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MILES S. DAVIS, et al.

v.

Docket No. 30-87-233

MONONGALIA COUNTY BOARD OF EDUCATION

D E C I S I O N

Miles Davis, Vicki Rohe, Carolyn Powell and Michael Pastuch are all employed by the Monongalia County Board of Education as teachers and had been employed by the board in the summer of 1986 for summer school teaching. By letter dated August 17, 1987 the teachers filed a level four grievance appeal alleging improper transfer, reduction of employment term or improper dismissal from their summer school teaching contracts. The teachers' representative originally indicated that the matter could be decided upon the record but subsequently requested that a level four hearing be scheduled. An October 6, 1987 hearing date was continued upon grievants' motion to October 14, 1987.

At the level four hearing grievants' representative stated that Ms. Rohe and Mr. Davis had withdrawn their grievances although Mr. Davis was present as a witness to testify on behalf of grievants Michael Pastuch and Carolyn Powell.¹ Grievants filed a supplementary brief on October 30, 1987.

The facts giving rise to this dispute are not contested. Grievant Powell had taught health for four previous summer school sessions. In 1987 she was awarded a contract to teach ninth grade English. Grievant Pastuch was employed in 1986 as a physical science teacher in the summer school program. Mr. Pastuch was not reemployed for the 1987 summer school program.

Grievants Pastuch and Powell contend that summer school contracts are protected by the procedural requirements of W.Va. Code, 18A-2-7 and W.Va. Code, 18A-2-8 and that their contracts for summer employment cannot be altered nor terminated without due process.² Pastuch cites special hardship because he was

¹ Grievant Davis was asked to file a formal withdrawal from the grievance, but neither he nor Ms. Rohe have done so to date. However, their dispute with the board regarding reduction of their summer school teaching term was not presented at the level four hearing as a grievance issue and consequently will not be addressed herein.

² Grievants also contend that State Board Policy 5300 is applicable in regard to their summer teaching positions and urged that case law benevolent to school personnel be applied in this grievance.

told he was going to be reemployed for 1987 summer school teaching and subsequently departed for a vacation. When he returned from his vacation and appeared at the designated time and site to begin his classes, he was told that he had not been hired and he was later unable to secure summer employment. Grievant Pastuch seeks an award of back wages and grievant Powell seeks reinstatement of her previous summer teaching contracts to teach health.

The board stated that health education was not scheduled for the 1987 summer term and Mrs. Powell applied for a summer teaching vacancy and was thus assigned an English teaching position. In regard to Mr. Pastuch, the board stated that it relied on a late breaking advisory from WVEA officials and a West Virginia Education Employees Grievance Board decision that summer school teaching seniority should not be a factor to consider in awarding summer school contracts, thus, Pastuch's service in the summer of 1986 did not qualify him for reemployment in 1987.³

³ The board cites Morgan v. Greenbrier County Board of Education, Docket No. 13-86-227-4. Grievants, however, contend that seniority is not at issue in this grievance, rather the issue is that grievants were not accorded due process as to their summer school employment contracts. The examiner must conclude, though, that Mr. Pastuch's employment was affected by the WVEA advisory.

The board defends its actions regarding the hiring and assignment of summer school teachers for 1987. It contends that neither State Board Policy 5300, W.Va. Code, 18A-2-7 nor W.Va. Code, 18A-2-8 are controlling in regard to summer school employment as summer school positions are temporary positions which have clearly stated starting and ending dates of employment.

W.Va. Code, 18-5-39 addresses the establishment of summer school programs. Notably, the statute provides that a school board has the authority to determine the term and curriculum of its summer school based upon its particular needs. The statute further provides that the board employ certified teachers, contract for the summer school employment and pay the daily rate such teacher would receive during the regular school year.

The West Virginia Supreme Court and this Board have consistently ruled that extracurricular employment under W.Va. Code, 18A-4-16 is subject to the provisions of Policy Bulletin 5300 and W.Va. Code, 18A-2-7 and W.Va. Code, 18A-2-8. The extracurricular contract is generally performed simultaneously with a continuing contract of employment, that is, during a regular school term as part of a well established, on-going non-instructional activity. Summer school employment, on the other hand, is clearly a temporary position beyond a curricular year and is based on variables of which a school board may have no control. Moreover, there is no statutory provision for

the attainment of summer school seniority as applied to overall years seniority with a board of education and employment beyond ten months is not credited for statutory seniority purposes.

In addition to the foregoing recitation, it is appropriate to make the following specific findings of facts and conclusions of law.

FINDINGS OF FACT

1. Grievants Michael Pastuch and Carolyn Powell are regularly employed county teachers who taught summer school in 1986. Powell had previously taught health while Pastuch taught science.

2. Before the end of the 1986-87 school year grievant Pastuch was told that he would be reemployed for summer school teaching in 1987. Contracts were issued June 11, 1987 but he was not employed. When grievant returned from a vacation anticipating the summer teaching term, he learned that someone with more overall county seniority than he had been hired instead.

3. Grievant Powell responded to a summer school position posting for English but indicated she preferred health as she had taught that subject four previous summers; however, health was not offered in 1987.

4. Grievants have not established, as a matter of policy or law, that temporary, needs based summer school employment/contracts are protected by the procedural due process rights afforded those contracts of employment which occur throughout the normal instructional year.

CONCLUSIONS OF LAW

1. A board of education may establish a needs based summer school program and employ certified teachers who shall be separately contracted for their services. W. Va. Code, 18-5-39.

2. School law does not provide that summer school contracts be continuing contracts of employment nor does summer school teaching add to a teacher's statutory seniority. W.Va. Code, 18-5-39; W.Va. Code, 18A-4-8b(a). See generally, David Deems, et al. v. Harrison County Board of Education, Docket No. 17-86-253-3 (200 day service personnel claiming entitlement to summer employment held in previous years).

3. Grievants have failed to prove their grievance as a matter of law.

Accordingly, this grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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 2, 1987

Nedra Koval

NEDRA KOVAL
Hearing Examiner