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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
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GREGORY D. CROWDER

v.

Docket No. 20-86-307-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Gregory Crowder, is employed by the Kanawha County Board of Education as a Custodian I on a half time basis at two schools. On September 3, 1986, he filed a grievance alleging that he had executed an employment contract with the school board which was later changed without his permission. A level two evidentiary hearing was conducted on September 27, 1986, and the decision appealed to the Education Employees Grievance Board on October 21, 1986; a level four hearing was conducted on April 15, 1987.¹

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The parties waived an evidentiary hearing and oral argument was conducted on April 15, 1987, on motion of counsel for the grievant. The transcript of evidence of the level two hearing was admitted and the grievance was submitted to the hearing examiner on that transcript, hereinafter referred to as (T.___), and oral argument of counsel for the parties.

At the time of the level two hearing grievant had been employed as a Custodian I for two school years and had commenced his probationary term at Dupont High School on a full time basis (T. 14). However, for the 1985-86 school year he was assigned to work one half time at Dupont High School and one half time at Dupont Junior High School.²

About July 26, 1986, grievant received a contract for the 1986-87 school year which listed only Dupont High School as his place of employment and he executed it and returned it to the personnel office (T. 8). On August 15, 1986, he commenced full time work at Dupont High School but after a few days was informed by the director of personnel of Kanawha County Schools, Stanley Cobb, that he was to continue to work half time at the two schools. Thereafter, on August 21, 1986, he received another contract from Mr. Cobb listing Dupont High School and Dupont Junior High School which he did not execute; however, he did commence working half time at both schools and continued to do so subsequent to filing the grievance (T. 9).

² The first contract he received listed Dupont High School for half a day and later on he was employed at both schools before commencement of school (T. 7).

Probationary service personnel employees are required to execute a contract each year until the continuing contract is executed (T. 19).

Mr. Cobb testified that the first part of August, 1986, he became aware that a computer error was involved in grievant's contract which resulted in listing only the primary employment location and deleting the secondary site (T. 16, 17).³ Accordingly, he contacted grievant by telephone and informed him that he was working incorrectly but grievant advised Mr. Cobb that he intended to remain at Dupont High School (T. 17). Mr. Cobb contacted grievant again and advised him that a letter and revised contract was being sent to him because the earlier contract was in error; Mr. Cobb sent the corrected contract to grievant on August 20, 1986 (T. 17).⁴

³ The computer error occurred in several other cases involving employees who worked at two different locations and was beyond the control of Mr. Cobb (T. 19).

⁴ At the level two hearing grievant acknowledged that at the time he filed the grievance he understood that the assignment to Dupont High School had been in error (T. 13, 14, 20). At level four grievant stated that he did not know that it was a computer error even though he had been informed it was an error.

Counsel for the grievant contends that the action of the school board in revising the employment contract is violative of W.Va. Code, 18A-2-5, W.Va. Code, 18A-4-8 and W.Va. Code, 18A-4-8a and the sanctity of the employment contract⁵; that although grievant has suffered no pecuniary loss he has been placed in a detrimental situation by being required to work for two principals and given inadequate time to properly clean two buildings.⁶

Counsel for the school board contends that the grievance is frivolous because a clerical error had been made by the computer and grievant knew at the time of filing the grievance that it was an error; that grievant pursued the grievance through level four knowing the circumstances and has therefore abused the grievance procedure and caused an inordinate waste of human resources and finances as a result thereof.

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W.Va. Code, 18A-2-5 provides for the form of the employment contract and does specify the place of assignment; W.Va. Code, 18A-4-8 provides, in part, that no service employee may be relegated to any condition of employment which would result in a reduction in pay or benefits and W.Va. Code, 18A-4-8a, provides, in part, that no service employee shall have his daily work schedule changed during the school year without his written consent.

⁶ Dupont High School and Dupont Junior High School are two blocks distance and transportation was not an element of the grievance (T. 9). Grievant stated the biggest objection he had to working both schools was "mental" (T. 10).

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

FINDINGS OF FACT

1. Grievant is employed by the Kanawha County Board of Education as a Custodian I and is in the probationary period of employment.

2. In the 1985-86 school year grievant was assigned to work one half time at Dupont High School and one half time at Dupont Junior High School and executed a written contract on that basis.

3. In July, 1986, grievant received a contract for the 1986-87 school year designating his place of employment as Dupont High School which he executed and returned.

4. Shortly thereafter grievant was informed that the computer had erred in listing only Dupont High School on the contract instead of both schools as was listed on the 1985-86 contract.

5. A corrected contract was sent to grievant but grievant refused to execute it; he did, however, commence work at both schools as contemplated by the corrected contract.

6. It is clear that the 1986-87 contract was in error in the designation of Dupont High School as the sole employment location and was contrary to the intent of one of the contracting parties.

CONCLUSIONS OF LAW

1. The original 1986-87 contract executed by grievant involved a mistake of expression of one of the terms thereof and was therefore unenforceable. In such a case the contract may be reformed to comply with the intent of the offeror.

2. Grievant has failed to prove the essential elements of the grievance as a matter of law.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha 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: June 25, 1987