



REPLY TO:
401 Davis Avenue
Suite 315
Elkins, WV 26241
Telephone: 636-1123

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

WANDA P. DAVIS

v.

DOCKET NO. 45-87-119

SUMMERS COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Wanda P. Davis, is employed by the Summers County Board of Education as a science teacher. Ms. Davis filed a level one grievance on May 14, 1987 in which she alleged violations of W. Va. Code, 18A-2-7 and 18A-4-b, State Board of Education Policy 5300 and County Board Policy IV-C-5 when she was transferred from Hinton High School to Sandstone Junior High School. The grievance was denied at levels one and two, the Summers County Board of Education waived consideration at level three and a level four hearing was conducted on August 10, 1987. ¹Proposed findings and conclusions were submitted by the parties on August 19 and September 3, respectively.

¹The board argues that a level one grievance was untimely filed with her immediate supervisor on May 15, 1987, more than 15 days after she was notified of her transfer. Grievant's Exhibits 14-22 indicate that a level four appeal form was filed on April 28, the matter was dismissed by Order dated May 8, was reinstated May 19 and was again dismissed on June 12 based upon procedural deficiencies. The grievant has established that she exercised diligence in protecting her rights and confusion as to the proper level of filing was legitimate, permitting a resolution of the grievance on its merits.

The grievant was first employed by the Summers County Board of Education in September, 1964 but did not begin her duties until January, 1965 working 5.5 months of that school term. She was employed 9.5 months the 1965-66 year, worked 6.7 months in 1966-77 and 9.5 months in 1967-68. The grievant did not work again until the 1978-79 school year and has been continuously employed since that time.

Due to a loss of student enrollment and a corresponding loss of finances the board of education determined that a reduction in force would be necessary for the 1987-88 school year. As part of this reduction the least senior science teacher in the county was released from employment and the grievant was transferred to his position as a general science teacher at Sandstone Junior High School.

The grievant argues that her transfer was improper as she was not the least senior science teacher at Hinton High School or in the county, that the board had failed to post the vacant position at Sandstone Junior High School, that no cuts in the science faculty at Hinton High School were necessary as evidenced

by the Dean of Girls position being reduced to half time with that individual being assigned to teach biology half time to alleviate the shortage due to the transfer of the grievant, that the half time biology position was not posted denying the grievant the opportunity to apply for the position, she was not properly evaluated prior to the transfer and that her transfer had been determined prior to a hearing before the board.

The board of education argues that a reduction in force was correctly implemented as the least senior science teacher in the county system was released from employment. The grievant, who is certified in the areas of elementary education (grades 1-8), middle childhood science (grades 5-6) and general science (grades 7-9), was the most restricted in scheduling of the science teachers at Hinton High School and as she is certified to teach grades 5-9 she was transferred to the junior high school. Additionally, the grievant was determined to be the least senior science teacher at Hinton High School as her employment time only from 1978 to the present was considered although the board states that seniority was not a factor in this transfer.

Evidence submitted by the grievant indicates that beginning in January, 1987 Superintendent Demetrius Tassos determined that it would be necessary to eliminate eleven professional positions in the county system. It was later determined that four of those positions would come from Hinton High School and upon the recommendation of Principal Michael Allen one of those positions could be a science teacher if the Dean of Girls was assigned to teach biology. At a board meeting held on February 26 Superintendent Tassos recommended, and the board approved, the elimination of one science position at Hinton High School.

By letter dated March 6, Superintendent Tassos advised the grievant that he would recommend her transfer and reassignment to Sandstone Junior High School at the board meeting scheduled for April 23. The reason given for this recommendation was a drop in enrollment, making it necessary to reassign staff on the basis of need/certification. At the grievant's request a hearing was scheduled for March 26; however, it was continued at her request and rescheduled for April 9. At that hearing the grievant apparently argued that her transfer should have been to an elementary rather than the junior high school. Superintendent Tassos requested that the grievant notify him by April 22 of her preference in the reassignment. The grievant

declined to state a preference in a written response dated April 20 based upon her understanding that W.Va. Code, 18A-4-8b did not give her alternatives. At a meeting conducted on April 23 the board of education approved the recommended transfer of the grievant from Hinton High School to Sandstone Junior High School.

In addition to the foregoing recitation the following specific findings shall serve as the findings of fact.

Findings of Fact

1. The grievant was first employed by the Summers County Board of Education in 1964, resigned in 1968, was reemployed in 1978 and has worked continuously from that time.

2. The grievant is certified to teach elementary education and general science, grades 7-9. For the past nine years she has taught general science at Hinton High School. There is no allegation that her performance has been less than acceptable.

3. In early 1987 it was determined that as part of a reduction in force the Dean of Girls would teach biology one half day permitting the elimination of one science teacher at Hinton High School.

4. On February 26, 1987 the board approved the elimination of one science position at Hinton High School. There is no indication from the minutes of that meeting or from any other source that any decision had been made at that time as to which teacher would be transferred. Subsequent correspondence from the Superintendent indicated his intention to recommend the grievant be transferred; however, the board's action approving the recommendation did not occur until after she had been afforded a hearing.

5. The science teacher with the least seniority in the county was released from employment. The position which he had held was at Sandstone Junior High School teaching general science. Following his termination the grievant was assigned to that position.

6. Of the seven science teachers at Hinton High School six possess multiple certifications for grades 7-12 while the grievant is certified only in general science, grades 7-9. It appears that the decision of which teacher to transfer was based on certification and not on seniority or evaluations.

7. The grievant was notified that she would be recommended for transfer in March and was granted a hearing on April 9, 1987 in compliance with W.Va. Code, 18A-2-7.

8. It has not been established that either of the vacancies of science position at Sandstone Junior High School or the half time biology position at Hinton High School were posted.

Conclusions of Law

1. Pursuant to W.Va. Code, 18A-4-8b (a), boards of education are required to post and date notices of all openings in established, existing or newly created positions in conspicuous working places for all professional personnel to observe for at least five working days. Peters v. Mercer County Board of Education, Docket Number 27-86-144-1 and Ruth Murphy v. Mingo County Board of Education, Docket No. 29-86-341-4.

2. Statutory provisions which are clear and unambiguous are not subject to interpretation and must be given full force and effect. Lavender v. McDowell County Board of Education, 327 S.E. 2d 691 (W.Va. 1984) and Fletcher, Springer and Kelso v. Berkeley County Board of Education, Docket No. 02-87-017-2.

3. There must be careful compliance with rules and regulations protecting school personnel and school personnel laws are to be strictly construed in favor of personnel. Morgan v. Pizzino, 256 S.E. 2d 592 (W.Va. 1979).

4. Attorney fees are not recoverable under W. Va. Code, 18-29-1, et seq., and costs and expenses are not generally recoverable in the grievance process. Wyatt v. Marshall University, Docket No. BOR2-87-044-1.

Accordingly, as the junior high school science and biology positions were not posted in statutory compliance the grievance is **GRANTED** and the board of education is **ORDERED** to reinstate the grievant to her former position at Hinton High School. The grievance is **DENIED** as to an award of attorney fees, costs, travel and telephone expenses.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Summers 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

October 13, 1987

Sue Keller

SUE KELLER

Hearing Examiner