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**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**  
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Charleston, WV 25301  
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PEGGY MOSS, et al.

v.

DOCKET NO. 01-88-260

BARBOUR COUNTY BOARD OF EDUCATION

DECISION

The grievants are bus operators employed by the Barbour County Board of Education (Board). Peggy Moss, acting on behalf of herself and all other bus operators, filed a level one grievance on November 3, 1988 in which she alleged that overtime compensation had been changed in violation of W.Va. Code §18A-4-8. The grievance was denied at levels two and three and was appealed to level four on January 19, 1989. A level four hearing was conducted on May 11 and proposed findings of fact and conclusions of law were submitted by July 21.

Prior to the 1988-89 term the grievants were compensated for overtime work at a rate of one and one-half times their regular hourly wages. This amount was determined by dividing the number of hours the driver actually worked into his or her daily salary. Beginning in September 1988 the Board determined that overtime pay would be at one and

one-half times the extra-duty rate of pay which is one-seventh of the driver's daily rate.

The grievants argue that one-seventh of their daily rate is less than their regular hourly rate and that the change in calculation has resulted in a loss of salary without their written consent, in violation of W.Va. Code §18A-4-8 and §21-5C-3(a) which requires that employees be paid at a rate of one and one-half times their regular rate of pay for work over forty hours a week.

The Board argues that the change was permissible in that a revision of Code §18A-4-8a in 1988 established a minimum hourly rate for extra-duty assignments which was more than it had previously paid. The Board also argues that Code §18A-4-8 does not apply to extra-duty assignments, that the method of payment complies with federal wage and hour laws, that the current method has eased the great disparity in compensation among the bus operators to such an extent that more operators are accepting extra-duty assignments, and it has alleviated a problem of some organizations cancelling trips because a bus operator would receive greater compensation than other bus operators. The Board notes in conclusion that all extra duty assignments are voluntary and may be refused without penalty.

The change in overtime pay based upon the extra-duty rate was improperly implemented because it reduced the base rate for calculation from the driver's hourly wage to one-seventh his daily wages without his consent. No service

employee, without his written consent, may 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 for which he would qualify by continuing in the same job position and classification held during said fiscal year and subsequent years. W.Va. Code §18A-4-8.

In addition to the foregoing narration it is appropriate to make the following findings of fact and conclusions of law.

#### Findings of Fact

1. Grievants are bus operators employed by the Barbour County Board of Education.

2. Beginning with the 1988-89 school year the Board compensated the grievants for overtime work at a rate of one and one-half times one-seventh their daily rate. Prior to that school year overtime compensation had been based upon one and one-half times the driver's hourly rate.

3. The grievants did not give their consent to the change in overtime wages and some have suffered a reduction in pay.

## Conclusions of Law

1. No service employee, without his written consent, may 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 by continuing in the same job position and classification held during said fiscal year and subsequent years. W.Va. Code §18A-4-8.

2. The Board's change in the basis for computing overtime pay from the driver's hourly rate to one-seventh of his daily rate resulted in a reduction of salary without the driver's consent in violation of W.Va. Code §18A-4-8.

Accordingly, the grievance is **GRANTED** and the Board is **ORDERED** to revert to computing overtime wages based upon the bus operator's hourly wages.

Either party may appeal this decision to the Circuit Court of Barbour 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 31, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER