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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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VIRGINIA M. WHITE

v.

DOCKET NO. 14-86-200-2

HAMPSHIRE COUNTY BOARD OF EDUCATION

DECISION

Virginia M. White, the grievant, was initially employed by the Hampshire County Board of Education in January, 1985, and assigned as a business education teacher at Hampshire County Senior High School. In April, 1986, the board of education unanimously voted to accept Superintendent Grey Cassell's recommendation that Ms. White's contract of employment not be renewed. Ms. White asserts the board's action to be in violation of W. Va. Code, 18A-2-8a and requests reinstatement, full compensation of benefits and that the respondent bear the court reporter costs in accordance with W. Va. Code, 18A-2-11.

The facts of this case are undisputed. At a board of education meeting held on April 30, 1986, Superintendent Cassell recommended that the board not renew Ms. White's contract

of employment. The board unanimously accepted that recommendation at the same meeting. By letter dated May 1, 1986, Superintendent Cassell notified the grievant of the board's action.

Ms. White requested a statement of the reasons for her nonretention and a hearing before the board. In compliance with that request, a hearing was held on May 21, 1986, at which time Superintendent Cassell informed Ms. White that his recommendation was based on her performance evaluations and because her principal had not recommended that her contract be renewed. The Superintendent noted that Ms. White had been given several plans of improvement but that her performance remained unsatisfactory in many areas.¹

Following Superintendent Cassell's statement, testimony was offered by Ms. White and the hearing was concluded. The Board took no further action and Ms. White appealed the matter level four.

The respondent board filed a motion to dismiss this grievance from level four inasmuch as the grievant had failed to follow the proper procedure. This motion was denied and

¹Superintendent Cassell went on to state that Ms. White's evaluations indicated deficiencies in five areas: (1) student behavior; (2) time on tasks; (3) focus on academics; (4) system of rules and (5) judgment-decision-making.

both parties instructed to proceed in the processing of this matter. Both agreed to submit the matter for decision on the record supplemented with briefs.

The grievant then filed a motion for summary judgment based on the board's failure to provide a full evidentiary hearing pursuant to W. Va. Code, 18-2-8a and Hedrick v. Pendleton County Board of Education, 332 S.E. 2d 109 (W. Va. 1985).

The respondent argues that the elements of due process vary, depending on the circumstances and status of the employee. As Ms. White is a nontenured employee, this was not a dismissal action but a nonrenewal of a contract and W. Va. Code, 18A-2-8a does not require a hearing prior to a board's action in such matters.

The West Virginia Supreme Court of Appeals has most recently addressed this issue in Hedrick, supra, in which it held that a nontenured employee who was not rehired was not afforded a full and complete hearing when her principal had not been present to testify about his recommendation and the grievant had no opportunity to cross examine him concerning the evaluations. The Court noted that without the principal's testimony the board was not able to meet the requirements of the statute that the reasons for nonrehiring be shown. In Hedrick, supra, as in the present case, the Superintendent's recommendation was based on the evaluations of the teacher

by the principal. As Ms. White's principal did not testify at the hearing the board has failed to show the reasons for the nonrenewal of her contract.²

In addition to the foregoing it is appropriate to make the following findings and conclusions.

Findings of Fact

1. Virginia M. White was first employed by the Hampshire County Board of Education in January, 1985, and has been assigned to Hampshire County Senior High School in the position of business education teacher.

2. Since January, 1985, Ms. White has been given a series of plans of improvement to assist her in the development of teaching skills.

3. In April, 1985, Superintendent Cassell recommended to the board of education that Ms. White's employment contract not be renewed.

4. Upon notification of the board's action, Ms. White requested a statement of the reasons for her nonretention and hearing before the board of education.

²A mere statement of the reasons will not satisfy the requirements of Code, 18A-2-8a. The reasons must "be shown", i.e. supported by evidence with the grievant given the opportunity to cross-examine.

5. At the hearing Superintendent Cassell stated the reasons for his recommendation were Ms. White's evaluations and because her principal had not recommended that her contract be renewed.

6. Neither Principal Mustoe nor any other school official was called upon to offer any testimony regarding this matter.

7. The board took no further action following this hearing.

Conclusions of Law

1. School laws are to be strictly construed in favor of the employee. Morgan v. Pizzino, 163 W. Va. 454, 256 S.E. 2d 592 (1979).

2. The board of education bears the burden of showing the reasons for the nonrenewal of a nontenured employee's contract. Hedrick v. Board of Education, 332 S.E. 2d 109 (W. Va. 1985)

3. A probationary employee is not afforded a full and complete hearing as contemplated by the legislature when the person who had evaluated the employee and ultimately refused to recommend that she be rehired was not present to testify. Hedrick v. Board of Education, 332 S.E. 2d 109 (W. Va. 1985).

4. A probationary teacher who is terminated without proper notice or hearing is not entitled to reinstatement, but is entitled to back pay until she is terminated in compliance with the law. Burks v. McNeel, 264 S.E. 2d 651 (W. Va. 1980).

5. "Any expenses incurred relative to the grievance procedure at levels one through three shall be borne by the party incurring such expenses." W. Va. Code, 18-29-8.

Accordingly, this grievance is granted in part and denied in part. Ms. White will not be reinstated, however, the Hampshire County Board of Education is ORDERED to compensate her for all lost salary from the time her contract expired until she is properly terminated.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hampshire 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: November 26, 1986

Sue Keller
SUE KELLER
Hearing Examiner