WILEY LESTER, et al.

v. Docket No. 91-33-036

McDOWELL COUNTY BOARD OF EDUCATION

DECISION ON REMAND

The grievants (See footnote 1) are all employed by the McDowell County Board of Education (Board) as teachers at the McDowell County Vocational Center (MCVC). They initiated a grievance at Level I in September 1990 alleging that the Board improperly issued them new contracts of employment in 1987 without terminating previously executed contracts. At Level IV, the undersigned denied the grievance on its merits and found that it was not timely filed. Lester v. McDowell County Bd. of Educ., Docket No. 91-33-036 (Oct. 31, 1991) (Lester I). A timely appeal was filed with the Circuit Court of McDowell County. By order dated December 29, 1993, the Court remanded the case and directed the Education and State Employees Grievance Board "to address the issue of whether the 1987 newcontracts were or were not to be retroactive to the dates of the petitioner's old contracts." (See footnote 2)

The parties were afforded the opportunity to present evidence and oral argument on the question posed by the Court at a hearing held January 31, 1994. After a thorough review of the evidence presented at that hearing, the parties' legal positions, and the record developed in the previous Level IV proceedings, the undersigned makes the following conclusions of law. (See footnote 3)

1) It was the Board's intent that the contracts signed by the grievants in 1987 providing a 240-day employment term be retroactive to the dates of their original continuing contracts of employment.

2) "A county board of education is a corporation created by statute with functions of a public nature expressly given, and no other; as such, it can exercise only such power as is expressly conferred or fairly arises by necessary implication, and only inthe mode prescribed or authorized by statute." Evans v. Hutchinson, 214 S.E.2d 453 (W.Va. 1975)

3) W.Va. Code §18A-2-2 prescribes the manner in which a county board of education may enter into contractual relationships with its teachers. The provisions therein authorize boards to enter into prospective contracts with its employees and does not provide for "retroactive" contracts which

cover periods other than the then current school year or future school years. The authority to do so also is not implied in the statute and is not necessary for a board to carry out its duties thereunder.

4) The contracts entered into between the Board and the grievants in 1987 were "retroactive" in nature and were therefore outside the Board's statutory authority. (See footnote 4)

Accordingly, the case is respectfully returned to the Circuit Court of McDowell County.

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JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: February 17, 1994

Footnote: 1Wiley Lester, Thomas Battlo, Tom Belcher, Marion Capehart, Curtis Johnson, Francine Kirby, Gordon Lambert, Robert Lawson, Alex Toney, and Robert Riffe.

Footnote: 2The order was received January 3, 1994. It provided that the "Board shall have forty-five days from receipt of this order to address this issue."

Footnote: 3These conclusions may exceed the scope of the issue identified by the Court. A review of the record developed in the previous Level IV proceedings and the evidence submitted January 31, 1994, reveals that the undersigned erred in Lester I in determining that since their initial employment with the Board, the grievants have always worked 240 days per year. The evidence supports that, prior to 1983, the grievants worked at least 246 days per fiscal year. It is assumed that the Court detected the error and considered its ramifications in reaching the decision to remand the case. For this reason and in the interest of judicial economy, the undersigned has given the question posed in the Court's order a broad interpretation.

Footnote: 4Since there was no ruling in the Court's order on the undersigned's finding that the complaint was untimely, the question of whether the grievants are entitled to relief on these holdings is left to the Court.