KENNETHA PARKER-HOWES

v. Docket No. 94-51-531

WEBSTER COUNTY BOARD OF EDUCATION

DECISION

Grievant, Kennetha Parker-Howes, employed as a teacher by the Webster County Board of Education (Board or Respondent), advanced a grievance to level four on August 30, 1994, in which she alleged violations of W.Va. Code §§18A-2-7, 18A-2-7a and 18-29-2 when she was transferred in an improper and untimely manner. Previously, the grievance had been denied at level two and the Board waived consideration at level three. Although the Grievant indicated that a decision had been issued at level one, no document from that level was made a part of the record. The matter became mature for decision at level four when both parties declined the opportunity to submit proposed findings of fact and conclusions of law following a hearing conducted on November 22, 1994.

The facts of this matter are as follows. Beginning with the 1990-91 school term Hacker Valley Elementary School (HVES)
implemented an ungraded system. (See footnote 1) In Spring 1994, the Board voted to return to the graded system at HVES. By letter dated March 21, 1994, Superintendent Ronald Williams advised Grievant that he would recommend to the Board that Grievant be placed on the transfer list and reassigned for the 1994-95 school year. At Grievant's request a hearing was held by the Board regarding Superintendent Williams' recommendation. During a regular meeting on April 25, 1994, the Board voted to accept the recommendation and approved the placement of Grievant on the transfer list. In July Grievant was notified that she would be assigned to the position of fifth/sixth grade teacher at HVES for the 1994-95 school year.

Grievant complains that the transfer was improper because the Board failed to provide her notice within ten days of the action, contrary to the requirement set forth in W.Va. Code §18A-2-7. Grievant calculates that the Board acted on April 25, therefore, she should have been provided notice by no

later than May 5. She actually received the notice on May 17 by letter dated May 16, 1994.

Grievant also alleges a violation of W.Va.Code §18-29-2(m). Because she was the only teacher at HVES placed on the transfer list, Grievant complains that the action was discriminatory. She requests that the transfer action bereversed or that she be allowed to select her assignment in compliance with the appropriate procedure. Grievant suggests that she has previously taught science and could be returned to that assignment.

The Board concedes that it failed to provide Grievant timely notice of the decision to place her on the transfer list, but argues that the delay does not warrant reversal of the action because she suffered no deprivation of any rights. The Board denies that Grievant was treated in a discriminatory manner simply because she was the only teacher at HVES placed on the transfer list. Grievant was the only teacher who required placement on the transfer list because only her assignment had substantially changed. Since the remaining teachers at HVES remained in the same classroom and/or taught the same subject and age group, the Board deemed their transfer and reassignment unnecessary.

W. Va. Code §18-29-2(m) defines discrimination as "any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees." Simply being the only faculty member of a school to be transferred does not constitute discrimination. In this instance the Board presents a legitimate basis for the decision to place Grievant on the transfer list. Further, the stated reason for the action is clearly related to the actual job responsibilities of the employee. Grievant does notassert that the given reason is pretextual, therefore, it must be accepted and concluded that no discrimination occurred in this matter. (See footnote 2)

The Board has, by its own admission, failed to provide Grievant with timely notice that she had been placed on the transfer list. The West Virginia Supreme Court of Appeals has repeatedly held that the procedural requirements of W.Va. Code §18A-2-7 must be complied with strictly when transferring school employees. See Lavender v. McDowell Co. Bd. of Educ., 327 S.E.2d 691 (W.Va. 1984); Morgan v. Pizzino, 163 W.Va. 454, 256 S.E.2d 592 (1979). When a board of education fails to strictly comply with the timelines, the Court has held that the grievant is entitled to reinstatement to his or her position. This rule must be applied to the instant case, although the unique facts and circumstances herein require additional consideration.

The facts establish that Grievant remains in the same school and, at least to some extent, continues to teach the same grade levels and subject matter. When HVES was in an ungraded format, Grievant taught multi-age science, physical education and health. At the level four hearing Grievant indicated that in addition to her fifth/sixth grade assignment for 1994-95, she has also agreed to teach two classes ofscience and physical education. (See footnote 3) Therefore, Respondent has already modified Grievant's assignment and partially granted her requested relief. It appears to the undersigned that further relief is not available. Because of the change in the format of the educational program at HVES from ungraded to graded, teachers are no longer assigned by subject matter; therefore, Grievant's previous assignment no longer exists.

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 has been employed by the Webster County Board of Education as a teacher since 1980 and has been assigned to Hacker Valley Elementary School at all times relevant to this grievance.

2. Prior to the 1994-95 school year the educational program at Hacker Valley Elementary School was delivered in an ungraded format. After the school was placed on "seriously impaired" status by the State Department of Education the Board decided to return to a graded format beginning with the 1994-95 school year.

3. It was possible to assign the majority of teachers to grade levels and/or subject matters in which they previously worked; however, the Board believed the change in Grievant's assignment was of such significance that it would be necessary to reassign her through formal transfer proceedings.

4. Grievant was notified in March that Superintendent Williams would recommend to the Board that she be placed on the transfer list. After a hearing on the recommendation, the Board voted on April 25, 1994, to place Grievant on the transfer list.

5. Grievant was notified by letter dated May 16, 1994, of the Board's action.

6. In July Grievant was reassigned to teach fifth and sixth grade at Hacker Valley Elementary School. Grievant also teaches two classes of science and physical education, subjects which she taught when the school was ungraded.

CONCLUSIONS OF LAW

1. Grievant has failed to prove by a preponderance of the evidence that she was subject to discrimination as defined by W.Va. Code §18-19-2(m).

2. By its own admission, the Board failed to strictly comply with the timelines set forth in W.Va. Code §18A-2-7 and did not provide Grievant notice within ten days of the action to place her on the transfer list.

3. Because the position at HVES held by Grievant during the 1993-94 school year no longer exists, reinstatement may not be granted.

Accordingly, the grievance is DENIED.

January 31, 1995 Sue Keller, Senior Admn. Law Judge

Footnote: 1HVES serves students from preschool (age four) through grade eight and was staffed with six teachers. The level two record indicates that fewer teachers may now be assigned to HVES after the reversion to a graded system.

Footnote: 2Grievant did not pursue the alleged violation of Code §18A-2-7a at level four.

Footnote: 3Specific information relating to the scheduling of these classes was not made a part of the record.