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RONALD FRAGALE

v.

DOCKET NO. 17-87-145-2

HARRISON COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Ronald Fragale, was employed by the Harrison County Board of Education as Director of Athletics/Extra Curricular Activities/Community-School/Physical Education/Health and Safety when he initiated grievance proceedings as a result of the elimination of this position and his reassignment as a physical education teacher for the 1987-88 school year. He alleges that the board of education has acted in violation of W.Va. Code, 18A-4-8b(a), 18A-2-2 and 18-5-32 by denying him a hearing on the position elimination prior to April 1, 1987 and by denying him a lateral transfer into another administrative position for which he is qualified.

¹Following a deposition taken on August 17, 1987 a briefing period was scheduled, however neither party had submitted any final written statement as of the date of this decision.

A "Stipulation of Facts" signed by both parties and made a part of the record indicates that the grievant was notified by letter dated March 9, 1987 that Superintendent Robert Kittle would recommend his transfer and reassignment for the 1987-88 school year as part of a reduction of professional staff. The grievant was notified by letter dated April 14, 1987 that he would be recommended for reassignment as a physical education teacher at South Harrison High School. Following a hearing held on April 27, 1987 the recommended transfer was approved.

The grievant presents two issues for consideration: first, whether the transfer was properly processed when a hearing was not conducted prior to April 1 and second, whether he is entitled to be laterally transferred to another director level position. The remaining county-wide administrative positions are the Directors of Food Services, Purchasing, Transportation and Finance and Treasurer. The grievant argues that his academic background and experience qualify him for a lateral transfer to any of these positions but that he is particularly qualified for the presently vacant position of Director of Finance and Treasurer.²

²The minimum qualifications listed on the job description of Director of Finance and Treasurer includes a B.S. degree in Business Administration or Accounting and a minimum of three years experience in central office budgeting and/or accounting.
(footnote continued)

Assistant Superintendent Robert Stemple, the immediate supervisor of the Director of Finance and Treasurer, concurs that the grievant does meet the academic qualifications of the position but whether he has earned the required experience in office budgeting or accounting may be a judgmental decision. The grievant has had responsibility for the county physical education budget for two years.

The board of education argues that the reassignment of the grievant to a teaching position was based upon an interpretation of the State Superintendent of Schools that employees do not earn seniority as central office administrators unless the position requires a specific endorsement to the administrative certificate. Therefore, they are not permitted to "bump" other central office administrative personnel during a reduction in force. Further, each director level position is unique, requiring different qualifications and responsibilities, making lateral bumping at this level almost impossible.

(footnote continued)

Applicants with M.B.A. or C.P.A. degrees are preferred. The grievant has earned a B.S. degree in Business Management which is equivalent to a Business Administrative program and has worked with the County Physical Education budget for two years.

In addition to the foregoing recitation the following shall serve as specific findings of fact.

Findings of Fact

1. Grievant has been employed by the Harrison County Board of Education since 1977 when he was hired as a teacher, a position he held until 1981 when he was appointed Coordinator, Community Use Facilities. In 1986 the grievant assumed additional duties as Coordinator of Physical Education and Health and Safety. In April, 1986 the grievant's position was upgraded to Director of Extra-Curricular Activities/Community-School/Physical Education/Athletics/Health and Safety.

2. In March, 1987 the grievant was notified that he would be recommended for transfer and reassignment for the 1987-88 school term as part of a reduction of the professional staff. He was also advised of his right to a hearing under W.Va. Code, 18A-2-7.

3. Following a hearing held on April 27, 1987 the board of education approved the recommendation that the grievant be transferred to the position of physical education teacher at

South Harrison High School effective the 1987-88 school year.

4. The State Superintendent of Schools has determined employees do not accrue seniority as central office administrators unless the position requires a specific endorsement to the administrative certificate. There has been no showing that the grievant or any other director was required to possess a special endorsement for their positions.

Conclusions of Law

1. The grievant was properly and timely given notice and a hearing prior to his transfer and reassignment as required by W. Va. Code, 18A-2-7.

2. Interpretations of the State Superintendent of Schools are considered as persuasive authority and will be applied unless clearly erroneous. Smith v. Logan County Board of Education, 342 S.E. 2d 685 (W.Va. 1985); Raymond Dunleavy v. Kanawha County Board of Education, Docket No. 20-87-040-1; Lawrence Martin v. Mason County Board of Education, Docket No. 26-87-156-3.

3. As the grievant earned no seniority as a county office administrator he could not bump another director nor is he entitled to a lateral transfer at this level.

4. The board of education has acted in compliance with W.Va. Code, 18A-4-8b by reassigning the grievant to a job classification which he previously held.

Accordingly, the 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 October 19, 1987

Sue Keller

SUE KELLER
Hearing Examiner