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THOMAS E. FLETCHER,
NORMAN SPRINGER and
LINDA KELSO

v.

Docket No. 02-87-017-02

BERKELEY COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants, Thomas E. Fletcher, Norman Springer and Linda Kelso are employed by the Berkeley County Board of Education as teachers. They presently serve as officers of the Berkeley County Education Association and in that capacity have filed this grievance in which they allege that the board of education has created and filled a new administrative position without having followed the guidelines set forth in W. Va. Code, 18A-4-8b. Following an evidentiary hearing held at level two the grievance was denied and ultimately appealed to level four on February

2, 1987.¹ Subsequent to a hearing being scheduled on February 18, 1987 both parties agreed that the matter would be submitted for a decision upon the record. Supplemental briefs were received on April the 8th and 27th, 1987, respectively.

At a meeting held on October 23, 1986 the Berkeley County Board of Education approved an organizational chart which included the position of Director of Vocational, Technical and Adult Education. The grievants argue that this was a newly created central office position and that the board was required to post and date the notice of this position in compliance with W.Va. Code, 18A-4-8b.

The respondent denies that a new position was created or that there was a vacancy in any existing position. Instead it characterizes the situation as "...the 'old' position of Director of Adult and Community Education was considered abolished

¹Briefs indicate that the level one grievance was filed on November 10, 1986 with Martha Grove, principal of Berkeley Heights Elementary School and that on November 13, 1986 Ms. Grove determined that she did not have the authority to resolve the matter and referred it to Superintendent Flanigan. Following receipt of the level two decision denying the grievance, it was appealed to level three on January 9, 1987. The board of education did not hear the grievance which was appealed to level four. Documentation of the level one proceedings and the level three response was not submitted by either party and is not a part of the record.

and the 'new' position of Director of Vocational, Technical and Adult Education absorbed the duties."² The respondent relies upon an interpretation of the State Superintendent of Schools which indicates that an assignment change at the director level could be made without posting so long as the employees mutually agreed to the change, they would be certified/qualified for their new duties, there would be no salary reductions and if the policy of the county board of education would permit it.³

The respondent further asserts that no alternative action could be taken as the individual who was formerly the Director of Adult and Community Education and is presently Director of Vocational, Technical and Adult Education could not be terminated

²Jeanette Sites, previously Director of Adult and Community Education is now Director of Vocational, Technical and Adult Education. The position of Director of Adult and Community Education does not appear on the organizational chart approved by the board on October 23, 1986.

³That interpretation dated September 30, 1985, was in response to the question of whether personnel changes at the director level could be made without posting when the employees mutually agree to the assignment changes. In addition to the response indicated above, the Superintendent included a footnote advising the county superintendent that if his intent is to reorganize his staff, an organizational chart should be approved by the county board of education. Once approved, the directors could be reassigned without a posting of their positions if they suffer no reduction of salary. The transfer procedure set forth in W. Va. Code, 18A-2-7 is to be followed.

or transferred as part of a reduction in force as her position still exists in its same form, more or less.

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 teachers employed by the Berkeley County Board of Education and also presently serve as officers of the Berkeley County Education Association.

2. In October, 1986 the board of education approved an organizational chart which included the position of Director of Vocational, Technical and Adult Education.

3. The position was not posted as a vacancy or newly established position.

4. The position of Director of Adult Education no longer appears on the organizational chart.

5. The individual who previously held the position of Director of Adult Education became the Director of Vocational, Technical and Adult Education as a result of the board's approval of the reorganization.

6. The position of Director of Vocational, Technical and Adult Education includes the duties of the Director of Adult Education plus duties in the area of vocational education formerly assigned to another employee.

Conclusions of Law

1. When duties performed by two administrative employees are combined into one position the result is a newly created position as evidenced by factors such as job title, duties, responsibilities, qualifications and certification.

2. W. Va. Code, 18A-4-8b requires that a county board of education is required to post and date all notices of all openings in established, existing or newly created positions in conspicuous working places for a period of not less than five working days. Carmelita M. Peters v. Mercer County Board of Education, Docket No. 27-86-144-1.

3. 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).

Accordingly the grievance is **GRANTED** and the Berkeley County Board of Education is Ordered to post and fill the position of Director of Vocational, Technical and Adult Education within statutory guidelines.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Berkeley 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: May 15, 1987

Sue Keller

SUE KELLER

Hearing Examiner