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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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BONNIE SCALIA, et al.

v.

Docket No. 42-86-054-2

RANDOLPH COUNTY SCHOOLS

DECISION

The grievants, Bonnie Scalia, Harry L. Van Noy, John P. Horne, John J. Rector and Ben L. Johnson, Jr. are employed by the Randolph County Board of Education in the positions of guidance counselors and librarian. There is no dispute the grievants were assigned to substitute for classroom teachers during May and June, 1985, which prevented them from fulfilling their regular duties. The grievants allege this action to be in violation of W. Va. Code, §18A-4-10 which permits the hiring of substitute teachers when required and their job descriptions, which do not list substitute teaching as a duty.

The board states that it was facing a large deficit and that reductions and cutbacks had been made in maintenance and transportation prior to the superintendent's directive relating to substitutes. The board points out that no grievant substituted more than 5 1/2 days and the superintendent has the authority to assign non-teaching, certified personnel as substitute teachers in an emergency such as this.

The grievants deny that an emergency situation existed as board officials testified this expenditure was underfunded when preparing the budget in March, 1984,¹ the board has used this same practice for five of six previous years and the board ended the school year with an \$80,000.00 surplus.²

Second, the grievants cite State Board of Education Policy 5114 which addresses the necessity for the hiring of substitute personnel and W. Va. Code 18A-4-10 which states:

"If funds in any fiscal year, including transfers, are insufficient to pay the full cost of substitutes in meeting the provisions of this section, the remainder shall be paid on or before the thirty-first day of August from the budget of the next fiscal year."

Finally, the grievants argue that the action to be in violation of their job description and contractual terms. The grievants assert that if the board wants noninstructional,

¹ Both Richard Legg, Finance Director, and Gordon B. White, Assistant Superintendent, testified at the level two hearing that they did not believe a sufficient amount of funding for substitutes was incorporated into the 1984-85 budget at the time it was developed.

² This amount was a portion of that received by the board of education earned from interest on investments and placed in the operating budget on June 17, 1985.

'certified personnel to serve as substitutes, this duty should be included in their contracts or job descriptions.

The board claims the superintendent may assign the grievants as temporary substitute teachers in emergency situations, that it is not required to hire and pay out of the next fiscal year's budget when said budget is also in a deficit situation and that the board had followed the mandates of W. Va. Code, 18-9B-8 in attempting to balance the budget.

If a proposed budget is found to be insufficient to maintain the schools for the employment term revisions may be made in the following order: postponment of expenditures for permanent improvements and capital outlays; reduction of the maintenance budget exclusive of salaries; reduction of noninstructional days; reductions of salary paid in excess of that fixed by W. Va. Code, 18-7-2 and adjustment in any other way so as to assure the required instructional term. While testimony indicates cutbacks were made in the areas of maintenance and transportation and there may have been no money available for permanent improvements or capital expenditures, it appears that other alternatives were available to the board.

W. Va. Code, 18A-2-3 grants the superintendent the authority to employ and assign substitute teachers. State Board Policy 5114 states that to allow a teacher to fill in for an absent

teacher is to allow the absence of an individual to disrupt not only his class but the entire building. To assure this does not occur, payment for substitute teachers may be from the budget of the following year. These provisions indicate the importance that a board provide substitute teachers when needed.

The board's assertion that the superintendent is granted broad authority to act in the best interests of the school during times of emergency is correct. It is also true that the job descriptions and contracts of the grievants contain broad statements relating to the individual's duties and responsibilities. In times of emergency a superintendent may validly assign teacher duties which are not part of his usual responsibilities.

However, the use of these individuals as substitute teachers five previous years, underfunding for substitute personnel, the knowledge that interest income was forthcoming and the ability to pay the cost of substitutes from the budget of the next fiscal year refutes the board's assertion that an emergency situation existed.³ Accordingly, the use of these individuals

³ Webster's New World Dictionary defines an emergency as a sudden, generally unexpected occurrence demanding immediate attention.

as substitute teachers is to be discontinued barring a bonafide emergency situation.

FINDINGS OF FACT

1. Grievants are noninstructional, certified professional personnel employed in the positions of guidance counselor and librarian.

2. The grievants were required to act as substitute teachers during the months of May and June, 1985 when the superintendent severely curtailed the hiring of substitutes for budgetary reasons.

3. The grievants were prevented from fulfilling their regular duties while acting as substitute teachers.

4. The grievants had been utilized as substitute teachers five of six previous years.

5. The board of education ended the school year with an \$80,000 surplus.

CONCLUSION OF LAW

If a county does not have sufficient funds, including transfers, for the payment of substitutes during any fiscal year, the remainder may be paid from the budget of the next fiscal year. W. Va. Code, 18A-4-10.

Accordingly, this grievance is granted and the grievants may not be assigned to substitute duty without a showing of a bona fide emergency.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Randolph 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 29, 1986

Sue Keller

SUE KELLER
Hearing Examiner