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JAMES FOX

v.

DOCKET NO. 45-87-175

SUMMERS COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, James Fox, was hired as a homebound teacher by the Summers County Board of Education in 1973 and has served in that position until the end of the 1986-87 school term. By letter dated March 6, 1987 Mr. Fox was informed the Superintendent of Schools, Mr. Tassos, would recommend to the Board that he be placed on a transfer list for reassignment at the beginning of the 1987-88 school term. He requested and was granted a hearing which was held on April 9, 1987. He was notified by letter dated April 24, 1987 that the Board had accepted the recommendation and he had been transferred from the position of homebound teacher to a position at Hinton High School. Mr. Fox then filed a grievance and proceeded through Levels I and II and the Board waived the

Level III hearing on June 11, 1987; a Level IV evidentiary hearing was held on November 6, 1987.¹

In February 1987 the Summers County Board of Education decided to make cuts in its professional staff because of declining enrollment and a loss of state funds. It chose to eliminate some positions, including the only two homebound teacher positions, and one was held by the grievant. The Board placed persons in those positions on a transfer list and at about the same time began terminating employees in order to make vacancies for those persons. One such employee was Rita Pack, who was teaching math at Hinton High School and grievant was transferred into her position. Grievant takes issue with the Board's actions and cites several actions on the part of the Board which he feels were improper:

1. The Board voted to eliminate on February 26, 1987 the only two homebound teacher positions in the County before he was informed and requested a hearing on his transfer and by doing so, the Board denied him his right to a full, fair and complete hearing.

¹After some confusion as to whether a Level III hearing had been held in this case and a dismissal from the docket of the West Virginia Education Employees Grievance Board, the grievance was reinstated on the docket on May 27, 1987.

2. He had not received an evaluation in accordance with West Virginia State Board Policy 5300 before his transfer.

3. The vacancy created by the termination of Rita Pack was not posted in accordance with W.Va. Code, 18A-4-8b.

The Board responds:

1. The vote taken by the Board on February 26, 1987 was not a final action taken on grievant's transfer as evidenced by the Board's action at a later hearing of rejecting some of the cuts in other departments.

2. The transfer was not made for disciplinary reasons and therefore Policy 5300 has no bearing on grievant's case.

3. The termination of Rita Pack was made in order to create a position for grievant and the posting of that vacancy would be a fruitless act and one not required by the W.Va. Code.

As the decision in this case is rendered on the grievant's first issue raised and the Board's response thereto, other points are not addressed.

A board of education must complete protest hearings regarding contemplated employee transfers before it acts on any recommendation for transfer in compliance with W.Va. Code, 18A-2-7. Lavender v. McDowell County Board of Education, 327 S.E.2d 691 (W.Va. 1984); Burge and Worrell v. Mercer County Board of Education, Docket No. 27-86-113. In the present case, the Board took final action on February 26, 1987 in eliminating two homebound teacher

positions and since there were only two such positions in the county, a hearing held to give one of those employees an opportunity to protest would be meaningless and much more is required of the Board in such circumstances.

In addition to the foregoing, the following findings of fact and conclusions of law are made.

FINDINGS OF FACT

1. Grievant has been employed by the Summers County Board of Education as a homebound teacher since the 1973-74 school term.

2. On February 26, 1987 the Summers County Board of Education, by unanimous vote, decided to eliminate two homebound teaching positions in the Summers County School system.

3. At the time of the Board's vote there were only two homebound teacher positions in the school system and one was held by grievant.

4. Grievant was notified that the Superintendent of Schools would recommend he be placed on a transfer list by letter dated March 6, 1987.

5. Grievant requested and was granted a hearing before the Board which was held on April 9, 1987.

6. The grievant was transferred from a homebound teacher position to a position at Hinton High School.

CONCLUSIONS OF LAW

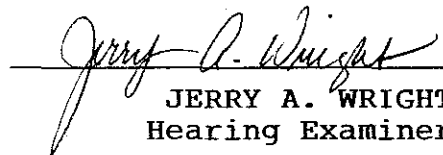
1. W.Va. Code, 18A-2-7 requires county school boards to conduct a hearing before final action is taken on an employee's proposed transfer.

2. Such hearings are to be detached and independent evaluations of the employee's case and if a decision has already been made, and the employees have been prejudged, the process is meaningless. Lavender v. McDowell County Board of Education, supra; Burge and Worrell v. Mercer County Board of Education, supra.

3. The Board's vote on February 26, 1987 to make a programmatic change in the school system and eliminate the two homebound teacher positions effectively rendered any transfer hearings held concerning the grievant's protest meaningless.

Accordingly, the grievance is **GRANTED** and the Summers County Board of Education is **ORDERED** to reinstate the grievant to his former position of homebound teacher.

Either party may appeal this decision to the Circuit Court of Summers County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code, 18-29-7). Please inform this office of your intent to do so in order that the record can be prepared and transmitted to the Court.


JERRY A. WRIGHT
Hearing Examiner

DATED: December 22, 1987