LOUISE SMITH,

Grievant,

v. **DOCKET NO. 97-29-198**

MINGO COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

This grievance was filed by Grievant Louise Smith against the Mingo County Board of Education ("MBOE") on or about December 20, 1996, alleging she was not being paid the proper salary as a Custodian III. (See footnote 1) The grievance was filed when MBOE reduced Grievant's salary in December 1996 upon discovering it had been paying her for working a nine-hour split-shift, when she had been working an eight-hour day. The salary reduction was to reflect the adjustment for not working the nine-hour split-shift, and a $36.00 per pay period repayment of the amount MBOE had overpaid her. (See footnote 2) Most of the facts pertinent to the resolution of this matter are not in dispute, and will be set forth in the following findings.

Findings of Fact

1. Grievant is employed by MBOE as a Custodian III.
2. Grievant's salary is governed by the salary schedule set forth in Level II Grievant's Exhibit II. (See footnote 3)
3. Grievant's position is within a Pay Grade C on the salary schedule.
4. Grievant had 17 years of service at the beginning of the 1996-97 school year, and the applicable years of service in applying the salary schedule is 16.
5. Grievant has a high school diploma, which adds $10.00 per month to her salary.
6. Grievant has earned 12 college credit hours, which adds $10.00 per month to her salary.
7. Grievant did not work a nine-hour split-shift for the 1996-97 school year. She worked an eight-hour day for ten months.

8. Grievant was overpaid $646.36 by MBOE, because she continued to be paid for working a nine-hour split-shift even though she was no longer doing so. This overpayment was tobe repaid by decreasing her salary by $36.00 per pay period beginning in mid-December 1996, until the amount was repaid by August 1997.

9. Grievant receives her salary over a period of twelve months on a pro rata basis, and there are two pay periods each month. That is, she earns her monthly salary only for the ten months she works, but receives payment of her salary over a twelve month period.

10. Grievant's monthly salary according to the salary schedule was supposed to be $1771.00 per month, or a total of $17,710.00 for the 1996-97 school year. Spread over a twelve month period, she should have received $1475.83 each month. After reducing this amount by $72.00 each month to repay the overpayment, her monthly salary was supposed to be $1403.83. (See footnote 4)

11. Grievant received $699.90 per pay period, beginning in mid-December 1996, for a monthly total of $1399.80.

Discussion

The facts agreed to by the parties leave no doubt that under the salary schedule, Grievant's monthly pay for the 1996-97 school year should have been $1771.00 per month. However, since Grievant receives her ten month salary over a period of twelve months, the amount she actually received each month should have been $1475.83. Once Grievant began repaying the $646.36 overpayment, she should have received $1403.83 each month. Beginning in December 1996, however, Grievant was paid $699.90 per pay period, or $1399.80 per month, $4.03 per month lessthan she should have been paid, for eight and a half months (from mid-December 1996 through August 1997), for a total of $34.26.

However, the undersigned is reluctant to order MBOE to pay Grievant this amount, as the facts also lead to the conclusion that $36.00 per pay period was not sufficient to repay the $646.36 overpayment. Based upon the facts presented to the undersigned, there are 17 pay periods from mid- December 1996 through August 31, 1997. $36.00 multiplied by 17 pay periods equals $612.00, not $646.36. The difference in these two amounts is $34.36. It appears to the undersigned that MBOE was in fact withholding $38.01 per pay period from Grievant's salary to repay the overpayment, not $36.00. Based upon all of the above, the undersigned concludes that MBOE paid

Grievant the proper salary for the 1996-97 school year.

It is understandable that Grievant believed she was being underpaid by a significant amount, as her monthly pay was much less than what she had received in previous years. However, this difference was largely due to the fact that she is no longer receiving payment for working the nine-hour split shift.

Conclusions of Law

1. The burden of proof is upon Grievant to establish her allegations by a preponderance of the evidence. Canterbury v. Putnam County Bd. of Educ., Docket No. 40-86-325-1 (Jan. 28, 1987).

2. Grievant failed to prove she was not paid according to the MBOE salary schedule for a Custodian III.

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.

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BRENDA L. GOULD

Administrative Law Judge

Dated: August 21, 1997

Footnote: 1

Grievant also made other complaints in this grievance, but abandoned them at Level II.

Footnote: 2

The grievance was denied at Level I on December 20, 1996, and was also denied at Level II on May 7, 1997,

following a hearing held on April 24, 1997. Grievant waived Level III and appealed to Level IV on May 9, 1997. Following continuances requested by both parties, a Level IV hearing was held on July 24, 1997, to supplement the lower level record. This matter became mature fordecision at the conclusion of that hearing. The undersigned thereafter called a conference with the parties on August 5, 1997, to clarify that Grievant was to be paid only for the ten months she worked during the 1996-97 school year.

Footnote: 3

W. Va. Code § 18A-4-8a sets forth the statutory minimum salary for a Custodian III. The salary schedule used by MBOE provides a higher salary for a Custodian III than the statutory minimum, and Grievant was paid more than the minimum statutory salary.

Footnote: 4

The undersigned is not commenting on whether this is the proper way to adjust Grievant's salary to reflect the overpayment. Rather, this is the way MBOE reflected the adjustment, and the undersigned will simply follow MBOE's format.