**OLLIE D. HUNTING**

**v.** **Docket No. 94-22-550**

**LINCOLN COUNTY BOARD OF EDUCATION**

**D E C I S I O N**

Grievant, Ollie Hunting, grieves Lincoln County Board of Education's ("LCBOE") failure to pay him for the full twelve supplemental days he believes he is owed pursuant to his principal's contract at Griffithsville Elementary School ("GES"). Grievant alleges a violation of W. Va. Code §§18A-2-2 and 18A-2-9. This grievance was denied at all three lower levels. It was appealed to Level IV (See footnote 1) and a hearing was held on December 8, 1994. After the submission of post-hearing findings of fact and conclusions of law this case became mature for decision on February 3, 1995.

Findings of Fact

The majority of the facts in this case are not in dispute.

1. Grievant was employed as one of the Assistant Principals at DHS for the 1993-94 school year.

2. These assistant principals have contracts for 200 days, plus twenty supplemental days that are to be scheduled and used for the opening and closing of school.

3. Although these assistant principals are directed to schedule fifteen days for the opening of school and five days for the closing of school, they are paid for the full twenty days in August to make things easier for the payroll department. If the five days are not worked at the close of school, this pay is "recaptured" from the employee's last paycheck.

4. Principals of elementary schools receive supplemental days based on enrollment. They are directed to save at least three of these days to "close out" their school.

5. Grievant was aware of the policies referred to in Finding of Facts 3 and 4.

6. All supplemental days must be approved by Superintendent Dallas Kelley on an "Extended Calendar Form" which includes the dates worked, the employee's signature, and the authorizing

signature.

7. In October, 1993, Mr. Larry Prichard, the principal at GES, was hired as Assistant Superintendent by LCBOE. The principal's contract at GES is a 212-day one, with twelvesupplemental days. Mr. Prichard worked nine of these supplemental days prior to the opening of school.

8. In October, 1993, Grievant applied for and received the principalship at GES. He was told verbally, either during the interview or shortly after his hiring, that Mr. Prichard had used nine of the twelve supplemental days, and he would have three days to "close out" school. Grievant disagreed with Assistant Superintendent Prichard. Trans. Level III at 16 and 44, test. at Level IV.

9. On January 14, 1994, Assistant Superintendent Prichard wrote Tina Burns, Payroll, stating Grievant had only three supplemental days left in the GES contract because he had used the nine other days to open school. Grievant received a copy of this memo. Level II at 41, test. at Level IV.

10. It was brought to Superintendent Kelley's attention that Grievant intended to work the twelve days Grievant thought he was entitled to. Superintendent Kelley sent the following memo:

TO: Trina Miller

FROM: Dallas K. Kelley, Superintendent (initialed by Superintendent Kelley)

RE: Extra Days, Ollie Hunting

DATE: June 22, 1994

This memo is to serve as notice that Ollie Hunting is to be paid the following days in June for Principal compensation: June 15, 16, 17 and June 21, 22, and 23. (See footnote 2)

This is the Griffithsville Elementary contract as set forth in board policy plus days for Drug Free assistance during School Year 1993/94.

As of this date Mr. Hunting's service will not be required to complete the Griffithsville assignment.

cc: Ollie Hunting
Larry Prichard

Grievant received this memo. Trans. Level III at 22.

10. Grievant worked without approval of Superintendent Kelley. On the "Extended Calendar Form" Grievant signed his name on both the employee line and the authorizing signature line. This form was completed on June 1, 1994. Level II Exh. 5. When LCBOE did not pay Grievant for the nine extra days he filed this grievance.

11. No charges of insubordination were brought against Grievant for his failure to follow a direct order of his supervisor.

12. Grievant was paid for 223 days as a principal/assistant principal.

13. Many principals voluntarily work extra, unpaid days.

14. Grievant was advised not to work the days in question and chose to do so of his own volition.

## Issues

Grievant alleges he received a personal contract for 212 days in October, 1993, and should be allowed to work all twelve of the supplemental days, no matter what the individual who had theposition before him did. (See footnote 3) At Level II Grievant also alleged favoritism because the individual who took his assistant principal's position at Duvall High School ("DHS") was allowed ten additional, supplemental days even though Grievant had worked all twenty of these supplemental days prior to leaving that position.

Respondent avers this grievance was untimely filed as the Grievant knew of the facts giving rise to this grievance in January, 1994, and did not file until July 1, 1994. Respondent also argues that each principal's or assistant principal's position is assigned a certain number of days pursuant to a set salary schedule and school enrollment. The assistant principal's position at GES is a 200-day position with twelve supplemental days. Respondent agreed the individual who replaced Grievant received ten supplemental days, but this was necessary due to DHS's impaired status and the need to complete special programs.

## Discussion

A. TIMELINESS

A review of the evidence submitted at hearings reveal this grievance is untimely filed. W. Va. Code §18-29-4 states a grievance is to be filed "within fifteen days of the date on which the event

became known to the Grievant." Grievant knew in January, 1994, of the facts giving rise to this grievance, that he would be paid for only three supplemental days, and did not file this grievance until July, 1994.

Thus, this grievance is **UNTIMELY**.

B. CONTRACT ISSUE

Even if this grievance had been found to be timely the Grievant would still not prevail. Grievant specified no violations of W. Va. Code §18A-2-2 dealing with teacher's contracts, or W. Va. Code §18A-2-9 dealing with the duties and responsibilities of principals and assistant principals. Nothing in either of these code sections speaks to supplemental contract days. Accordingly, no violation of these code sections is found.

C. FAVORITISM

W. Va. Code §18-29-3(o) defines favoritism as "unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees." In order to prove favoritism, a grievant must first demonstrate a prima facie case by establishing:

> (a) that he is similarly situated, in a pertinent way, to one or more other employee(s);
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> (b) that he has, to his detriment, been treated by his employer in a manner that the other employee(s) has/have not, in a significant particular;
>
> and,
>
> (c) that such differences were unrelated [to] actual job responsibilities of the grievant and/or other employee(s), and were not agreed to by the grievant in writing.

Steele, et al. v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989). If a grievant successfully demonstrates a prima facie case, a presumption of favoritism exists, which the Respondent can rebut by presenting a legitimate, nondiscriminatoryreason for its action. However, the Grievant may still prevail if he can demonstrate the reason given by the Respondent was mere pretext.

Grievant alleges Dwight Colburn, the individual who took his position as assistant principal, received preferential treatment when he was allowed ten supplemental days at DHS at the end of school. Respondent argues they were not similarly situated for three reasons: 1) Grievant had supplemental days left on the contract he assumed, and Mr. Colburn had none; 2) Mr. Colburn negotiated the ten supplemental days and received prior approval to work; and 3) Mr. Colburn's duties at DHS required him to work.

Testimony at Level IV revealed DHS was on "seriously impaired status," and the duties Mr. Colburn was required to do in the areas of "tech prep," "High Schools at Work" and attendance at a conference in Nashville were designed to get DHS off this status. Assistant Superintendent Prichard thought these reasons justified ten supplemental days for Mr. Colburn and LCBOE agreed.

The above facts demonstrate Grievant has not carried his burden to establish a prima facie case. Grievant and Mr. Colburn were not similarly situated, and the ten supplemental days granted to Mr. Colburn were not the result of favoritism.

The above discussion will be supplemented by the following conclusions of law.

## Conclusions of Law

1. Grievant has the burden of proving his case by a preponderance of the evidence.

2. This case is untimely pursuant to W. Va. Code §18-29-4 as the Grievant knew of the facts giving rise to his grievance in January, 1994 and did not file until July, 1994.

3. Even if the grievance had been timely filed, Grievant failed to demonstrate a violation of W. Va. Code §§18A-2-2 or 18A-2-9. See Wilson v. Mineral County Bd. of Educ., Docket No. 90-28-226 (Oct. 31, 1990).

4. Grievant failed to establish a prima facie of favoritism. Steele, supra.

5. A principal's contract, including supplemental days, goes with the contracted position, and the days allotted are for the stated school year.

Accordingly, this grievance is **DENIED**.

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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**JANIS I. REYNOLDS**

**Administrative Law Judge**

**Dated: March 31, 1995**

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Footnote: 1*Grievant filed a Motion for Summary Judgment with his appeal. A review of the motion indicated it should be more accurately styled as a Motion for Default Judgement. This motion was denied by Order dated September 14, 1994, citing Jerden v. Lewis County Bd. of Educ., Docket No. 93-21-349 (Aug. 19, 1994) and Smith v. Bd. of Directors/West Liberty State College, Docket No. 93-BOD-051 (Feb. 17, 1993). This motion was renewed and denied at the Level IV hearing.*

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Footnote: 2*The additional three days of compensation are for work in the Drug Free Program.*

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Footnote: 3*The principal's contract at GES is for 200 days plus twelve days for performing the principal's duties.*