



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

CONNIE HADDOX

v.

Docket No. 20-86-223-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Connie Haddox, has been employed for five years as a 200 day Cook by the Kanawha County Board of Education. In 1985 grievant had been awarded a cook position for the summer session and filed a grievance on June 16, 1986 when she again applied for the cook position and it was awarded to another employee. A level two evidentiary hearing was conducted on June 20, 1986 and the decision of the grievance evaluation was upheld by the board of education on July 7, 1986. A request for a level four hearing was filed on July 10, 1986 and an evidentiary hearing was waived by the parties.¹

¹ The transcript of evidence of the level two hearing was filed in the office of the Education Employees Grievance Board on October 23, 1986 and the remainder of the record was filed on November 21, 1986.

Grievant commenced her employment with Kanawha County Schools as a cook at Kenton Elementary School, where she worked one year. The following three years were served at Owens Elementary, where she was classified as a Cook III. (T. 7). In 1985 she had applied for and was awarded a summer position as cook at Owens Elementary. She transferred to Kenton Elementary at the conclusion of the 1985 summer session and when the position was again posted in the summer of 1986 at Owens Elementary, grievant applied. The position was awarded to Louise Godby, a regular 200 day cook at Owens Elementary, on the basis of the Kanawha County practice of filling summer positions in extended school year programs with the regular 200 day employees assigned to the particular school. Grievant contends that this policy is violative of W. Va. Code, 18A-4-8b; she seeks pay for loss of the summer position and for reinstatement to the summer position she had in 1985.

Mr. Stanley Cobb, director of personnel of Kanawha County Schools, is in charge of selection and placement of service personnel and confirmed the practice by which certain service personnel employees are selected for summer work. He stated that grievant was not selected for the cook position at Owens Elementary in the summer of 1986 because there were two cook positions posted and two of the cooks on the Owens staff applied and were placed in the positions. (T. 14). The school board contends that summer positions are temporary positions posted on an annual basis and that the practice of giving priority

to regular employees of the facility where the summer program is conducted is not violative of W. Va. Code, 18A-4-8b.²

In addition to the foregoing factual recitation, the following specific findings of fact and conclusions of law are appropriate.

FINDINGS OF FACT

1. Grievant has been employed by the Kanawha County Board of Education for five years as a 200 day cook and at the time of filing the grievance was a cook at Kenton Elementary School.

2. In 1985 she had been assigned to Owens Elementary and had bid upon and was awarded a summer cook position at Owens Elementary.

² Grievant counters that the only provision for substitutes is found in W.Va. Code, 18A-4-15, which authorizes a county board to employ substitute service personnel on the basis of seniority to temporarily fill a vacancy in a permanent position caused by resignation. However, this position must be filled within twenty working days in accordance with W.Va. Code, 18A-4-8b and 18A-2-5.

These and other issues involved in the instant grievance were discussed in Shirley Mullins v. Kanawha County Board of Education, Docket No. 20-86222-1 and Vincent R. Yarber v. Fayette County Board of Education, Docket No. 10-86-258-4. In the Mullins case bus aide positions were awarded on a terminal basis because transportation employees had voted for that procedure in lieu of county-wide seniority. There is no such evidence in the instant case.

3. Upon the completion of the 1985 summer program at Owens, grievant voluntarily transferred to Kenton Elementary, where she worked the regular school year.

4. In the summer of 1986 two positions for cook were posted for the summer session at Owens Elementary and grievant again applied. The position was awarded to a regular cook at Owens Elementary, Louise Godby, in accordance with Kanawha County School practice relative to such summer positions.

5. It is the practice of Kanawha County School officials to first offer summer positions in extended school year programs to the 200 day employees assigned to the particular school during the regular school year and then to employees of other schools. This practice is then repeated the following summer and thereafter as long as the position is maintained.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-8b(b) provides for extra-duty assignments on a rotation basis and W.Va. Code, 18A-4-15 provides for hiring substitute employees for temporary service personnel positions but there is no provision for filling "temporary" positions.

2. A service personnel position which is in excess of twenty working days in duration is not a temporary position and must be filled in accordance with W.Va. Code, 18A-4-8b(b) and W.Va. Code, 18A-2-5. Shirley Mullins v. Kanawha County Board of Education, Docket No. 20-86-222-1.

It is therefore Ordered that the grievant is entitled to be reinstated to the summer cook position she held in the summer of 1985 and to payment of the loss of pay for the summer of 1986, offset by any income derived for that period.

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty days of receipt of this decision. (W.Va. 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.

A handwritten signature in cursive script, reading "Leo Catsonis", is written over a horizontal line.

LEO CATSONIS

Chief Hearing Examiner

Dated: December 18, 1986