



**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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LOUISE ISAACS

v.

DOCKET NO. 22-86-104

LINCOLN COUNTY BOARD OF EDUCATION

DECISION

On March 25, 1985 Charles S. McCann, Superintendent of Schools of Lincoln County, notified grievant that he was considering recommending her transfer from Griffithsville Elementary School effective with the 1985-86 school year for "lack of need." On March 26, grievant requested a statement of reasons and was advised that it was as a result of the decrease in kindergarten enrollment at Griffithsville Elementary. Grievant requested a hearing before the board of education and it was conducted on April 16, 1985. By letter dated May 6, 1985 grievant was advised that the board of education had approved the transfer. On June 18, 1985, grievant filed a petition with State Superintendent of Schools Truby, who returned it to counsel for grievant. A

level four evidentiary hearing was conducted on June 5, 1986.¹

At the level four hearing grievant testified that at the time of the proposed transfer she was employed as an Early Childhood Education (ECE) Aide at Griffithsville Elementary School, having been first employed by the Lincoln County Board of Education on January 22, 1979. Grievant had six and one half years seniority at Griffithsville Elementary, six and one half years seniority as an Aide and five and one half years in the ECE program. She testified that Anna Gae Rymer had more than six and one half years seniority at Griffithsville Elementary, more than six and one half years seniority as an Aide and two years seniority in the ECE program; that Ella Clark had more than six and one half years seniority at Griffithsville Elementary, more than six and one half years seniority as an Aide and more than six and one half years in the ECE program; that Syble Wilkerson had less than six and one half years seniority at Griffithsville Elementary, less than six and one half years seniority as an Aide and was then working as a Special Education Aide. Grievant added that Anna Gae Rymer and Ella Clark did not receive notice of intent to transfer and Syble Wilkerson received notice of intent to transfer but was not placed on the transfer list.

¹The petition was returned on the basis that any grievance appeal not decided by Dr. Truby by July 1, 1985 was required to be referred to the Education Employees Grievance Board. The petition was forwarded to the individual board members and then to the hearing examiner. A hearing was scheduled, continued by Superintendent McCann and then rescheduled. This accounts for the inordinate delay.

Grievant asserts that the Lincoln County Board of Education is not interpreting its transfer policy in a consistent manner and transferred grievant in violation of Code, 18A-2-7 and its own policy.² Specifically, grievant contends that if county wide seniority is to be used as the basis of transfer Syble Wilkerson should have been transferred; that if transfers are made from specific programs rather than schools, Anna Gae Rymer should have been transferred.³

The board of education contends that in the spring of 1985 it conducted a projected enrollment for the kindergarten program for 1985-86 school year and determined that there was a lack of need for three kindergarten programs at Griffithsville Elementary; that since the kindergarten program was affected the aide in this program should be transferred rather than some other aide in a

²Policy 8-04.00, Administrative Transfers, is, in pertinent part, as follows:

"Transfers of all personnel will be administered in accordance with Chapter 18A of the West Virginia Code, as amended.

Transfers of personnel will be made where the following conditions prevail: staff reduction because of decline in enrollment, lack of need, and/or lack of funding. Such transfers are to be construed as administrative transfers...

In the case of service and auxillary positions, the Board of Education is to reduce staff by seniority order (last in, first out) and job classification on a county wide basis also.

County seniority is the total experience in Lincoln County..."

³Counsel for grievant acknowledges that grievant cannot dictate to the board of education a policy to be used but that the policy must be consistent in application; that regardless of how the regulation is interpreted grievant should not have been transferred.

completely different program.⁴

Code, 18A-2-7 places great discretion in school officials in transfer of school personnel and it is generally acknowledged that school employees do not have a vested right to be assigned to any particular school. State ex. rel. Hawkins v. Tyler County Board of Education, 275 S.E.2d 908 (W.Va. 1980). However, where school officials establish policy procedures pertaining to transfer of school employees they must abide by these procedures and apply the policies in a fair and consistent manner. Hooper v. Jensen, 328 S.E.2d 519 (W.Va. 1985); Powell v. Brown, 160 W.Va. 723, 238 S.E.2d 220 (1977). These procedures are strictly construed in favor of the employee. Wren v. McDowell County Board of Education, 327 S.E.2d 464 (W.Va. 1985).

In addition to the foregoing factual recitation and based upon the evidence presented herein the following specific findings of fact are appropriate.

⁴The board of education did not present any testimonial evidence but submitted an unverified typewritten statement which was admitted into evidence as Employer's Exhibit No. 1. The representative of the board did not desire to elaborate upon the written statement which does appear to be inconsistent as applied herein, e.g., that an Aide is an Aide regardless of the classification and must be considered on a county wide basis, not school by school. The hearing examiner cannot place any weight upon this document where it is in conflict with the sworn testimony. Cf. Christopher v. City of Fairmont, 280 S.E.2d 284 (W.Va. 1981).

FINDINGS OF FACT

1. Grievant was employed by the Lincoln County Board of Education on January 22, 1979 and served as an ECE Aide at Griffithsville Elementary School until her transfer for the 1985-86 school year.
2. The Lincoln County Board of Education has a written policy on administrative transfers which provides that staff reduction in service and auxillary positions will be by seniority order and job classification on a county wide basis.
3. On the basis of the evidence presented the manner by which the board of education selected the Aide to be transfered is unclear but it appears that grievant has more seniority in the ECE program than Anna Gae Rymer and more county wide seniority than Syble Wilkerson.
4. On the basis of the evidence presented it does not appear that grievant should have been transferred under Policy 8-04.00.

CONCLUSIONS OF LAW

1. School officials are required to abide by the procedures and policies they properly establish to conduct their affairs and must apply these policies in a fair and consistent manner.
2. School personnel regulations and/or policies are to be strictly construed in favor of the employee.

For the foregoing reasons the grievance is granted and grievant is entitled to be reinstated to her position at Griffithsville Elementary School.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln 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.



LEO CATSONIS
Hearing examiner

Dated: July 11, 1986