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LEONARD BONFANTINO

vs.

DOCKET NO. 24-86-079

MARION COUNTY BOARD OF EDUCATION

DECISION

During the 1985-86 school year, Mr. Van Gilder, a guidance counselor at North Marion High School, was transferred to an administrative position. The position of guidance counselor was subsequently filled by Ms. Miller, another teacher at the high school. Mr. Leonard Bonfantino, the grievant, alleges a violation of W. Va. Code, 18A-4-8b in that the position was not posted, denying him the opportunity for application. Mr. Bonfantino has nineteen years seniority with Marion County Schools and is presently assigned as a teacher at East Fairmont High School. Mr. Bonfantino is certified as a guidance counselor and contends that he was more qualified than the individual awarded the position.

At level two of the grievance process Superintendent John D. Myers, in reliance on several opinions issued by the State Superintendent of Schools, determined a school principal may reschedule teachers within their school so long as any reassignment is within the teacher's area of certification.

The grievant argues that upon the transfer of Mr. Van Gilder, a vacancy existed for the position of guidance counselor and the board of education is "required to post and date notices of all openings in established, existing or newly created position in conspicuous working places for all professional personnel to observe for at least five working days."

It appears that the board has misapplied the State Superintendent's opinion and interpretations. The Superintendent's opinions clearly state: (1) vacancies must be posted and (2) a school principal may reschedule teachers to different jobs within their areas of certification and assignment.

The evidence presented by the record indicates a vacancy did exist for the position of guidance counselor at North Marion High School. This vacancy was improperly filled by the principal who executed an intrabuilding transfer without having posted the position, thereby depriving the grievant an opportunity for application.<sup>1</sup>

Therefore, prior to the 1986-87 school year, the board of education must properly advertise and fill this vacancy in accordance with all statutory regulations.

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<sup>1</sup>The question of how and when a teacher's assignment may be changed will not be reached in this decision as the critical error committed was the failure to post the vacancy.

FINDINGS OF FACT

1. The grievant has been employed by the Marion County Board of Education for nineteen years and is presently assigned to a teaching position at East Fairmont High School.

2. During the 1985-86 school year the position of guidance counselor at North Marion High School became vacant.

3. The position was not advertised and was assumed by another teacher at North Marion High School.

4. The grievant was afforded no opportunity to submit an application for the position.

CONCLUSIONS OF LAW

1. A board of education is required to post and date notices of all job vacancies for established existing or newly created positions in a conspicuous working place for at least five days.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Marion County and such appeal must be filed within thirty (30) days of receipt of this decision. (Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

DATED August 8, 1986

Sue Keller  
SUE KELLER  
Hearing Examiner