CHARLES MOODY, et al.

v. Docket No. 93-24-401

MARION COUNTY BOARD OF EDUCATION

DECISION

Grievants, Charles Moody, Charles Wolfe, Bill Fluharty, John Price, Brad Straight, and Sam Wilson, employed as service personnel by the Marion County Board of Education (Board), filed a grievance at level four on September 27, 1993, in which they alleged "that Respondent permitted professional employees and volunteers...to perform service personnel jobs in violation of West Virginia Code §§18A-4-8 and 8b." Grievants seek as relief compensation for the work lost as a result of the violation.

Prior to advancing the matter to level four, the grievance was denied at levels one and two. An evidentiary hearing was conducted at level four on December 3, 1993, and proposed findings of fact and conclusions of law were submitted by Grievants on January 13 and by the Board on January 20, 1994, at which time the matter became mature for decision. The parties stipulate to the following findings of fact:

1. Grievants were employed by the Board in the maintenance department at the time this grievance arose. Each Grievant held the title of "Carpenter" either as their classification title or as part of a multi-classification title.

2. Janet Crescenzi, principal at East Dale Elementary School (East Dale) wished to have a deck constructed outside the school's science center. She did not approach the Respondent's maintenance supervisor about getting the deck constructed. She did contact the Assistant Superintendent in charge of buildings and grounds who told her it would not be possible for several years because of a money crunch the Board was currently suffering through. She sought the permission of the Board to construct the deck with volunteer labor and this request was granted.

3. From April 19 through April 26, 1993, the deck in question was constructed. The work was performed by parents of students, spouses of classroom teachers assigned to East Dale, and by two professional employees assigned to East Dale.

4. The two professionals who worked on the deck were Andy Neptune, Physical Education instructor, and Jim Napollio, Assistant Principal. These two individuals were observed constructing the deck during the hours when schoolwas in session by Grievants Wolfe and Price who were at the school to work on a lock.

5. Mr. Neptune and Assistant Principal Napollio received their regular salary as professional employees on the days that they spent working on the deck. Principal Crescenzi indicated that the professional employees worked on the deck during lunch, "free time," or when using "comp" time, an arrangement which had not been formalized in writing.

6. When Grievants approached their immediate supervisor for an informal conference relating to the construction of the deck they learned that he was unaware that the construction was taking place.

In addition to the foregoing, the undersigned makes the following further findings of fact:

7. All of the Grievants worked a full eight hour shift on the days that the deck was constructed except for those who were absent from work while on leave.

8. Grievants assert that the project should have been offered to them as an extra-duty assignment or, in the alternative, that the project could have been given priority status for early completion during their regular working hours.

9. Grievants offer no evidence to dispute the Board's claim that the professional personnel observed working on the deck were on "comp" or free time.

Grievants argue that county boards of education are permitted to employ two types of personnel: professional, which includes classroom teachers and principals, and service personnel who serve the school or schools in a nonprofessional capacity such as custodians, carpenters, and maintenance workers. Grievants also cite W.Va. Code §18A- 4-8b which requires that school service personnel positions be posted and filled on the basis of seniority, qualifications, and evaluations of past service and that regular school service personnel be given first priority in filling such positions. Grievants reason that because "carpenter" was the correct classification for an employee who is constructing a deck, they should have received the assignment as part of their regular duties or as an extra- duty assignment.

It is the Board's position that W.Va. Code §18A-4-8b does not prohibit parents or other volunteers from working to improve the facilities and/or education programs in the schools. To the contrary, the Board asserts, it is public policy in the State of West Virginia, as stated in W.Va. Code §18-5A-1, to

"provide opportunities for the involvement of the school community in the operation of the local schools and to support local initiatives to improve school performance" and to "promote innovations and improvements in the environment for teaching and learning at the school [and may include programs and policies] to (1) encourage the involvement of parents in their child'seducational process and in the schools;...(4) encourage school volunteer programs and mentorship programs; and (5) foster utilization of the school facilities and grounds for public community activities." W.Va. Code §18-5A-2. The Board argues that to accept Grievants' position would contravene the single greatest factor in school success, i.e., parental and community involvement in the operation of the schools, by prohibiting volunteers from performing any work that falls within a service personnel category.

Although Grievants' correctly assert that building a deck is work to be performed by service personnel as opposed to professional personnel, they offer no authority for a finding that community volunteers may not engage in activities which if performed in house would be assigned to service personnel. As noted by the Board, volunteerism is in the best interest of the community, the schools, and the children. It is important to consider that in this particular case no service employee lost any regular work time or wages as a result of the volunteer labor. While the assignment could possibly have been awarded to Grievants as an extra-duty assignment, this would have entailed additional costs to the Board. Because a project such as a deck may be characterized as more of a luxury than a necessity, it is likely that the Board would choose not to complete the project rather than assign it as an extra-duty. Grievants are entitled to receive extra-duty assignments which are approved by the Board; however, they are notentitled to perform work beyond the regular work day as extra-duty when the Board is fortunate enough to have volunteer labor.

Although the use of community volunteers is acceptable, Grievants' concern regarding professional personnel working on the project during the day is reasonable. The record does not include any relevant Board policies addressing the accrual or use of compensatory time, nor does it provide any information as to why a teacher may have "free" time during the instructional day. Certainly, it would be improper to allow professional personnel to engage in service personnel work while "on the clock;" however, absent any evidence that the two employees were not utilizing legitimate time away from their professional duties, no improprieties are found.

In addition to the foregoing findings of fact, argument, and discussion, it is appropriate to make

the following formal conclusions of law

CONCLUSIONS OF LAW

1. Grievants have failed to prove by a preponderance of the evidence that the Board is prohibited from accepting volunteer services from members of the community to complete a project which if undertaken by the Board would have been assigned to service personnel. 2. Absent any evidence that the two professional employees were not assisting with the deck on "free" or "comp" time, their voluntary assistance with the project cannot be found improper.

3. Service personnel employees may not compel a board of education to assign them any given project as part of their regular duties or as an extra-duty assignment when the work can be completed with volunteer labor and the service employees are not deprived of their regular work time or wages as a result.

Accordingly, the grievance is DENIED.

April 29, 1994 SUE KELLER

SR ALJ

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