EDWARD STANLEY, et al.

v. Docket No. 95-15-217

HANCOCK COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants are five of nine service workers in Respondent Hancock County Board of Education's (HCBE) maintenance department. They allege HCBE "has failed to maintain uniformity with regard to the employment terms" of employees within the maintenance department, in violation of W.Va. Code 18A-4-5b. HCBE denies wrongdoing, and basically contends the uniformity provisions of the statute do not apply because the maintenance workers hold different class titles and are not similarly situated. In conjunction with their request for a cancellation of a scheduled level four hearing, Grievants stated the matter could be decided on the basis of the lower-level record. HCBE agreed to the arrangement. The case became mature for decision on September 20, 1995, the designated time for the completion of a briefing schedule, including a rebuttal period.

Findings of Fact

1. At times, if the need arises, all nine members of HCBE's maintenance department may be assigned to perform or assist with plumbing, carpentry, masonry, groundskeeping, locksmithing, truck driving, and electrical work, either individually or as part of a "team" doing some specific project or work. T.8, 24.

2. Grievants and two other maintenance workers hold 240-day contracts, while two long-time workers in the maintenance department hold "extended" 261-day contracts.

3. Since 1987, by policy and practice, HCBE has not

offered 261-day contracts to service workers, except in certain special circumstances. Rather than reducing the pre-existing 261-day contracts of workers hired prior to the policy change, HCBE sought the elimination of extended contract situations through attrition.

4. All of the Grievants joined the maintenance department after 1987, and most had accrued seniority in other classifica tions prior to their transfer to maintenance.

5. Grievant David L. White, with twenty years' overall seniority, had been a custodian for fifteen years. He is now a five-year member of the maintenance department currently multiclassified as a painter/groundsman/handyman. T.22.

6. Grievant Randall Waite, with fourteen years' overall seniority, seven of them as a custodian, is classified in the maintenance department as a Carpenter II, a title he has held for seven years. T.26.

7. Grievant Charles H. Davis is multiclassified as a plumber/HVAC/multi-skill, and has two years' overall service with HCBE. Grievant Davis stated that he stayed away from groundskeeping, truck driving and handyman duties "as much as possible" because he had plenty of work as the department's plumber. T.28-29.

8. A named grievant, Wilmon B. Cully, did not appear at the level two hearing. The record contains no information about his classification within the maintenance department.

9. Grievant Edward R. Stanley, a former 200-day custodian with fifteen years' overall seniority, has been classified as "multi-skill" since he received a 240-day contract/position in the maintenance department in Fall 1989.1 T.8, 10-11.

10. The two maintenance department workers who hold a

261-day contract are Ron Carmichael, a maintenance worker for twenty-five years who is classified as an electrician, and Dale Schon, a department member for fifteen years who presently is classified as multi-skill.2

1W.Va. Code 18A-4-8 does not list the job title, "multi-skill." However, there is a position listed as "General maintenance." This position is defined as "personnel employed as helpers to assist skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system." Multi-skill seems to fall in this category. In any event, this matter is of no consequence because Grievant Stanley did not allege he was misclassified or improperly titled pursuant to Code 18A-4-8.

2While Grievant Stanley testified about the classifications held by the two 261-day workers, HCBE offered no evidence to the contrary. Therefore, it is assumed that Mr. Charmichael and Mr. Schon are classified as Mr. Stanley reported.

11. No Grievant alleged he was misclassified.

Discussion

Grievants rely on the "uniformity" provisions of W.Va. Code 18A-4-5b to support their claim in this matter. They contend that they perform the same services as the department's two 261-day employees. Under those circumstances, they argue, they are also entitled to the same benefits as those workers, namely, an extended contract for purposes of a paid vacation, more personal leave, and additional payments for social security and retirement.

According to HCBE, the Grievants in this case have differ

ent qualifications, classifications and contracts than the maintenance department's 261-day workers, and as such, their responsibilities differ. HCBE also argues that the issues raised in this grievance have already been considered in prior grievances, including Hissom v. Hancock County Bd. of Educ., Docket No. 94-15-568 (Jan. 31, 1995), and Robb v. Hancock County Bd. of Educ., Docket No. 91-15-356 (Mar. 31, 1992), and that its practice of not offering extended 261-day contracts to all service employees has been upheld by the Grievance Board. Grievants' claim that they all perform the same duties as the 261-day maintenance department employees is not borne out by the record. It may be that all members of the department perform similar tasks on occasion when necessary. However, the undisputed evidence is that Grievants White, Waite, and Davis hold different classifications than both Mr. Charmichael and Mr. Schon. As none of the Grievants claimed they were misclassified, their contention that they deserve a 261-day contract on the basis they perform the same duties as the 261-day workers must fail.

However, Grievant Stanley is classified multi-skill, the same as Mr. Schon. Therefore, Grievant Stanley and Mr. Schon are similarly situated in the maintenance department by virtue of their common "multi-skill" classifications, and it can be inferred that they perform the same duties. However, while Grievant Stanley has demonstrated that he and Mr. Schon have common classifications, this does not automatically entitle him to either receive similar contract terms, or, at the very least, to receive a similar vacation benefit, as he contends. See Robb, supra; Allman v. Harrison County Bd. of Educ., Docket No. 89-17-215 (June 29, 1990). To be eligible for a vacation

benefit similar to Mr. Schon's, Grievant Stanley must also demonstrate that he and Mr. Schon actually work the same number of days. No showing was made as to the total number of days he and Mr. Schon worked. Therefore, Grievant Stanley failed to meet his burden of establishing that he is similarly situated to Mr. Schon in all respects and, thus, entitled to the vacation benefit he seeks.3 Allman.

3Even if Grievant Stanley had shown that he and Mr. Schon were similarly situated in all respects, including that they actually worked the same number of days, there would be no obligation on HCBE's part to extend Grievant Stanley's contract for the purposes of granting a paid vacation. Rather, HCBE could have elected to reduce Mr. Schon's contract to create the requisite uniformity. See, e.g., W.Va. Code 18A-2-6, 18A-2-7 and 18A-4-19.

In addition to the foregoing presentation of facts and discussion, the following conclusions of law are made.

Conclusions of Law

1. "Under W.Va. Code 18A-4-8 and 18A-4-5b there is no requirement that boards of education provide uniform across-the-board or classification-related employment terms to its service personnel. Compare Workman v. Logan County Bd. of Educ., Docket No. 89-23-287 (Jan. 30, 1990)." Robb v. Hancock County Bd. of Educ., Docket No. 91-15-356 (Mar. 31, 1992).

2. W.Va. Code 18A-4-5b requires boards of education to provide uniform vacation benefits to similarly-situated service employees, that is, to employees with like classifications, ranks, assignments, duties and actual working days. See Allman

v. Harrison County Bd. of Educ., Docket No. 89-17-215 (June 29, 1990).

3. Grievants have not demonstrated that they are similarly situated in all respects to other maintenance workers who hold differing class titles and extended service contracts.

4. Grievants have failed to show a violation of W.Va. Code 18A-4-5b, or to provide any factual or legal basis for which to grant the relief they seek in this matter.

Accordingly, this grievance is DENIED in its entirety.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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NEDRA KOVAL

Administrative Law Judge

Date: September 29, 1995