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GEORGE BENNETT

v.

DOCKET NO. 10-87-045-4

FAYETTE COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a waiver of consideration at level three by the Fayette County Board of Education. The grievant, George Bennett, complains that the respondent board failed to properly advertise or fill a principal's position thereby denying the grievant an opportunity to apply for the position.

The complaint arises out of a series of events which began with the July 1981 termination of David Perry. It appears that David Perry was the Principal at Mt. Hope Middle School and upon his involuntary termination in 1981, he filed an appeal with the State Superintendent of Schools. That appeal subsequently made its way to the West Virginia Supreme Court of Appeals where it was pending on December 5, 1986. The Fayette County Board of Education, by its President, Thomas Stafford, entered into a settlement/agreement with

David Perry on December 5, 1986, whereby the parties agreed, among other things, that David Perry would be restored his seniority and reinstated as Principal at Mt. Hope Middle School. Subsequently, the appeal was dismissed and on January 5, 1987, the agreement was approved by the respondent board.¹

During the period beginning with the termination of David Perry (July 1981) and until December 3, 1986, the Principal's position was filled and was last occupied by Ralph Winters who transferred to another position on December 3, 1986.

The grievant complains that a vacancy was created by the transfer of Ralph Winters which was never posted and that the filling of the position by David Perry violated WV Code §18A-2-1, 18A-2-9 and 18A-4-8b.

The evidence reveals that the agreement of December 5, 1986 was made a part of the record and that among its terms and conditions Mr. Perry was to be reinstated as Principal of Mt. Hope Middle School together with the benefits attendant thereto.

While the grievant's position amounts to a collateral attack on the validity of the agreement, the question squarely presented is whether there was a vacancy which was required to be filled in accordance with WV Code §18A-4-8b(a) and upon the nomination and recommendation

¹It is noted that a civil action styled Tom Muncy v. The Board of Education of the County of Fayette, et al., Civil Action No. 86-C-113, is presently pending wherein the action(s) of Thomas Stafford as President of the Fayette County Board of Education are being challenged regarding the settlement of the David Perry appeal including his reinstatement. The grievant herein is not a party to that civil action.

by the county superintendent (WV Code §18A-2-1 and 18A-2-9).

Black's Law Dictionary (5th Ed.) defines "reinstate" to mean:

To reinstall; to reestablish; to place again in a former state, condition, or office; to restore to a state or position from which the object or persons had been removed.

The effect of the December 5, 1986 agreement was, by its terms and conditions, to restore Mr. Perry to his former position as if he had not been terminated. It, therefore, follows that the position was never properly vacant and that Ralph Winters served as Principal only until Mr. Perry returned.

Inasmuch as the validity of the agreement remains unchanged, even though it is now the subject of a Circuit Court action, there was no vacancy to be posted or filled. Therefore, the basis upon which the grievant seeks relief, i.e., that a vacancy was not posted or filled properly, is without merit.

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

FINDINGS OF FACT

1. George Bennett has been employed as a teacher at Collins Middle School and Nuttall Middle School in Fayette County, West Virginia, for the past ten years and previously served for six years as Principal of Mt. Hope Middle School. Additionally, George Bennett had served for five years as an Assistant Principal at Fayetteville High School.

2. On or about July 14, 1981, David Perry's employment as Principal of Mt. Hope Middle School was involuntarily terminated by the Fayette County Board of Education and Mr. Perry appealed that decision, first to the State Superintendent of Schools and then subsequently to the Circuit Court of Kanawha County (by way of Application for Writ of Certiorari) and finally to the West Virginia Supreme Court of Appeals wherein said matter was pending on December 5, 1986.

3. In an agreement with David Perry dated December 5, 1986, the Fayette County Board of Education agreed to "reinstate" Mr. Perry to his position as Principal of Mt. Hope Middle School. In consideration of the "reinstatement" and other terms and conditions as stipulated in a "settlement agreement" of December 5, 1986, Appeal No. 17023 in the West Virginia Supreme Court was withdrawn.

4. The agreement dated December 5, 1986 was formally approved by the respondent board on January 5, 1987.

5. There was no vacancy upon which the grievant bases his complaint.

6. The validity of the agreement dated December 5, 1986 is presently the subject of a civil action styled Tom Muncy v. The Board of Education of the County of Fayette, Civil Action No. 86-C-113.

CONCLUSIONS OF LAW

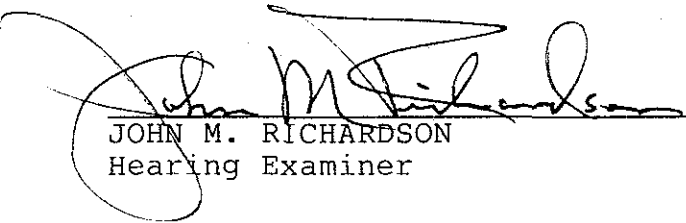
1. Pursuant to an agreement dated December 5, 1986 and approved on January 5, 1987, David Perry was reinstated to his position as Principal of Mt. Hope Middle School and therefore no vacancy existed upon which the grievant bases his complaint. In this regard, the validity of the agreement is presumed to be ongoing unless otherwise determined by a court of competent jurisdiction because the law favors and encourages the resolution of controversies by contracts of compromise and settlement rather than by litigation; and it is the policy of the law to uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy. Sanders v. Roselawn Memorial Garden, Inc., 152 W.Va. 91, 159 S.E.2d 784 (1968); The Board of Education of the County of Monongalia, etc., et al. v. The Honorable Larry Starcher, Judge, etc., et al., 343 S.E.2d 673 (W. Va. 1986).

2. The provisions of WV Code §18A-4-8b(a), 18A-2-1 and 18A-2-9 are not applicable in this situation where no vacancy existed.

3. The grievant has failed to prove as a matter of law any basis upon which relief should be granted.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Fayette County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (WV 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.



JOHN M. RICHARDSON
Hearing Examiner

DATED:

July 15, 1987