HASKELL HOLLEY, ET AL.,

Grievants,

v. DOCKET NO. 94-22-247

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, Haskell Holley, Gloria Bell and Peggy Lester, are employed by Respondent Lincoln County Board of Education as teachers. Grievants filed a Level I grievance on March 21, 1994, alleging:

> Grievants have not been paid for students enrolled in excess of the ratio for holidays, OS (See footnote 1) days, Kindergarten planning days, etc. in the 1993-94 school year, and in some instances previous school years, in violation of W. Va. Code 18-5-18a. Relief sought is to be compensated for ALL dates for which pay was not made to grievants for children in excess of the ratio. Reference Ruling by Administrative Law Judge Sue Keller in Breinig vs. Hampshire County Board of Education. See article attached.

A Level II hearing was held on May 3, 1994, and a decision denying the grievance was rendered by Larry Prichard, Assistant Superintendent of Lincoln County Schools on May 10, 1994. Respondent waived decision at Level III and this matter came on forhearing at Level IV on August 10, 1994, at which time this case became mature for decision (See footnote 2).

The facts of this matter are undisputed:

1. Grievant Haskel Holley is employed by Respondent as a sixth-grade teacher at Hamlin Elementary School.

2. During the 1993-1994 school year Grievant Holley was assigned more than 25 students and qualifies for additional compensation under the provisions of W. Va. Code § 18-5-18a, which provides that any classroom teacher of grades one through six who has more than twenty-five pupils shall be paid additional compensation based on the affected teacher's average daily salary divided by

twenty-five for every day times the number of additional pupils enrolled.

3. Grievant Gloria Bell is employed by Respondent as a kindergarten teacher at Hamlin Elementary School.

4. Grievant Peggy Lester is employed by Respondent as a kindergarten teacher at Hamlin Elementary School.

5. During the 1993-1994 school year Grievants Bell and Lester were assigned more than 20 students and qualify for additional compensation under the provisions of W. Va. Code § 18-5-18a, which provides that any kindergarten teacher who has more than twenty pupils shall be paid additional compensation based on the affected teacher's average daily salary divided by twenty for every day times the number of additional pupils enrolled.

6. It is the practice of Respondent to pay the additional compensation required by W. Va. Code § 18-5-18a only for "instructional" days. Instructional days do not include holidays, sick days, out of school environment days, vacation days, or kindergarten planning periods.

Grievants rely on a previous decision of this Board, Breinig v. Hampshire County Bd. of Educ., Docket No. 92-14-496 (Apr. 29, 1993), to support their position that Code § 18-5-18a encompasses all days during the employment term, including holidays, vacation days, sick days, and planning periods, and that they should, therefore, have been paid for those days according to the terms of the statute. Breinig held that

> The interpretation issued by the State Superintendent dated September 7, 1988, which declared that additional pay for pupil-teacher overages was not to be granted for holidays or noninstructional days was clearly wrong in light of Code § 18-5-18a, . . . as well as the provisions relating to personal leave and paid holidays set forth in W. Va. Code § 18A-4-10 and § 18A-5-2.

Respondent, despite the clear holding in Breinig, asserts that the State Superintendent's interpretation is correct, and argues that it is not the correct procedure to pay teachers for noninstructional days, which are days when actual instruction to students is not taking place. Respondent has offered no law or evidence which would persuade the undersigned to revisit the Breinig decision.

Respondent also asserts that Breinig is only binding on the parties involved in that grievance and therefore limited to the Hampshire County Board of Education. State statutes enacted by theState

Legislature are presumed to apply state and county-wide, unless there is some language which explicitly limits their application. That is not the case here, as Code § 18-5-8a specifically encompasses county boards of education. Respondent again has offered no law or evidence to distinguish its practice from that of the Hampshire County Board of Education in Breinig, and as Respondent is now a party to a grievance addressing the same issue, Respondent is now bound by that ruling.

Respondent argued at the Level IV hearing that, should it be required to pay its teachers in accordance with the holding in Breinig, that such payment should not begin until the beginning of the 180-day instructional term, as opposed to the 200-day employment term, as defined in W. Va. Code § 18-5-15. There is nothing in Code § 18-5-18a or § 18-5-15 which warrants such a conclusion. Indeed, in Breinig, the author states "that the teacher receive the additional pay for every day which she is paid during her employment term." Breinig, at p. 5 (emphasis added). Code § 18-5-18a refers to payment "for every day times the number of additional pupils enrolled up to the maximum pupils permitted in the teacher's classroom." Clearly, if additional pupils are enrolled from the beginning of the teacher's employment term, that teacher is preparing for those students and perhaps meeting with the parents of those students before the instructional term actually begins. Therefore, payment is properly made from the beginning of the employment period as the additional pupils are enrolled.

Conclusions of Law

1. Respondent's practice of denying teachers additional pay on holidays, vacation days, sick days, during planning periods and other noninstructional days is clearly contrary to the statutory directive that the compensation be based upon enrollment. Breinig v. Hampshire County Bd. of Educ., Docket No. 92-14-496 (Apr. 29, 1993).

2. W. Va. Code § 18-5-18a requires that the teacher receive the additional pay for every day additional students are enrolled during the employment term as well as the instructional term, as defined in W. Va. Code § 18-5-15.

Accordingly, this grievance is **GRANTED** and Respondent is hereby **ORDERED** to compensate Grievants for all noninstructional days, including holidays, vacation days, sick days, out of school environment days, and for planning periods, for which they were not paid the additional pay provided for in W. Va. Code § 18-5-18a during the 1993-94 school term. Additionally, Respondent is hereby

ORDERED to cease and desist its current practice of not compensating teachers for additional pay as that practice is in direct violation of Code § 18-5-18a, and to commence compensation of its teachers in accordance with this Board's holding herein and in Breinig v. Hampshire County Bd. of Educ., supra.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln 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 Administrative Law Judges is a party to such appeal, and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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MARY JO ALLEN

Administrative Law Judge

Dated: September 21, 1994

Footnote: 1 *Also known as "out of school environment" days or vacation days.*

Footnote: 2 *Grievants Bell and Lester were represented but not present in person at the Level IV hearing.*