

WILLIAM STAPLETON, III,

Grievant,

v. DOCKET NO. 96-23-128

LOGAN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, William Stapleton, III, filed this grievance September 22, 1995:

William Stapledon (sic), Grievant, contends that the Respondent has failed to assign "planned overtime" assignments within the maintenance department on a rotational basis pursuant to West Virginia Code § 18A-4- 8b. Grievant seeks backpay for missed assignments and future compliance with West Virginia Code § 18A-4-8b.

Following adverse decisions at the lower levels, Grievant appealed to level four on March 26, 1996. An evidentiary hearing was held on August 5, 1996, and this case became mature for decision on September 3, 1996, the deadline for the submission of the parties' post-hearing fact/law proposals.

The facts in this case are not in dispute and are set forth in the following findings of fact.

Findings of Fact

1. Grievant is employed by Respondent Logan County Board of Education as a Carpenter II/General Maintenance.
2. On four consecutive weekends (7/29-30/95, 8/5-6/95, 8/12-13/95, 8/19- 20/95), four employees in Respondent's maintenance department were assigned to build cabinets, computer desks, and mail shelves for the school at Man. The four employees were David Steele (Cabinetmaker), David Armentrout (Carpenter II/Mason), Gary Browning (Carpenter II), and Bruce Roberts (Carpenter II).
3. Grievant, John Martin (Carpenter II/Truck Driver), Carlos Dingess (Carpenter II/Glazier), and

Bill Jenkins (Carpenter II/Glazier), were not offered the opportunity to work on any of these weekends.

4. Grievant is the most senior employee in the maintenance department of the eight employees mentioned above. He is more senior in the Carpenter classification than all of the above-mentioned employees except Mr. Armentrout.

5. The work in question was extra-duty in nature and such assignments are rotated among Respondent's service employees.

6. Had the work in question been rotated over the four consecutive weekends, Grievant would have been called out for two of the four weekends.

Discussion

Grievant contends that Respondent violated the provisions of W. Va. Code § 18A- 4-8b, which state:

Notwithstanding any other provisions of this chapter to the contrary, decisions affecting such personnel with respect to extra-duty assignments shall be made in the following manner: An employee with the greatest length of service time in a particular category of employment shall be given priority in accepting such assignments, followed by other employees on a rotating basis according to the length of their service time until all such employees have had an opportunity to perform similar assignments. . . . For the purpose of this section, extra-duty assignments are defined as irregular jobs that occur periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

Respondent concedes that the work in question was extra-duty in nature and that such assignments are rotated. Respondent contends, however, that the work in question constituted a single assignment, i.e., building cabinets and shelves for Man school, and that the same crew that began that assignment was allowed to complete it.

Grievant likens the cabinet-building assignment to an extra-duty bus operator assignment to transport a football team to away games, suggesting that, if Respondent's argument prevails, all bus trips to an away football games could be considered one assignment. The undersigned is not persuaded by Grievant's analogy. While the nature of each bus trip is the same, i.e., driving a bus, the assignment for each trip is completely separate and different from the last, specifically with regard to location and distance, and the assignment is completed upon return to the home school.

Conversely, while the undersigned agrees that any one of the Carpenters employed by Respondent

could perform the work in question, it would be inefficient and disruptive to require the individuals who began building the cabinets to relinquish their assignment to others in the middle of the construction project. In addition, while building cabinets and shelves may not be considered complex tasks, and perhaps the other employees could easily take over the project, other carpentry and construction projects could be much more complex, and it would not be feasible to switch workers mid-project, unless absolutely necessary.

Conclusions of Law

1. It is incumbent upon the Grievant to prove the allegations of his complaint by a preponderance of the evidence.
2. Grievant has not proven that Respondent violated the rotation provisions of W. Va. Code 18A-4-8b with respect to extra-duty assignments in treating the cabinet- building project as one assignment and permitting the same crew to work to completion on the project.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Logan 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.

MARY JO SWARTZ
Administrative Law Judge

Dated: September 20, 1996