



Members
James Paul Geary
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone 348-3361

ALICE DE FAZIO

vs.

DOCKET NO. 42-86-054-2

HARRISON COUNTY BOARD OF EDUCATION

DECISION

The facts of this matter are undisputed. The Harrison County Board of Education determined that both the Sardis and Hepzibah Grade Schools would be closed with the student bodies to merge into the Wilsonburg and Adamston Grade Schools, respectively. As a result of this action three additional positions were required at Wilsonburg and two at Adamston. Those teachers at the Sardis and Hepzibah schools with the most seniority were assigned to the positions at Wilsonburg and Adamston with the remainder of the faculty members being placed on the transfer list.

Alice De Fazio, the grievant, has been employed by the Harrison County Board of Education as a teacher for the past ten years. Ms. De Fazio asserts the three positions at Wilsonburg and the two positions at Adamston should have been advertised for all qualified employees to bid on as is required by W. Va. Code, 18A-4-8b.

Mr. James R. Christie, a member of the Harrison County Board of Education, testified at the level four hearing that the board's decision insured teacher cooperation and was beneficial for the children as they would be changing schools with some of the same teachers who were familiar to them, thereby easing their transition to a new school.

Robert Skidmore, Personnel Supervisor, characterizes the board's action as a transfer of positions, rather than the creation of new positions. There appears to be no authority in support of the transfers of positions. Positions may be created or abolished, however it is personnel that is subject to transfer.

The fact that the remaining faculty members were placed on the transfer list supports the finding that all the positions at the Sardis and Hepzibah schools were abolished and new positions were created at the Wilsonburg and Adamston schools. As such, the board is required to post notices of these five openings and to fill the positions within applicable statutory guidelines.

This decision is consistent with an interpretation of the State Superintendent of Schools in which it is stated: "The closing of one school and transfer of its students to another school merely adds to the enrollment of the receiving school and thereby creates the need for new positions which must be posted; there is no requirement that existing staff be placed on the transfer list or that their positions be posted."

Findings of Facts

1. The Harrison County Board of Education has determined that Sardis Elementary School will be merged with Wilsonburg Elementary School and Hepzibah Elementary School will be merged with Adamston Elementary School beginning with the 1986-87 school year.

2. As a result of the mergers three additional teachers were required at the Wilsonburg School and two additional teachers were added to the Adamston School staff.

3. The three teachers at the Sardis school and the two teachers at the Hepzibah school with the most seniority were transferred to the Wilsonburg and Adamston schools.

4. The remainder of the faculty members of the Sardis and Hepzibah schools were placed on the transfer list.

5. The grievant alleges a violation of W. Va. Code, 18A-4-8b in that the five positions were not posted, thereby depriving her of an opportunity to apply for any of the vacancies.

Conclusions of Law

1. W. Va. Code, 18A-4-8b requires boards of education to post and date notices of all openings in established existing or newly created positions in conspicuous working places for at least five working days prior to the filling of any vacancy.

2. The grievant has been improperly deprived of

an opportunity to apply for any of the five newly created positions at the Wilsonburg and Adamston schools.

In consideration of the foregoing discussion, the Harrison County Board of Education is directed to properly post and fill these five vacancies in accordance with all statutory regulations.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Harrison 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 27, 1986

Sue Keller

SUE KELLER
Hearing Examiner