JOHN HICKMAN

v. Docket No. 94-01-1049

BARBOUR COUNTY BOARD OF EDUCATION

DECISION

Grievant, John Hickman, employed by the Barbour County Board of Education (Board) as a Custodian III/Heavy Equipment Operator, filed a level four grievance appeal on November 10, 1994, in which he alleged a violation of W.Va. Code §18A-2-7 when he was transferred from the Barbour County Vocational Center to Phillip Barbour High School. An evidentiary hearing was conducted on April 7, 1995, and the matter became mature for decision with the submission of proposed findings of fact and conclusions of law filed by both parties on or before May 8, 1995.

The facts of this matter are undisputed. Grievant has been employed by the Barbour County Board of Education for a number of years and was classified as a Custodian III/Heavy Equipment Operator at all times relevant hereto. Prior to and during the 1993-94 school year Grievant was assigned to theBarbour County Vocational Center (BCVC). By letter dated March 25, 1994, Superintendent William E. Phillips notified Grievant that he would be recommended for placement on the transfer list. The reason given for the recommendation was "that a .5 custodial position has been eliminated at the Phillip Barbour Campus; thereby necessitating a realignment of the existing custodial personnel." (See footnote 1) Following a hearing before the Board, Grievant was placed on the transfer list and subsequently reassigned to Phillip Barbour High School (PBHS).

Grievant argues that the transfer was improper because BCVC and PBHS are two separate entities and the position at PBHS was not posted as required by W.Va. Code §18A-4-8b. In support of this position, Grievant offers several documents which refer to PBHS and the BCVC separately and distinctly, including Board minutes and letterhead stationary for the Director of the BCVC. Grievant claims that the BCVC was never a part of PBHS and that to merge or consolidate two

schools requires that the Board publish a written report citing the reasons for the proposed action, conduct a public hearing, receive approval by the State Board of Education, and provide notice to employees on or before the first Monday in April, as provided by W.Va. Code §18-5-13(3) and (4), W.Va. Code §18-5-13a. Grievant requests reinstatement to BCVC because there ismore custodial work to be done at PBHS and the work is more difficult.

The Board asserts that a review of custodial needs at PBHS and BCVC indicated that one-half of a position at the BCVC would be better utilized at PBHS. Because the buildings are two of several which form an educational complex, the Board determined that it was unnecessary to post the position. Interestingly, while the Board argues that the reassigment of Grievant between buildings was not a transfer, Superintendent Phillips testified that the reassignment was so processed as a precautionary measure. The Board also presented documentation which refers to the campus at Phillipi as a "complex."

Whether the schools are one or separate entities is not controlling in this matter since the Board utilized the transfer procedure. Further, the transfer was processed in compliance with W.Va. Code §18A-2-7 which provides that:

The superintendent, subject only to approval of the board, shall have authority to assign, transfer, promote, demote or suspend school personnel and to recommend their dismissal pursuant to this chapter. However, an employee shall be notified in writing by the superintendent on or before the first Monday in April if he is being considered for transfer or to be transferred . . . . Any teacher or employee who desires to protest such proposed transfer may request in writing a statement of the reasons for the proposed transfer. Such statement of reasons shall be delivered to the teacher or employee within ten days of the receipt of the request. Within ten days of the receipt of thestatement of the reasons, the teacher or employee may make written demand upon the superintendent for a hearing on the proposed transfer before the county board of education. The hearing on the proposed transfer shall be held on or before the first Monday in May. . . . At the hearing, the reasons for the proposed transfer must be shown. . . .

Grievant was provided notice by letter dated March 25, 1994, of the impending recommendation that he be transferred. The reason for the proposed transfer was set forth in the March 25 letter, and a hearing was conducted prior to the Board accepting the recommendation on April 19, 1994. These facts establish that the Board met all the requirements of W.Va. Code §18A-2-7.

Grievant is correct that all vacant school service personnel positions must be posted and filled on the basis of seniority, evaluations of past service and qualifications; however, there is no authority to support his assertion that if BCVC and PBHS are separate entities, it is illegal to transfer him to PBHS without a posting. W.Va. Code §18A-4-8b requires that boards of education "post and date notices of all job vacancies of established existing or newly created positions in conspicious working places for all school service employees to observe for at least five working days." There is no evidence that there was either an existing vacancy or a newly created position at PBHS. On the contrary, the facts establish that a position was transferred from one building or school to another as part of a realignment of servicepersonnel. To require the Board to post a position held by Grievant, and to be filled by Grievant, would be an exercise in futility not generally required by the courts. See Board of Educ. of the County of Kanawha v. Casey 349 S.E.2d 436 (W.Va. 1986).

In conclusion, a board of education has substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. State ex rel. Melchiori v. Board of Educ., 425 S.E. 2d 251 (W.Va. 1992). In the present matter, it appears that the Board has exercised this discretion reasonably, in the best interest of the schools, and in a manner which is not arbitrary and capricious. If it should be determined that posting was required, the Board's failure to do so must be assessed as harmless error in that Grievant would have been placed in that assignment, notwithstanding. In any event, the requested relief may not be granted because the position held by Grievant during the 1993-94 school year no longer exists. (See footnote 2)

In addition to the foregoing narration it is appropriate to make the following formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant is employed by the Barbour County Board of Education and has been classified as a Custodian III/Heavy Equipment Operator at all time pertinent herein.

2. In March 1994, Grievant was notified that Superintendent Phillips would recommend that he be transferred from the Barbour County Vocational Center to Phillip Barbour High School, effective the

1994-95 school year.

3. The reason given for the transfer was that half of a custodial position was being eliminated at the BCVC requiring a realignment of personnel.

4. A hearing was conducted at Grievant's request prior to the Board acting on the recommendation.

5. The evidence does not support a finding that a reduction in force was implemented or that Grievant was assigned to either an existing vacancy or a newly created position at PBHS.

6. The full-time custodial position held by Grievant at BCVC no longer existed after the 1993-94 school year.

CONCLUSIONS OF LAW

1. Grievant was timely provided notice and hearing regarding his transfer, effective the 1994-95 school year, in compliance with W.Va. Code §18A-2-7.

2. Because Grievant was not assigned to a newly created or previously existing position, the Board was not requiredto post the position at PBHS under the provisions of W.Va. Code §18A-4-8b.

Accordingly, the grievance is DENIED.

DATED July 18, 1995 SUE KELLER, SENIOR ADMN. LAW JUDGE

Footnote: 1*The record does not establish the number of custodial positions assigned to BCVC during the 1993-94 school year or how the remaining .5 position was filled, although Superintendent Phillips testified that the remaining .5 position would be eliminated effective the 1995-96 school year.*

Footnote: 2*Although the wording in the March 25, 1994, letter might be construed to mean that only half of Grievant's assignment was to be transferred, subsequent actions establish that in fact his entire position was to be transferred and that the end result of this, and perhaps other personnel matters, was that BCVC would have a reduction of a .5 custodial position for the 1994-95 school year.*