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DAVID E. FRIEND

v.

Docket No. 39-87-001-2

PRESTON COUNTY BOARD OF EDUCATION

DECISION

Grievant, David E. Friend, has been employed by the Preston County Board of Education since 1969 and has been assigned as head teacher/guidance counselor at Rowlesburg High School since 1985. Mr. Friend alleges that his position is primarily administrative in nature and requests that he be reclassified as principal of the school. The grievance was denied at level two and the board of education waived consideration of the matter to level four; an evidentiary hearing was held on February 5, 1987.

The grievant argues that he performs duties similar or identical to other principals as he evaluates teachers, disciplines students, completes reports, supervises evening activities and is responsible for the academic program at the school.

The respondent argues that W. Va. Code, 18-5-13 grants county boards of education broad authority in the administration of the school system and that the board could not justify the hiring of a full-time principal for a school of low enrollment which has been scheduled for closing in approximately two years. Therefore, it is the board's position that the administrative duties were temporarily assumed by the grievant who knowingly and willingly entered into a contract for the position of head teacher/guidance counselor.

Testimony offered by both parties indicate that reclassifying the grievant to the position of principal would guarantee him an extended employment term and a state salary supplement awarded to principals. The reclassification would result in no increased cost to the respondent as the grievant presently receives the county salary supplement awarded to principals.

The grievant states that if he is reclassified as principal he is willing to continue with his duties as guidance counselor which he estimates to require twenty-five to thirty percent of his work day.¹

¹As noted by the respondent, it is sometimes difficult to separate the grievant's administrative and counseling duties, e.g. the disciplining of students.

Findings of Fact

1. Grievant was appointed as head teacher/guidance counselor at Rowlesburg High School in August, 1985. At that time he did not possess administrative certification.

2. The W. Va. Department of Education issued the grievant administrative certification with a specialization as principal, grades 7-12, effective August 8, 1986.

3. The grievant requested that the Preston County Board of Education reclassify his position to principal; however, the board declined to do so.

4. The board has granted the grievant an extended employment term and the county salary supplement paid to principals.

5. While a change in classification would result in no increase in cost to the board of education, the grievant would receive an additional salary supplement from the state.

6. The grievant's duties as guidance counselor require less than one third of his work day and are often difficult to separate from his administrative duties.

7. The board's refusal to classify the grievant as a principal is based on the scheduled closing of the school in approximately two years and the grievant's contractual status as head teacher/guidance counselor.

Conclusions of Law

1. While county boards of education possess substantial discretion in personnel matters that discretion must be exercised reasonably and not arbitrarily or capriciously. Dillon v. Board of Education of the County of Wyoming, 351 S.E. 2d 58 (W.Va. 1986); State ex rel Hawkins v. Tyler County Board of Education, 275 S.E. 2d at 911 (W.Va. 1980) and Beverlin v. Board of Education, 158 W.Va. 1067, 216 S.E. 2d 554 (1975).

2. The respondent acted arbitrarily and capriciously in not reclassifying an acting administrator as a principal simply because the school is scheduled for closing sometime in the future and because he had earlier entered into a contract as head teacher/guidance counselor prior to receiving administrative certification.

3. The failure to place an employee in the same classification as other employees who perform the same duties results in discrimination as defined by W.Va. Code, 18-29-2(m).

Accordingly, the grievance is GRANTED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Preston 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: March 12, 1987

Sue Keller

SUE KELLER
Hearing Examiner