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PAMELA SHEPHERD, et al.

v.

Docket No. 89-55-103

WYOMING COUNTY BOARD OF EDUCATION

DECISION

Grievants¹ are all school service employees of the Wyoming County Board of Education (Board) assigned to its central office. They filed a grievance at Level I on November 3, 1988 alleging:

Apparently, vacation benefits have been taken away in violation of W.Va. Code §18A-4-8

Statutes Involved: §18A-2-5; 18A-4-8; 18A-2-6;
Board Policy, Board Minutes, April 17, 1984; Board
Policy, Board Minutes, June 23, 1987

¹Pamela Shepherd, Judy Goode, Ann Reed, Ruth Cook, Karen Brooks, Jean Lusk, Eva Jean Clay, Kati Toler, Judy McNair, Carolyn Reid, Sandra Boninsegna, Wilda Powell, Vickie Blankenship, Marie Adams, Sarah E. Greene, Jeff Brewer, David Stewart, James Combs, Kenneth Grogg, Harlie Elkins, Roy Hefner, John Scott, Eugene Brewer, Oran D. Toney, James B. England, Carl Allen, Melvin H. Thorn, Roger Lafferty, Charles Snyder, Larry Hylton, Gail Acord, Roy Lafferty, Dwight Brooks, Denver E. Goodman and Donald F. Russell.

Grievants' supervisors found they had no authority to grant the relief requested and at Level II, following a hearing held on or about January 25, 1989², Superintendent of Schools Frank Blackwell found that applicable law favored grievants' position. Mr. Blackwell also noted:

Since Mr. Gerald Short, Interim Superintendent, was acting in my capacity during the policy change of July 25, 1988, I must refer this grievance on to the Board of Education, along with my interpretation concerning this matter, and my recommendation if they do not wish to address this matter any further, to forward your grievance to the West Virginia Education and State Employees Grievance Board for decision.

The Board held an evidentiary hearing at Level III on February 6, 1989 but the response form at that level, dated March 9, 1989, did not contain a ruling on the grievance but merely a statement by Mr. Blackwell that "The Board, by a majority, voted to refer your grievance to Level IV to be heard by the Hearing Examiner. We are enclosing a Level IV Grievance form in the event that you wish to request an appeal."³ Grievants appealed to Level IV

²Grievants did not request a transcript of this hearing and none was prepared.

³It appears the Board, subsequent to the February 6, 1989 hearing, did communicate, in some way, a decision not to grant the grievance and attempts were made either by Mr. Blackwell or grievants' representative to obtain a reconsideration of that decision. It is assumed that Mr. Blackwell's statement concerning the Board's waiver was the result of a misinterpretation of the Board's wishes or the Board's mistaken conclusion that the February 6 proceedings were something other than a Level III grievance hearing.

March 17, 1989 where a hearing was held April 17, 1989.⁴ The Board's proposed findings of fact and conclusions of law were received by May 24, 1989. Grievants' proposals were not received until June 19, 1989.

The facts surrounding the grievance are essentially uncontroverted. As early as 1975 there was an informal practice in the Wyoming County School System whereby employees who were designated 261-day employees only worked 240 days per year. These employees were not required to work on twenty-one (21) "non-calendar" days. These are days on which school is not held and for which school employees with 200-day contracts are neither paid nor required to work. This included eight or nine days during the Christmas and Easter breaks.

On April 17, 1984 Mr. Blackwell presented to the Board a memorandum which, in pertinent part, provided:

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

All 12 month 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.

This is not a new policy but rather a clarification of a procedure that has been in practice for a number of years and will be effective for this school term.

This assignment of 240 or 261 days will not change present salaries, however, it could effect any further increases provided by the state. The four OSE days will continue to be designated in the

⁴At this hearing the transcript of the Level III hearing was admitted and the parties offered supplementary testimony.

school calendar for all Wyoming County Board of Education employees.

Board minutes of that date reflect this schedule was formally adopted "providing there is full agreement among the individuals involved". The minutes of a June 23, 1987 meeting reveal the same schedule was presented to the Board⁵ and the following action was taken:

A motion was made by Mr. Cook, seconded by Mr. Lookabill, to re-establish the policy of April 17, 1984, minute record as the work schedule for 261-day central office employees, maintenance and transportation employees. The motion included that these employees would have a 240-day work year physically present minus legal school holidays and OSE days.

A discussion was held concerning the need for employees to have twenty-one (21) vacation days but the motion passed by a 3-2 vote.

In March 1988 grievants received letters informing them that the Board would consider a proposal to reduce their 261-day contracts by twenty-one (21) days and their yearly salaries by five percent (5%). The proposal was accepted but after a grievance concerning that decision reached Level III the Board, by vote taken July 25, 1988, adopted the following resolution:

[T]hat these 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. This action will be made retroactive to July 1, 1988. Personnel may

⁵The matter arose due to a grievance filed by service employees who apparently were working a different schedule.

take vacation days or if they choose to be docked during Christmas, Easter, or any other unpaid days mentioned they may do so.

The Board's decision meant grievants would be required to work eight or nine days during Christmas and Easter breaks without additional compensation.⁶ They contend their time off during those breaks was a benefit bestowed by the Board which it is forbidden to infringe upon by 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.

The Board maintains it had the authority to increase the number of workdays for the grievants as their contracts clearly provide for 261-day terms. The Board further contends the change was allowable because the practice of allowing time off during the Christmas and Easter breaks was only implemented by the Superintendent and never formally approved by Board vote.

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

⁶It appears five days are allotted to the Easter break and four to the Christmas break.

FINDINGS OF FACT

1. Grievants are school service employees assigned to the Board's central office. All have 261-day continuing contracts but have only been required to work 240 days per year since as early as 1975.

2. On July 25, 1988 the Board adopted a policy by which grievants were required to work during the designated Christmas and Easter breaks.

CONCLUSIONS OF LAW

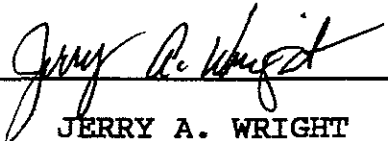
1. The Board on April 17, 1984 formally adopted a policy of requiring 261-day school service employees to only work 240 days per year. Although the policy did not specifically address Christmas and Easter breaks, those days were included in the twenty-one on which grievants were not required to work.

2. The employment term of school service personnel can be modified without their consent but only through termination of their contracts after strict compliance with the provisions of W.Va. Code §18A-2-6. Winebarger v. McDowell County Board of Education, Docket No. 33-88-169 (December 28, 1988); Marcum v. Wayne County Board of Education, Docket No. 50-88-167 (November 28, 1988); Brewster and Breedlove v. Lincoln County Board of Education, Docket No. 27-87-081-1 (December 1, 1987); Roach, et al. v. Mason County Board of Education, Docket No. 26-87-070 (November 20, 1987).

3. The modification in grievants' established employment term made by the Board on July 25, 1988 was not in compliance with the provisions of W.Va. Code §18A-2-6.

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

Either party may appeal this decision to the Wyoming County Circuit Court or Kanawha County Circuit Court 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: July 20, 1989