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RICKEY HOLLIDAY

v.

Docket No. 89-25-376

MARSHALL COUNTY BOARD OF EDUCATION

DECISION

Grievant Rickey Holliday, a service employee of respondent Marshall County Board of Education (MCBE), has been classified as a Custodian III and assigned to duties at Moundsville Junior High School since 1982. He filed three grievances in March 1989 and contended variously that MCBE failed to properly reclassify and multiclassify him to reflect the duties he performed and to pay him mandated wages for weekend work he performed beyond his normal weekday duties, all violative of W. Va. Code §18A-4-8. Grievant did not prevail at the lower grievance levels, and on

October 9, 1989, the matter was submitted for a level four decision based on the record developed below.¹

The specifics of grievant's contentions are that he is expected to allocate one-half of his workday to perform maintenance duties and one-half to perform custodial duties; that commencing in 1984 he assumed the duties of head custodian and has worked in that capacity to date; and that he reported to his assigned school for an hour each Saturday and Sunday to conduct maintenance and security checks continuously since 1984, but was only paid at time and one-half rate per hour. Grievant requested as relief that MCBE multiclassify him as Custodian/Maintenance with appropriate in-class seniority retroactive to 1984; reclassify him as Custodian IV with attendant wages and back wages to 1984; and pay him back wages at the rate of three and one-half total hours for each Saturday and Sunday he worked until he was relieved of the duty after he filed this grievance.

The relevant portions of W. Va. Code §18A-4-8 pertinent to the issues herein are as follows:

Should an employee whose regular work week is scheduled from Monday through Friday agree to perform any work assignments on a Saturday or Sunday, the employee shall be paid for at least one-half day of work for each such day he reports for work, and if the

¹The matter was filed at level four in late July 1989; thereafter, several hearings were scheduled and continued for cause shown. The record was considered closed upon the parties' agreement to submit on the record, as per MCBE's October 9, 1989, representations.

The record consists of three April 3 level one decisions; a May 23 level two decision and a transcript of the May 5 level two proceeding in which the three grievances were consolidated; and MCBE's June 6 decision.

employee works more than three and one-half hours, he shall be paid for at least a full day of work for each such day.

"Custodian III" means personnel employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs.

"Custodian IV" means personnel employed as head custodians. In addition to providing services as defined in "Custodian III," their duties may include supervising other custodian personnel.

"General maintenance" means personnel employed as helpers to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system."

The county boards shall review each service personnel employee job classification annually and shall reclassify all service employees as required by such job classifications.

To support the multiclassification issue, grievant testified that it was his belief that the non-cleaning, repair-type work he performed in his school was more akin to maintenance than custodial work. He said he performed plumbing repairs such as replacing the inside parts, vacuum breaker valves and wax ring of a leaking commode; electrical work such as changing the ballasts in lights; and carpentry work such as repairing a broken door by regluing the frame where it had broken off from the hinge. He agreed, however, that he did not assist the county maintenance workers who reported to the school for major tasks he was unable to undertake. MCBE contended that the minor repairs required of grievant in his school were normal custodial duties and not those required of maintenance personnel. The evidence does not preponderate that grievant performed maintenance duties as contemplated by Code §18A-4-8.

MCBE did not dispute that grievant performed the weekend work and did not challenge grievant's authority on the matter. It however raised the affirmative defense of laches and claimed that grievant sat on his rights through years and years of budgetary considerations, and allocations and money other than that budgeted for the present fiscal year was no longer available to pay him. Grievant offered no defense for his inaction other than that he did not know of the entitlement.

MCBE's laches argument may have merit. However, grievant cannot prevail on the weekend work issue for other reasons. School law provides only two means for a service employee to attain work and compensation beyond the workday. Code §18A-4-8b(b) provides for extra-duty work on a rotating basis among service workers and §18A-4-16 provides for a separately-contracted extracurricular assignment. It seems clear that §18A-4-8's mandate about Saturday and Sunday work references extra-duty work not extracurricular employment since the extracurricular assignment provides for agreement between the parties as to wages and hours. Because grievant's weekend duties were not rotated among the custodial staff but were exclusively his, the arrangement and agreement for work and wages between him and MCBE was clearly an extracurricular assignment. MCBE's failure in this case was simply to have neglected to place the agreement in writing and formally approve the same.

Grievant's strongest case was on the Custodian IV issue. He said he assumed head custodian duties when the former head custodian passed away in 1984. Grievant testified that he

supervised five other custodial staff and ordered all necessary supplies. He produced official evaluations of his work performance which referred to him as Head Custodian and commended him for "how well the building was maintained" and for his leadership which produced "the best, most cooperative custodial staff at this school in the last 10 years." Gr. Ex. Nos. 2 and 3.

MCBE did not address or comment about the duties grievant actually performed. It instead contended that grievant could not be a custodian IV because he had never bid on or been awarded that position. Grievant obviously could not bid on a position that MCBE never posted. However, MCBE violated W.Va. Code §18A-4-8 when it did not review grievant's performance and either limit him to custodial III duties or reclassify him for performing custodial IV duties. Moreover, MCBE benefited over the years from grievant's efforts as head custodian. Conversely, grievant allowed the matter to continue for an extended time prior to filing a grievance and offered no reason for his delay on the reclassification claim. MCBE's laches argument must be considered on this issue for it stated that it no longer had funds beyond the 1988-89 fiscal year to pay grievant's claims. Accordingly, grievant's monetary relief will be limited to the fiscal year he filed his grievance. See Sprout v. Harrison Co. Bd. of Educ., Docket No. 17-86-124 (Sept. 11, 1989).³

³The grievant in Sprout was awarded monetary relief on an ongoing violation extending over several years only from the time the grievance was filed.

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

FINDINGS OF FACT

1. Grievant is a school custodian who performed weekend assignments for several years. He was offered and accepted time-and-one-half wages for one hour's duty each Saturday and Sunday he worked.

2. In conjunction with his custodial duties, grievant performed minor plumbing, electrical and carpentry repairs.

3. Grievant supervised the other custodians in his school, performed other supervisory duties such as ordering supplies and was specifically referred to as head custodian.

CONCLUSIONS OF LAW

1. The agreement between MCBE and grievant for his performance of weekend duties and wages thereof paralleled an extracurricular assignment, and the only missing element was a writing. See W.Va. Code §18A-4-16.

2. The minor plumbing, electrical and carpentry work performed by grievant are duties reasonably within the ambit of the custodial classifications, III and IV. See Code §18A-4-8.

3. Grievant has established by a preponderance of the evidence that the totality of his work performance and

responsibilities since 1984 encompassed the duties of a Custodian IV, see id.

4. Marshall County Board of Education has a non-discretionary duty per Code §18A-4-8 to annually review its service employees' duties and to reclassify as necessary. Yoho v. MCBE, Docket No. 25-86-129-2 (Dec. 3, 1986).

5. MCBE failed to review and upgrade grievant's classification since 1984. Its failure to reclassify grievant was an ongoing violation of W.Va. Code §18-29-4(a)(1).

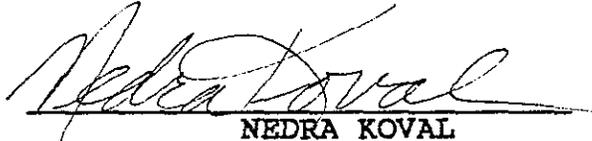
6. "The grievant's lack of diligence in seeking a remedy to an ongoing grievable problem which involves the expenditure of public funds constitutes laches prohibiting an award of relief for that time prior to the filing of a grievance. Maynard v. Bd. of Educ. of Wayne Co., 357 S.E. 2d 246 (W.Va. 1978)." Sprout v. Harrison Co. Bd. of Educ., Docket No. 17-86-124 (Sept. 11, 1989).

7. Grievant is entitled to immediate reclassification as custodian IV but his recovery of back wages is limited to the 1988-89 school year in which he filed a grievance. See Sprout

Accordingly, the grievance is GRANTED in part and DENIED in part. MCBE is ORDERED to reclassify grievant as Custodian IV with attendant wages, in-service seniority from 1984 and back wages for fiscal year 1988-89.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Marshall 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: November 30, 1989


NEDRA KOVAL
Hearing Examiner