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ROBERT FORD, et al.

v.

Docket No. 54-87-077-3

WOOD COUNTY BOARD OF EDUCATION

DECISION

Orman Whited, Theodore Wigal, Arthur Frederick, Jack Keeling, Robert Beard, Robert Ford, Robert Crawford and Herbert Dawson, grievants herein, are employed by the Wood County Board of Education as vocational teachers at either Parkersburg High School or Parkersburg South High School. On or about April 8, 1987 grievants' WVEA representative filed two level four appeals in protest of the board's action on March 24, 1987 terminating the named parties' contracts of employment. The board timely moved for the dismissal of the grievances arguing that a remand would be improper since no lower level proceedings had been undertaken.¹ The grievances were dismissed without prejudice to grievants by Order dated April 28, 1987. Upon satisfying the procedural requirements of W.Va. Code, 18-29-1, et. seq., and decisions adverse to

¹ The two grievances, as originally filed, were Robert Ford et al. v. Wood County Board of Education, Docket No. 54-87-078-3 and Orman Whited, et al. v. Wood County Board of Education, Docket No. 54-87-077-3.

grievants, the grievance appeal was refiled to level four by letter dated June 17, 1987.² An Order was issued June 30, 1987 consolidating the two grievances into one docket number for hearing and decisional purposes; a level four hearing was set for July 28, 1987 but continued upon the board's motion. Subsequently, the parties determined the matter could be submitted for decision based on the existing record and supplementary statements, the last of which was received in early October 1987.

In early December 1986 grievants met with Edna Rothwell, County Vocational Director, who informed them of her intention to recommend to the board on December 9, 1986 that their 240 day contracts be reduced to 200 day contracts. She explained that the funds thus saved could be redirected for purchase of educational supplies and equipment for students and that vocational summer school would thereafter be offered in the same manner as regular summer school (T.27). At the December 9, 1986 meeting, the board was presented informational packets and a vocational summer school program report and recommendations regarding the program from the superintendent, assistant superintendent and Mrs. Rothwell.³

² A level two hearing was conducted May 20, 1987 and references thereto shall be cited (T.____).

³ Grievants submitted into evidence at level two the unofficial minutes of the December 9 meeting and the board additionally submitted the official minutes as well as a tape recording of the entire vocational education summer school report-presentation. The tape was subsequently transcribed and appears as Exhibit A in a bound volume (Vol. II) of relevant grievance documents appended to the level two decision.

It is apparent from the record that the presentation to the board on December 9 was quite lengthy, detailed and exhaustive. (See, T.31-34; Board Exhibits 2,3 and 4; Exhibit A, Vol. II.) At that time the board was not asked nor did it act on the administration's recommendations regarding the vocational summer school program.

Further meetings were held with grievants on March 5, 1987. At that time an explanation was given regarding forthcoming recommendations concerning termination of their present contracts and generally, a question/answer session about how they should proceed if they wanted a hearing on the proposed action and the like (T.36).

By written notice dated March 5, 1987 the school superintendent advised grievants that pursuant to W.Va. Code, 18A-2-2, he intended to recommend at the March 24, 1987 board meeting that their employment contracts be terminated for lack of need as a tuition free vocational summer school program could no longer be offered. The letter stated that they would be extended an opportunity to be heard by the board prior to its action on his recommendation (T.10; Grievant Exhibit 2). When grievants responded that they were desirous of a hearing, they were notified by letter to appear at the March 24, 1987 board meeting.

On March 24, 1987 the superintendent and assistant superintendent alluded to the December 9, 1986 presentation and presented their recommendations to the board that grievants be dismissed for lack of need. Although there was initially a question as to whether the grievants would be heard as a group or individually, they took a recess with their WVEA representative and subsequently indicated that grievant Frederick had been "elected by his peers to serve as spokesman." Frederick then addressed the board to demonstrate alternative money saving means whereby the present vocational educational programming could remain undisturbed. When Frederick finished his presentation grievants' WVEA representative thanked the board for its time, noted that the teachers' (grievants herein) presentation was concluded and requested a transcript of the proceedings.⁴

⁴ This portion of the board meeting was tape recorded and transcribed. It appears in the record as Exhibit D, Vol. II. Grievant Frederick's presentation was lengthy and can be found in pp. 6-13 of that transcript. Frederick provided the board handouts and used a chart to discuss the salaries of administrators and how it was derived; he demonstrated the cost-savings if administrators' terms of employment were reduced thereby allowing instructional programs to remain intact.

At the conclusion of grievants' presentation, board member Leachman asked Mrs. Rothwell to refresh the board regarding her December report, which she did, and some discussion followed (Exhibit D, Vol. II, pp. 15-17). A motion to act on the Superintendent's recommendation to terminate grievants' employment was carried by a 3-1 vote. Grievants were placed on a preferred recall list; subsequently all of grievants' former positions were posted in the appropriate curricular area for 200 day terms. On April 21, 1987 the board voted to reemploy all of the grievants to a 200 day teaching contract.

Grievants argue that the decision to terminate their 240 day employment contracts was made in advance of the board's official action on March 24, 1987 and that they were thereby prejudiced at the hearing proceedings conducted prior to the board's vote; they cite all of the various meetings prior to March 24 in which grievants were told of the pending personnel actions regarding their employment terms.⁵ Grievants especially note that they

⁵ The record establishes that administrative personnel attempted to apprise grievants of the problems and its recommended solutions in respect to the summer school situation; prior to the March 24, 1987 board meeting there had been no action on either staff or program reduction. Grievants' reliance on Wood, et al. v. Mason County Board of Education, Docket No. 26-87-095-1 is without merit in this situation as the facts are not analogous. In Wood, the school board had voted upon and approved programmatic and reorganizational changes that would affect certain school personnel prior to notification to those employees of pending recommendations that would alter their employment status.

did not have access to certain information and documents used by the board in its decision making process until the level two hearing, specifically a report prepared by the vocational director and presented to the board on December 9.⁶

Grievants further state that they were "denied their right to a true hearing" and argue that "witnesses" were not under oath, that a "key" document was not made part of the record and that the superintendent admitted that a "full" hearing was not conducted.⁷ Grievants finally contend that the reasons for their termination was not shown or substantiated March 24, 1987 and the board had the burden of proof thereof. They ask for reinstatement to their former 240 day contracts and any loss of wages or benefits thereto.

⁶ It is noted that grievants had the right, as does any citizen, to access information at the administrative offices of the county board of education. It appears that grievants made no requests for specific data and at the March 24, 1987 board meeting chose to offer alternatives to the elimination of the vocational summer school program rather than attack the veracity of the administration's representations regarding cost-benefits of conducting the vocational summer school program in the manner of regular summer school.

⁷ In its brief, the board stated that grievants did not have a "formal" hearing. As for the document, see Footnote 6, supra.

The board, in the first instance, raises a timeliness issue at level four and argues that the grievance should be denied as the grievants did not properly file within fifteen days of the grievable event, March 24, 1987. True, grievants did improperly file an appeal to level four and the board's motion for dismissal, rather than remand, concluded that the examiner could dismiss "without expressing an opinion as to whether it may now be filed at a lower level...." However, the Dismissal Order clearly granted the motion to dismiss "without prejudice to grievants."⁸ In addition, the timeliness matter was neither raised nor addressed by school officials at the level two adjudication and thus cannot now be fairly presented at level four when the submission is based upon the existing record of levels one, two and three.

In regard to the grievance issues, the board states that the grievants' dismissal was predicated on W.Va. Code, 18A-2-2. The statute provides that a teacher's continuing contract of employment may be terminated and the teacher dismissed for lack

⁸ In this instance grievants did not ignore the 15 day filing requirement, rather they filed to the level wherein they believed relief could be granted. Grievants requested that the board concur with their waiver as to lower level adjudications and the examiner identifies no intent on grievants' part to circumvent the grievance laws, rather an attempt, however presumptuous, to facilitate judicial economy.

of need based upon pupil/teacher ratio. The board claims it no longer has the resources to offer a tuition free summer school program for its students and the adult county population nor can it maintain a full-time vocational summer school staff when class enrollments meet neither the state's nor its own minimum size requirement. The evidence of record shows that over the past six years vocational summer school classes have numbered 64; the state's minimum enrollment of ten (10) was met only fifteen times, the county's minimum enrollment of fifteen (15) was met only three times. For 28 classes there were five or less high school students enrolled. In addition, previous outside funding for the program was no longer available in either 1985-86 or 1986-87.

The board contends that it also met the requirements of W.Va. Code, 18A-2-2 with respect to the adequacy of written notice to grievants stating cause for the recommended termination and that grievants were offered and availed themselves of an opportunity to be heard by the board prior to its action. The board's counsel notes that grievants did not ask questions of the administrators at the March 24 hearing or raise objections regarding the sufficiency of the administration's evidence but instead presented a well prepared alternative for the board's consideration.

In addition to the foregoing narration the following findings of fact and conclusions of law are appropriate.

FINDINGS OF FACT

1. Grievants herein are all employed by the board of education as vocational teachers at either Parkersburg or Parkersburg South high schools and prior to the 1987-88 school year held a 240 day contract.

2. In past years these teachers had taught vocational classes during the summer; the program was open to county high school students and adults on a tuition free basis. Prior to the summer of 1986, the board received outside funding to help implement the summer program.

3. Summer vocational classes were cancelled in the summer of 1986 and the teaching staff was made aware of administrative scrutiny of the summer program; instead of teaching the teachers worked on staff development.

4. Vocational administrators met with grievants on or about December 2, 1986 and the teachers were apprised of impending recommendations to be made to the superintendent and board of education in regard to the summer vocational program and their employment terms.

5. Education administrators presented a report on the summer vocational program to the board of education on December 9, 1986.

Although the board was presented the factual and financial data concerning the status of the vocational summer school program on December 9, 1986, no teachers were identified or recommended for dismissal nor was a vote requested for action on any programmatic changes.

6. On March 5, 1987 grievants met with school administrators concerning the impending recommendation that their contract terms be reduced. They were apprised as to procedures for requesting a hearing before the board. They received the written notice from the superintendent on that date stating a recommendation would be made to the board on March 24, 1987 that they be dismissed for lack of need pursuant to W.Va. Code, 18A-2-2.

7. The grievants indicated a desire to be heard on March 24, 1987 and all but one grievant was present on that night. Administrators presented their rationale and recommendations to the board to terminate the grievants' employment, place them on a preferred recall list and repost the various positions as 200 day employment terms.

8. Grievants herein were represented by their WVEA representative and did not choose to be heard individually. Instead, they elected a spokesperson who presented a well prepared, logical and rational plan to the board whereby administrative salaries and employment terms could be reduced and the resultant savings utilized for instructional programming and preservation of teaching positions and extended teaching contracts.

9. Grievants herein did not ask questions of the administrators who recommended their employment terms be reduced or address the sufficiency of the evidence presented by the administrators.

10. On March 24, 1987 the board of education was presented with two alternatives it could pursue in regard to vital fiscal and educational matters. It chose to accept the recommendations of school personnel and professionals who are charged with the responsibility of administering the needs of the school system.

11. Grievants herein have produced no evidence to support a finding that prior to March 24, 1987 the board of education had determined, by thought or action, to reduce their teaching contracts or that they should be reinstated to a 240 day contract as a matter of law.

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. Fain and Fazzini v. Harrison County Board of Education, Docket No. 17-87-082-2.

2. 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; Davis, et al. v. Monongalia County Board of Education, Docket No. 30-87-233.

3. The school board complied with the provisions of W.Va. Code, 18A-2-2 in the instant grievance and grievants herein have failed to prove that the board's action to terminate their extended teaching contracts for lack of need, rehire them to 200 day contracts and establish a needs based vocational summer school program was otherwise violative of school laws.

Accordingly, this grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wood 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 21, 1987

Nedra Koval

NEDRA KOVAL
Hearing Examiner