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HUGH ALLTOP

DOCKET NO. 11-87-167-3

GUY BOGGS

DOCKET NO. 11-87-154-3

v.

GILMER COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants, Hugh Alltop and Guy Boggs, were hired by the Gilmer County Board of Education on August 25, 1986. In March 1987 the grievants received letters from Superintendent of Schools Robert Hardman informing them that their contracts would be terminated effective June 30, 1987 and they had a right to a hearing before the Board before a final decision was made. Both requested and were granted hearings and following their hearings the Board voted to terminate their contracts. Grievants proceeded through grievance Levels I, II and III and all parties waived their right to a Level IV evidentiary hearing and the cases were submitted on the record.¹

¹The Board waived its right to a Level III hearing in Alltop's case and upheld the Level II decision in Boggs' case.

Because of a similarity in circumstances and issues, the grievances were consolidated for decision.

In the spring of 1987 the Gilmer County Board of Education was faced with a declining student enrollment and loss of state funds and decided to make cuts in its professional staff and referring to W.Va. Code, 18A-4-8b(a), 18A-2-2 and 18A-2-7, sent the aforementioned letters to the grievants. After their hearing on March 20, 1987 they received additional letters on April 28, 1987 informing them that they had not been rehired for the 1987-88 school term and indicating such notice was necessary under W.Va. Code, 18A-2-8a. That section of the W.Va. Code deals with probationary employees. The grievants cite several reasons why the actions of the Gilmer County Board of Education should be ruled improper and in violation of the W.Va. Code:

1. The Board made the decision to terminate the grievants before they were given a meaningful hearing.
2. The initial letters from the Superintendent were not sufficient notice in that they did not fully explain the reasons for the reduction in force.
3. W.Va. Code, 18A-4-8b(a) requires a county board to terminate the least senior professional employee when it is required to reduce its staff and those employees should be terminated in accordance with W.Va. Code, 18A-2-2, which the Board failed to do.

The Board responds and argues:

1. W.Va. Code, 18A-2-8a is the controlling statute when probationary employees are not rehired by the Board.

2. The Board complied with the requirements of W.Va. Code, 18A-2-8a when it sent both grievants the letters of April 28, 1987 informing them that the Board had voted not to rehire them for the 1987-88 school term.

3. As both grievants were probationary employees and of April 28, 1987 the Board was under no further obligation to the grievants.

The Gilmer County Board of Education apparently decided in the spring of 1987 to provide notice to employees that cuts were to be made and sent those notices in accordance with W.Va. Code, 18A-2-2 to all those employees that they were going to terminate, even probationary employees. In the grievants' cases, the Board also sent notices in accordance with W.Va. Code, 18A-2-8a.

W.Va. Code, 18A-4-8b(a) deals with seniority rights in cases where a board must make cuts in its professional staff and in pertinent part reads:

Whenever a county board of education is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority shall be properly notified and released from employment pursuant to the provisions of section two [§18A-2-2], article two of this chapter:...

This section of the W.Va. Code is only a requirement that the least senior professional employees be terminated in accordance with W.Va. Code, 18A-2-2 and that section deals solely with continuing contracts of professional employees. The grievants argue the words of W.Va. Code, 18A-4-8b(a) "the employee with the least amount of seniority" should include the probationary employee.

This section's reference to W.Va. Code, 18A-2-2 contains no language granting special rights to probationary employees over and above those given in W.Va. Code, 18A-2-8a. There is no ambiguity regarding the meaning of the word "employee" when W.Va. Code, 18A-4-8b(a) is read in conjunction with W.Va. Code, 18A-2-2 and a statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted but will be given full force and effect. Lavender v. McDowell County Board of Education, 327 S.E.2d 691 (W.Va. 1984)

In addition to the foregoing, the following findings of fact and conclusions of law are made.

FINDINGS OF FACT

1. The grievants, Hugh Alltop and Guy Boggs, were hired by the Gilmer County Board of Education on August 25, 1986.
2. The grievants were notified on April 28, 1987 that the Board had voted not to rehire them for the 1987-88 school term.
3. The grievants did not request a statement of the reasons for the Board's vote nor did they request a hearing before the Board.

CONCLUSIONS OF LAW

1. When a probationary employee is not rehired a school board must abide by the requirements of W.Va. Code, 18A-2-8a.

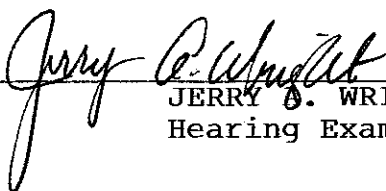
2. W.Va. Code, 18A-4-8b(a) requires a school board to terminate the least senior employees in accordance with W.Va. Code, 18A-2-2 when it seeks to reduce the number of professional staff in its employment.

3. W.Va. Code, 18A-4-8b(a) and its reference to W.Va. Code, 18A-2-2 apply to those professional employees with continuing contracts.

4. The grievants were probationary employees in April 1987 and the Gilmer County Board of Education fulfilled the requirements of W.Va. Code, 18A-2-8a when it voted not to rehire the grievants.

Accordingly, the grievances are **DENIED**.

Either party may appeal this decision to the Circuit Court of Gilmer County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code, 18-29-7). Please inform this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



JERRY O. WRIGHT
Hearing Examiner

DATED: 12/11/87