



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

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

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

KAREN CORDER, MARY POLING, et al.

v.

DOCKET NO. 01-86-264-2

BARBOUR COUNTY BOARD OF EDUCATION

DECISION

Grievants, thirty-nine teachers assigned to Philip Barbour High School, allege that the Board of Education has acted in violation of W. Va. Code, 18-5-15 by extending the 1985-1986 employment term two additional days for which they were not compensated. No action was taken regarding this matter at levels one or two and the Board of Education waived consideration of the grievance to level four where a hearing was held in Philippi, West Virginia at the request of the grievants.

In March, 1985 the Barbour County Board of Education adopted a school calendar for the 1985-1986 school term. This calendar was later approved by the W. Va. State Board of Education and was implemented for the term beginning August 26, 1985. The calendar remained unchanged until November, 1985 when serious flooding caused the cancellation of four days of school. On November 19, 1985 the Board of Education amended the calendar in an attempt to make up the lost instructional time. November

29 and December 24 were reclassified from noninstructional to instructional days and December 26 and 27, which had been designated as outside school environment days, were deleted from the calendar. Following an outpouring of letters from employees protesting these changes, the Board of Education held a special meeting four days later at which time June 3rd and June 4th were designated instructional days (formerly record days), June 6th was changed from an outside school environment day to a record day, December 26 and 27 were deleted as outside school environment days and removed from the school calendar. November 29 and December 24 were returned to their original status, outside the calendar, June 11 was added as a record day and June 12 added as an outside school environment day.

After being forced to cancel an additional five instructional days due to adverse weather, the board amended the calendar again in March, 1986. At this time June 5, 6, 9, and 10 were converted from noninstructional to instructional days.

The grievants argue that the board of education improperly amended the school calendar which had been "fixed" in March, 1985, that the changes had increased their employment term to two hundred and two days, that they received no compensation for the two added days, that the days cancelled due to inclement weather are to be counted as part of the two hundred day employment term and that the board should have converted the first available noninstructional days to instructional days rather than converting days at the end of the term.

The grievants request that they be compensated for the two days added to the 1985-1986 school term and be awarded ten percent interest. They further request that the Education Employees Grievance Board prohibit the board of education from making any calendar changes in the future other than those specifically provided for in W. Va. Code, 18-5-15.

The board of education responds that the calendar revisions were necessary to ensure a full instructional term prior to the second day from the last of the two hundred day employment term, that they were in full statutory and regulatory compliance and that the changes were approved by the State Superintendent of Schools. The board argues that the employment term was not extended beyond two hundred days and that it is within a board's discretion to determine which noninstructional days are to be converted to instructional days.

Willis Moore, Assistant Bureau Chief of the Bureau of Finance and Services of the W. Va. State Department of Education, appeared on behalf of the board and testified that calendars submitted by boards of education in March for the subsequent year are viewed as tentative by the Board of Education. Mr. Moore stated that the calendars must be flexible allowing for amendment as, in practice, calendar changes are frequent and ongoing throughout the term.

Regarding the Barbour County calendar for the 1985-1986 school term, Mr. Moore stated that the Department of Education

had accepted the revisions without exception. The revised calendar permitted the scheduling of one hundred and seventy-seven instructional days and June 12, 1986 was the two hundredth day of the employment term.

W. Va. Code, 18-5-15 requires that county boards of education provide an employment term for teachers of no less than ten months, a month defined as twenty employment days, exclusive of Saturdays and Sundays. The employment term must fall within the beginning and closing dates established by the State Board of Education and may not exceed forty-three weeks. Within the employment term a board must establish an instructional term of not less than one hundred eighty nor more than one hundred eighty-five instructional days. The instructional term shall open no earlier than September 1 and close no later than June 8th. If a board cancels any instructional days equal to the difference between the total instructional days and one hundred seventy-eight, each succeeding instructional day which is cancelled shall be rescheduled on the remaining noninstructional days, except holidays, following the cancellation and prior to the second day before the end of the employment term established by the county board.

In addition to the foregoing it is appropriate to make the following findings of fact.

Findings of Fact

1. The Barbour County Board of Education established a

calendar for the 1985-1986 school term in March, 1985. This calendar provided for a one hundred eighty day instructional term and a two hundred day employment term beginning August 26, 1985 and ending on June 10, 1986.

2. Severe flooding forced the closing of schools in Barbour County on four instructional days in November, 1985.

3. On November 19, 1985, the board of education, in an attempt to compensate for the lost instructional and employment time, reclassified November 29 and December 24 to instructional days and converted December 26 and 27 from outside school environment days (paid) to days deleted from the school calendar (nonpaid).

4. School employees implemented a letter campaign directed to the board members protesting the calendar revisions.

5. On November 23, 1985 the board of education again revised the calendar to return November 29 and December 24 to their original status outside the calendar and to confirm their action deleting December 26 and 27 from the school calendar. Other changes were the reclassification of June 3 and 4 from records day to instructional days, converting June 10 from outside school environment to a records day and the addition of June 11 and 12 as a record day and outside school environment day, respectively.

6. The board of education has provided a copy of a memorandum dated November 26, 1985 and directed to all employees setting

forth the calendar revisions.

7. Grievant Mary Poling states that neither she nor the other grievants received the memorandum and were not aware of the November 23 revisions until March, 1986. Ms. Poling notes that the teachers' time sheets for December indicated December 26 and 27 as outside school environment days.

8. Following the November calendar revisions five more instructional days were cancelled due to inclement weather.

9. The board of education amended the calendar on March 25, 1986 converting June 5, 6, and 9 from preparation days to instructional days and June 10 from a record day to an instructional day.

10. The calendar revisions were accepted without exception by the West Virginia Department of Education.

11. Testimony of a Department of Education official indicates that school calendars are flexible and, as a matter of practice, are revised frequently.

12. The calendar revisions which deleted December 26 and 27 added June 11 and 12 to the school calendar did not extend the grievant's employment term beyond two hundred days.

Conclusions of Law

1. W. Va. Code, 18A-5-2 provides that school closings caused by conditions of weather shall be counted as days of employment and toward meeting a part of the requirements of

the minimum instructional term.

2. W. Va. Code, 18-5-15 limits W. Va. Code, 18A-5-2 by requiring a board, if it has cancelled instructional days equal to the difference between the total instructional days scheduled and one hundred seventy-eight, to reschedule each succeeding instructional day cancelled, utilizing the remaining noninstructional days available prior to the second day before the end of the employment term.

3. Neither the act of revising the school calendar nor the revisions themselves resulted in violation of the grievants' employment term as defined by W. Va. Code, 18-5-15.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Barbour 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: March 3, 1987

Sue Keller

SUE KELLER
Hearing Examiner