. 1982); Winebarger v. McDowell County Board of Education, Docket No. 33-88-169 (December 28, 1988); Roach et al. v. Mason County Board of Education, Docket No. 26-87-070 (November 30, 1987).

3. The decision of the Greenbrier County Board of Education

to reduce the grievant's wages was in violation of W.Va. Code §§18A-4-14 and 18A-4-8.

Accordingly, the grievance is **GRANTED** and the Greenbrier County Board of Education is hereby **ORDERED** to reinstate grievant's former rate of pay and compensate her for any loss of wages she may have incurred as a result of the improper reduction in salary, less any appropriate set-off.

Either party may appeal this decision to the Circuit Court of Greenbrier 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: February 23, 1989