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**NELLAJEAN BUMGARDNER**

**v.**

**Docket No. 43-87-219-3**

**RITCHIE COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Nellajean Bumgardner, is employed by the Ritchie County Board of Education as a teacher assigned to Ritchie County High School. On June 23, 1987 she filed a level one grievance alleging violation of notice and transfer laws and job posting laws in that she was involuntarily transferred from her full-time librarian position to that of librarian and home economics teacher. The grievance was denied at level one, two and three and appealed to level four by letter of August 17, 1987. In early September, a co-grievant with a similar complaint resolved her dispute with the board and indicated a wish to withdraw from the grievance. A dismissal order was issued September 10, 1987 deleting the other grievant's name and restyling the grievance as shown above. At the request of the parties a level four evidentiary hearing was conducted in Harrisonville, West Virginia on October 15,

1987; at the conclusion of the hearing the parties agreed to file briefs by November 10, 1987.<sup>1</sup>

Grievant holds certification in vocational home economics 7-12 and librarian; she was initially employed by the board in 1974 and assigned as a librarian at Harrison High School. During the spring of 1986 as part of a general school reorganization, all professional employees were placed on a transfer list. Grievant herein was subsequently assigned to the position of librarian at the newly formed Ritchie County High School, a consolidation of Harrison and Pennsboro High Schools.

In early June 1987 grievant received her preliminary schedule for the 1987-88 school year. The schedule indicated that grievant would be teaching two classes in vocational home economics. When the master schedule was completed grievant was assigned to resume her librarian position for four of her six working class periods; in addition, she was scheduled to teach one class of Foods and Nutrition and a study hall the first semester and two foods/nutrition classes the second semester.

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<sup>1</sup>Grievant's WVEA representative filed his brief on November 12, 1987; counsel for the board of education informed the hearing examiner in late November 1987 that he would not be submitting a brief.

Grievant testified that her role as a librarian consists of cataloging and classifying materials, discarding and purchasing materials, preparing overdue notices, book repair, inventory control and the like. Additionally, she helps students with research work and assists teachers with classroom materials. During the previous year's task of reorganizing the library, she reinventoried the entire library working through her daily allotted planning period from August until mid-April. She stated that prior to the 1987-88 school year she had no direct classroom responsibilities such as preparation of lesson plans and teaching, testing and grading students.

Grievant stated that her reassignment to that of a part-time home economics teacher involves the responsibilities of a classroom teacher; lesson planning, teaching, testing and grading plus the responsibility inherent in the area of home economics. These duties include: setting up food demonstrations with food dishes she has had to pre-prepare; preparing shopping orders, purchasing and storing groceries; supervising food preparation; testing recipes at home before presentation; general cleanup in the lab kitchen and attending vocational meetings and parent-teacher conferences.<sup>2</sup> Grievant stated that in acknowledgement of the

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<sup>2</sup>In order to meet her vocational home economics classes, grievant must vacate her third floor library at Ritchie County High School and travel to the vocational center which is located in another building over the hill.

extra time required of the duties of home economics teachers, the board granted other home economics teachers extended contracts (T.13). School officials did not refute this allegation.

Grievant contends that her 1987-88 dual assignment involves substantial changes in her prior duties, responsibilities and subject matter which amounts to a transfer.<sup>3</sup> Therefore, she argues, the principal was obligated to comply with the notice and hearing requirements of W.Va. Code, 18A-2-7 and let her present her objections to the board before action could be taken on the transfer. Grievant cited several West Virginia Education Employees Grievance Board decisions in support of her position.

Grievant further argued that her position was, in fact, eliminated and that during a reduction in force the board had an obligation to place her in the position of the individual having the least seniority in the area of library certification. She requested that she be reinstated to her position as full-time librarian at Ritchie County High School.<sup>4</sup>

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<sup>3</sup> Characterizing the substantial change, grievant stated, "They're about to work me to death" (T.16).

<sup>4</sup> Apparently there are several other full-time librarians assigned to other county schools but this argument has dubious value in light of grievant's request for reinstatement to her full-time librarian position at Ritchie County High School.

Grievant's principal testified that the computer placed several home economics classes at periods conflicting with other classes in which there were no assignable home economics teachers (T.17). He originally assigned grievant two classes in "STEPS", a new program with which she was not familiar, and subsequently changed the assignment to Foods and Nutrition (T.18).<sup>5</sup> He stated that a certified librarian covers the two periods in the library when grievant is absent.

School authorities contend that grievant's principal is authorized to make schedule changes within grievant's areas of certification.<sup>6</sup> The level two decision cites a Marion County Circuit Court case in support of its position that a principal may reschedule teachers and that W.Va. Code, 18A-4-8b is not controlling in such situations.<sup>7</sup>

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<sup>5</sup> Of interest is the principal's testimony reflecting that he had not scheduled grievant to teach two home economics classes because of student demand for a particular class, that is, Foods and Nutrition. He adjusted his original assignment from STEPS to Foods and Nutrition, thus the computer generated schedule was not inflexible or unalterable, yet the principal would not make further modifications to preserve grievant's prior assignment of librarian only.

<sup>6</sup> At the level four hearing, the board's counsel argued that testimony established a home economics teacher deficiency in regard to the student ratio (T.21). However, no such testimony was adduced nor was evidence presented documenting increased student enrollment or otherwise showing an increase in student demand for vocational home economics classes.

<sup>7</sup> W.Va. Code, 18A-4-8b defines teachers' seniority rights when a reduction in force transpires and does not specifically address other instances of teacher transfer governed by W.Va. Code, 18A-2-7.

In addition to the foregoing narration, the specific findings of fact and conclusions of law are appropriate.

#### FINDINGS OF FACT

1. Grievant is professionally employed by the Ritchie County Board of Education and is certified as a librarian and in secondary vocational home economics.

2. In the past, grievant had been employed as a librarian at Harrisonville High School; in early 1986 she was placed on a transfer list, along with other professional personnel, in an anticipated consolidation of Harrisonville and Pennsboro High Schools.

3. For school year 1986-87, the school superintendent assigned grievant to the newly formed Ritchie County High School (the former Harrisonville High School site) as a full-time librarian.

4. In addition to performing the normal duties of school librarian during the 1986-87 school term, grievant inventoried and reorganized the entire Ritchie County High School library which necessitated foresaking her allotted daily planning period from August until mid-April.

5. Grievant's full-time librarian duties in 1986-87 did not require that she prepare lesson plans or student assignments, or teach, test and grade students in a classroom or participate in parent-teacher conferences.

6. In June 1987 grievant's 1986-87 schedule was altered and she was reassigned by her principal to teach several vocational home economics classes, in addition to a part-time librarian position.

7. Grievant's principal explained that a computer generated schedule placed several home economics classes in conflict with other classes whereby there were more classes in one time slot than available assignable home economics teachers. There was no testimony or evidence that student enrollment or demand for vocational home economics classes increased over that of the previous year.

8. Grievant's principal substituted the home economics classes he had originally assigned to grievant with another, thus the computer schedule was not inflexible and could be modified to realign the scheduled home economics classes.

9. In addition to the added responsibilities of a classroom teacher, grievant's part-time assignment to teach Food and Nutrition requires that she travel from one building to another and prepare for demonstrations of food dishes on her own time. The duties and responsibilities of a librarian and a home economics teacher are substantially different.

10. Grievant's assertion that home economics teachers are given extended contracts in recognition of their added duties beyond that of regular classroom teachers was not disputed or challenged and therefore stands as proven.

#### CONCLUSIONS OF LAW

1. An assignment/transfer of a teacher to an area outside of his or her presently assigned area of certification, discipline, or department involving a substantial change in duties, responsibilities and subject matter requires compliance with W.Va. Code, 18A-2-7. Pansmith, et al. v. Taylor County Board of Education, Docket No. 46-86-057; Burge and Worrell v. Mercer County Board of Education, Docket No. 05-86-347-3; Lavender et al. v. McDowell County Board of Education, 327 S.E.2d 691 (W.Va. 1984).

2. Grievant has proven that her split schedule assignment for the 1987-88 school term to teach several home economics classes on site at the vocational center in addition to part-time librarian at her home school imposed substantial changes in her duties, responsibilities and subject matter over that of her 1986-87 assignment solely as librarian.

3. Grievant's principal failed to recommend to the superintendent that she be transferred to the vocational center for part-time duties, W.Va. Code, 18A-2-9, and otherwise failed to comply with the statutory guidelines for transfer.

Accordingly, this grievance is **GRANTED** and the board is directed to reinstate grievant to her full-time librarian position at Ritchie County High School beginning the second semester, 1987-88.

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

December 14, 1987

Nedra Koval

NEDRA KOVAL  
Hearing Examiner