

JUDY SMITH, et al.,

Grievants,

v.

DOCKET NO. 95-29-530

MINGO COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, teachers at Matewan High School, filed this grievance on or about September 7, 1995, alleging:

A change in the bus schedule from last year has caused the enclosed list of teachers to work more than an eight-hour day. The teachers ask that they be paid for the overtime. They also ask that the school return to last year's schedule. See enclosed documentation.

Following adverse decisions at the lower levels, Grievants appealed to Level IV on November 29, 1995, and requested that the decision be made based upon the record developed below. ([See footnote 1\)](#))

The only evidence of record is a hand-written list of teachers indicating their starting and ending times for September 1, 6 and 7, 1995, and the amount of overtime they allege they are due for these days. No testimony was taken at the Level II hearing from any of the Grievants regarding this list. The only explanation of the grievance came from Grievants' representative, who alleged Grievants were required to work more than eight hours a day on the given days in order to "supervise" students, apparently when they arrived at school in the morning. Nevertheless, this statement by Grievants' representative is not evidence and will not be given any weight for purposes of this decision.

In any event, it is incumbent upon Grievants to prove their allegations by a preponderance of the evidence. Grievants have not identified any rule, statute, practice or law which would entitle them, professional employees, to overtime pay even if they did work more than 8 hours on the dates in question. See Oblinger v. Lincoln County Bd. of Educ., Docket No. 89-22-552 (Jan. 5, 1990).

Conclusion of Law

Grievants, professional educators, have failed to prove any entitlement to overtime pay under any rule, statute, law or practice.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mingo 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: March 18, 1996

[Footnote: 1](#)

The lower level record consists of a one-page Level II transcript and Level II decision of Assistant Superintendent Johnny Fullen dated November 20, 1995.