



**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

**ARCH A. MOORE, JR.**  
Governor

**Members**  
James Paul Geary  
Chairman  
Orton A. Jones  
David L. White

**Offices**  
240 Capitol Street  
Suite 508  
Charleston, WV 25301  
Telephone: 348-3361

**BENNETT CHURCH**

**v.**

**Docket No. 33-87-214**

**MCDOWELL COUNTY BOARD OF EDUCATION**

**DECISION**

On February 5, 1985 grievant, Bennett Church, was appointed interim superintendent of McDowell County Schools by the school board and served until June 30, 1987, the expiration of the most recent one year term. Effective July 1, 1987 J. Kenneth Roberts was elected and appointed for a one year term to succeed grievant and on July 15, 1987 grievant was appointed to an LD teaching position at Welch Junior High School. Grievant filed a grievance alleging that the school board failed to evaluate him as required by Policy 5300 and that he should have been reemployed in a comparable capacity to that which he held prior to becoming superintendent. The school board waived the grievance to level four and evidentiary

hearings were conducted on August 25 and September 15, 1987.<sup>1</sup>

Grievant had been appointed to act as interim superintendent upon the suspension of superintendent Robert Goosens on February 5, 1985; at the time of his appointment grievant was serving as supervisor of the Title I Program in McDowell County.<sup>2</sup> On March 11, 1985 grievant was elected to serve a one year term as superintendent commencing July 1, 1985 and terminating June 30, 1986. Thereafter, on April 24, 1986 the school board elected grievant to serve an additional one year term commencing July 1, 1986 and expiring June 30, 1987.

Grievant allegedly fell from the favor of his benefactors during the most recent school board election in McDowell County and at the regular meeting on February 25, 1987 he was directed to post the position of superintendent, commencing February 25 through March 11, 1987. Applications and resumes were directed to be forwarded to Mr. Benny J. Cassady, president of the school board, rather than to the school board office and/or the

---

1

The hearing at level four was a de novo hearing conducted in Beckley. This grievance essentially involved legal issues and counsel were instructed to file proposed findings of fact and conclusions of law within twenty days of the hearing. Counsel for the school board filed on October 15, 1987 but counsel for grievant did not elect to submit a legal argument on the issues.

2

Jawa v. McDowell County Board of Education, Docket No. 33-86-192 is illuminating on some of the issues raised in the instant grievance and that grievance involved the removal of superintendent Church. The effect of that (footnote cont.)

superintendent's office.<sup>3</sup> (Joint Exhibit 5). At the school board meeting on March 11, 1987 J. Kenneth Roberts was appointed and elected for a fixed one year term to succeed grievant on July 1, 1987.<sup>4</sup> (Joint Exhibit 7).

On July 1, 1987 Mr. Roberts assumed his duties and notified grievant by Certified Mail that he would be given the status of teacher in accordance with W.Va. Code, 18-4-1, with seven available LD positions being offered; Roberts requested grievant to notify him prior to July 10, 1987 which of the seven positions he desired and advised grievant that if no response was received an assignment would be recommended. (Employer Exhibit 1). Receiving no response from grievant the school board appointed grievant to an LD teacher

---

(footnote cont.)

decision was that Mr. Church was an "officer" subject to removal via W.Va. Code, 6-6-1, W.Va. Code, 18-4-3 and W.Va. Code, 18-3-4 but not W.Va. Code, 18-29-1.

<sup>3</sup> Counsel for grievant contended this factor, inter alia, tended to demonstrate the "politics" involved in grievant's non-reappointment but the significance of this evidence was never adequately developed. Mr. Cortelessi, personnel director, testified that this was the manner the posting was done when Mr. Church was employed.

Attached to the posting was a copy of the job description of the duties of the superintendent which noted that for the purpose of evaluations, the superintendent would be directly responsible to the board of education. (Joint Exhibit 6).

<sup>4</sup> At the meeting a motion was made to reappoint grievant to the position for a four year term but the motion failed 3-2; a motion to extend the time to vote on the election similarly failed. Grievant contends the board members did not have sufficient time to examine the applications; however, Mr. Roberts had twenty years in the McDowell County Schools system, fifteen of which were served in the administrative area.

position at Welch Junior High School.<sup>5</sup> (Employer Exhibit 4).

Counsel for grievant ostensibly contends that grievant was never evaluated as required by Policy 5300 (6)(a) and McDowell County Personnel Evaluation Policy 8-040 and that grievant was entitled to reemployment with the school board in a comparable capacity to that he held prior to becoming superintendent.<sup>6</sup>

Counsel for the school board acknowledges that grievant was not evaluated by the school board during his term as superintendent but contends that this grievance does not involve a termination but the nonrenewal of a term which had expired by operation of law; that grievant is an "officer" and is not covered by the requirements of Policy 5300 (6)(a).

In addition to the foregoing factual narrative the inclusion of the following specific findings of fact are appropriate.

---

<sup>5</sup> W.Va. Code, 18-4-1 requires that a county superintendent whose term expires be given the status of teacher unless dismissed on statutory grounds. However, there appears to be no requirement that the former superintendent be permitted to select the position of his choice if more qualified personnel occupy those positions.

Mr. Roberts testified that there were two assistant superintendent positions earlier but due to a reduction in force one of those positions was eliminated; there had been no board action thereon.

<sup>6</sup> Counsel for grievant requested and was granted leave to submit pertinent opinions of the State Superintendent on these and other issues raised by grievant but no legal or other authority was received at the time of preparation of this decision. Accordingly, those grounds (footnote ccnt.)

## FINDINGS OF FACT

1. Since July 15, 1987 grievant has been employed by the McDowell County Board of Education as an LD teacher at Welch Junior High School.

2. Prior to July 15, 1987 and until June 30, 1987, grievant had been superintendent of schools of McDowell County; however, on March 11, 1987 J. Kenneth Roberts was elected to serve as superintendent for a one year term to succeed grievant on July 1, 1987. During his tenure grievant had not been formally evaluated by the school board as per Policy 5300 (6)(a) or McDowell County Policy.

3. By certified letter dated July 1, 1987 grievant was notified that he was being given the status of teacher in the system and seven LD positions were listed as being within grievant's area

---

(footnote cont.)

asserted but not developed or pursued by counsel for grievant are deemed abandoned.

Significantly, at the level four hearing counsel for grievant submitted documentary evidence concerning amendments to Policy 5300 and 5310 but did not establish that these proposed amendments were ever adopted. (See, e.g., Grievant's Exhibit 3). Similarly, it was not developed or pursued the effect, if any, these proposed amendments might have upon W.Va. Code, 18-4-1.

of certification. Mr. Roberts requested grievant notify him prior to July 10, 1987 which of the seven positions was most desirable; otherwise he would be obliged to recommend an assignment to the school board at its meeting on July 15, 1987. Grievant did not respond and on July 15, 1987 the school board assigned grievant to the position of LD teacher at Welch Junior High School.

4. At the time of the appointment of Mr. Roberts there were two assistant superintendent positions in the McDowell County Schools system and the holders of these positions were also notified that their positions would terminate June 30, 1987 as required by law. Mr. Roberts reappointed these individuals to the posts and there was no evidence presented as to their qualifications, etc. Grievant had supervised the Title I program in McDowell County prior to becoming superintendent and held a Masters plus 30, with specializations in Health and Physical Education, Major 7-12, Social Studies, Major 7-12, Reading Specialist, Major K-12, and Special Learning Disorders, Major K-12. He also held a professional administrative certificate with a specialization in supervisory general instruction, K-12.

5. Grievant contends that the school board was required to evaluate him in accordance with Policy 5300 and 5310 and offer an improvement plan prior to the nonrenewal of his term; that in the alternative the board had a legal and moral obligation to offer him an administrative position. Grievant is seeking reinstatement

to the position of superintendent and/or appointment to an administrative position.

### CONCLUSIONS OF LAW

1. In the grievance procedure it is incumbent upon the grievant to prove the elements of the grievance by a preponderance of the evidence. Edith Harrison v. Kanawha County Board of Education, Docket No. 20-86-219. Elements or allegations of the grievance which are raised but not pursued or developed will be considered abandoned.

2. At the time of the events giving rise to this grievance Policy No. 5300 (6)(a), by its terms, was inapplicable to a county school superintendent whose term expired by operation of law. Lookabill v. Wyoming County Board of Education, 304 S.E.2d 678 (W.Va. 1983).

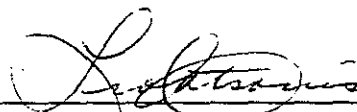
3. A county superintendent of schools elected and appointed by the board of education pursuant to W.Va. Code, 18-4-1, is an officer, not an employee, of the school board. Lookabill v. Wyoming County Board of Education, supra; Jawa v. McDowell County Board of Education, Docket No. 33-86-192.

4. W.Va. Code, 18-4-1 provides that upon expiration of the term a county superintendent shall be given the status of teacher in the system unless dismissed for statutory reasons. The school board should consider the outgoing superintendent for a supervisory/

director position unless it appears the former superintendent is not qualified as a supervisor or director or that the position is occupied by a more qualified employee.

It is accordingly Ordered that the grievance is denied as to the reinstatement of grievant as superintendent; it is granted to the extent that the school board is Ordered to consider grievant for a supervisory type position if one is available.

Either party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of McDowell County and such appeal must be filed within thirty 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.



LEO CATSONIS

Chief Hearing Examiner

Dated: November 30, 1987