



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

**SANDRA FAIN and
CYNTHIA FAZZINI**

v.

DOCKET NO. 17-87-082-2

HARRISON COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants, Sandra Fain and Cindy Fazzini, are employed by the Harrison County Board of Education as vocational home economics teachers. On March 25, 1987 they filed a grievance in which they alleged a violation of W. Va. Code, 18A-2-2 when they were coerced to sign an addendum to their teaching contracts reducing their employment term from 240 days to 210 days for the 1987-88 school year. Both parties agreed to waive consideration to level four; an evidentiary hearing was conducted in Clarksburg on June 8, 1987.

Grievants are employed for a 240 day employment term as their assignments require that they continue working with students beyond the school term and throughout the summer. Due to severe financial cutbacks the board of education determined that extended employment terms would be curtailed for the 1987-88 school term.

Grievants, along with other personnel, were present at a meeting with various administrative officials on March 10, 1987 at which time they were advised that due to a reduced operating revenue and decreasing student population it was necessary that their extended employment terms be reduced.¹ The grievants' testimony at the level four hearing was that they were given the choice of voluntarily relinquishing 30 days of their extended employment term or their position would be abolished and reposted with a shorter employment term. If the positions were abolished the teachers would be placed on the preferred recall list and would possibly lose their assignments to other teachers with more seniority. They were given 24 hours to decide what action to take. Both grievants signed and returned the agreement with the following statement typed beneath the signature line:

This addendum to my contract is signed under duress and protest in order to preserve my employment which is represented to be in jeopardy if I do not sign and I hereby preserve any and all rights of grievance and or appeal of this action by the Harrison County Board of Education.

In addition, this addendum is without any binding and legal consideration for the Harrison County Board of Education's requiring my signature to reduce my written contract benefits.

¹Grievants requested that a transcript of a tape made during this meeting be submitted into the record however, as of the date of this decision it has not been submitted.

By letter dated March 16, 1987 Superintendent Robert Kittle informed the grievants that on or before April 1, 1987 the board of education would consider termination of 30 days of their 240 day contracts for the 1987-88 school term. They were advised that a hearing on this issue could be requested within 10 days. At their request a hearing was held on March 30, 1987; they were notified by letter dated April 6, 1987 that the board had abolished 30 days of their extended employment term effective June 30, 1987.

Grievants argue that their school term begins in September and concludes the following August after their students complete summer assignments. Therefore, they interpret the reduction of employment to be a part of the 1986-87 school term in violation of W. Va. Code, 18A-22. They further argue that they were placed in a disadvantageous position at the meeting held on March 10 as the board's attorney was present while they were denied the opportunity for representation. They also allege discrimination as those teachers who had signed the reduction of employment agreements without comment had been issued letters of appreciation from Superintendent Kittle and/or Myra Tounsand, Administrative Assistant-Personnel. The grievants argue that they had not acted in an uncooperative manner by including a

comment on the agreement, that they had not requested a hearing before the board prior to receiving Superintendent Kittle's letter of March 16 and that the lack of a similar letter in their personnel file creates a negative impression which could affect them in their future employment.²

An allegation of sexual discrimination is based on the fact that most, if not all, home economics teachers and students are female and that ultimately it was the only summer program eliminated.

The respondent argues that the 30 days eliminated from the employment terms occur after the fiscal year ends on July 1 and while the summer employment facilitates a continuation of instruction from the previous school term it is financed as part of the prior term. The respondent does not view the lack of the letter of appreciation in the grievants' files in any negative light but states that those letters which were issued simply reflect the events as they occurred. The respondent concedes that it has never given an employee the opportunity to be represented by legal counsel in employment related meetings and denies that home economic teachers were the only employees to lose extended employment terms as several coaches were also subject to the reductions.

²The grievants originally requested that these letters be removed from all personnel files but amended the request that they also be issued such letters.

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

Findings of Fact

1. Grievants are employed as vocational home economics teachers with extended employment terms of 240 days per year.

2. Due to a reduction in revenue the respondent determined that extended employment would be reduced for the 1987-88 school term.

3. At a meeting conducted by the administration and its attorney on March 10, 1987 the grievants, among others, were asked to sign an agreement to a reduction of their employment term from 240 to 210 days for the 1987-88 school term.

4. Grievants were not given an opportunity to be represented by legal counsel at this meeting.

5. The grievants understood that if they did not sign the agreement their positions would be abolished and reposted with a shorter employment term; that they would be placed on the preferred recall list and would assume the risk of not receiving the same assignment upon the reposting.

6. The grievants were given 24 hours to decide whether or not to sign the agreement.

7. The grievants signed and returned the agreement with a statement that it had been signed under duress and protest and that they retained all rights to grievance proceedings.

8. The statement was interpreted as having been signed involuntarily and termination for the grievants', extended employment was recommended to, and approved by, the board of education at a meeting held on March 30, 1987.

9. Those individuals who voluntarily relinquished extended employment terms were issued letters of appreciation, copies of which were placed in their personnel files.

Conclusions of Law

1. W. Va. Code, 18A-2-2 provides that the continuing contract of any teacher shall remain in full force and effect except as modified by mutual consent of the school board and the teacher unless and until terminated by a majority vote of the full membership of the board before April 1 of the then current year after the teacher has been given notice and the opportunity to be heard prior to the board's action.

2. W. Va. Code, 18-1-2 states that "...[t]he school year shall begin on the first day of July and end on the thirtieth day of June...". All reports, accounts and settlements are to be made with reference to the school year.

3. Grievants have offered no legal citations or other authority in support of their request that they be allowed the opportunity to have legal counsel at future employment related meetings and this board has no basis upon which to grant said relief.

4. Grievants have failed to establish that their failure to receive letter of appreciation to be discrimination as defined by W.Va. Code, 18-29-2(m).

5. Grievants have failed to show that their reduction in employment was an act of sexual discrimination, however, claims of this nature are properly filed with the Human Rights Commission. Kimberly Sall v. Wood County Board of Education, Docket No. 54-86-311-3.

Accordingly, this grievance is DENIED.

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

July 22, 1987

Sue Keller

SUE KELLER

Hearing Examiner