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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
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JIMMIE GRAHAM

v.

Docket No. 55-87-183

WYOMING COUNTY BOARD OF EDUCATION

DECISION

On May 4, 1987 the Wyoming County Board of Education voted to abolish grievant's position of assistant transportation director and terminate his employment, effective July 1, 1987. Grievant had requested a hearing prior to this action and filed an appeal with the Education Employees Grievance Board on June 25, 1987 alleging, inter alia, that the board had wrongfully denied a hearing. An evidentiary hearing at level four was conducted on August 28, 1987 in Beckley.¹

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The hearing had been continued on motion of the school board and rescheduled on August 28. Proposed findings of fact and conclusions of law were filed by counsel for the respective parties on September 25, 1987.

Grievant was initially employed as inventory supervisor in the transportation department in 1981 and thereafter assumed the duties of the assistant director of transportation in 1984.² On March 27, 1987 Gerald L. Short, interim superintendent of schools, personally delivered a letter to grievant informing him that he (Short) intended to recommend to the board of education that his position be eliminated, effective July 1, 1987.³ The decision to eliminate the position was predicated upon reduced enrollment and grievant was informed that under the law he could:

...within 10 days after receiving his notice request a formal statement of reasons for not having been recommended for rehiring. After receiving these reasons you may desire a hearing before the Board of Education, and if so, a meeting will be scheduled.⁴ (Joint Exhibit No. 2).

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The continuing contract of employment for the service personnel position is dated August 2, 1984 at an annual salary of \$31,200.00 for 261 days. (Joint Exhibit No. 1).

In this position grievant was responsible for the discipline, evaluation, etc. for approximately seventy five school bus operators serving twenty five schools in the county.

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Counsel for grievant also asserts that all of the actions taken by Mr. Short concerning grievant are void and illegal because he is not serving in accordance with the provisions of W.Va. Code, 18-4-1. It is unnecessary to reach this issue due to the disposition of the grievance on the basis of the due process issue.

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The letter erroneously referred to W.Va. Code, 18A-2-8a and advised grievant that he would be placed upon the preferred recall list, thereby permitting grievant to bid upon openings as they arose. However, counsel for grievant contends that this was not done.

In accordance therewith grievant requested a formal letter setting forth the reasons the position was being eliminated and on April 10, 1987 Mr. Short responded, in part, as follows:

Since Wyoming County has lost students we must reduce our employees to such an extent that the loss is equalized within the monies available. The decision to reduce in force within the central office complex was necessary just as it was necessary to reduce forces throughout our schools. Researching the various departments we found that the transportation department and the Chapter I program were the only two departments that had an assistant director. Using seniority as a basis for reducing forces in the assistant director position, your position as assistant transportation director was eliminated. (Joint Exhibit 3)⁵

On April 21, grievant requested a formal hearing and on April 22 Mr. Short made arrangements for a hearing for grievant with the school board at 9:00 a.m. on April 27, 1987. A few hours later on April 22 grievant advised Mr. Short that he had spoken with Mr. Kenneth Legg, director at the school service personnel association, and was advised that an association attorney would not be available on April 27 because of prior commitments. Grievant telephoned Mr. Short, explained his dilemma and understood that Mr. Short would attempt to reschedule the hearing.

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At the level four hearing Mr. Short acknowledged that he had erroneously compared grievant's position with the assistant director of the Chapter I program, a professional classification. Although the director of that program is a first cousin of the interim superintendent, counsel for grievant imputes no wrongdoing by Mr. Short on that basis.

On Thursday, April 23, grievant went to Mr. Short's office but was unable to speak with him; thereafter, Mr. Short informed grievant that Mr. Lookabill, the board president, would not change the hearing date. On Sunday, April 26, grievant telephoned Mr. Short at home to inform him he could not obtain the services of a lawyer and did not want the board to convene for a hearing at which grievant would not be present. Mr. Short assured grievant that he had scheduled matters on the agenda other than the hearing for grievant; grievant attended the board meeting on April 27 but did not participate therein.

Interim superintendent Short testified that he scheduled the hearing for April 27 with the consent of grievant and the hearing could not be rescheduled later the same week because three board members were unavailable on those days. The hearing was not continued or rescheduled on May 4, 1987, the regular board meeting date, because grievant did not make the request.

Counsel for grievant contends that verbal notice to grievant on the morning of April 22 that his hearing would be held at 9:00 a.m. on April 27 constituted two days notice and gave grievant only two working days to obtain appropriate counsel; that Mr. Short acknowledged that grievant had been the last employee to be notified of the proposed reduction in force and because he (Short) erroneously proceeded under the wrong statutory provision the entire procedure was invalid. Counsel contends the hearing was required to be held prior to the first day of April in accordance with W.Va. Code, 18A-2-6.

Counsel for the school board contends that there was no due process violation by the school board because grievant agreed initially to the hearing date of April 27 and did not request a hearing on May 4 when he became aware of the unavailability of counsel to assist in his hearing on April 27. Counsel contends the appropriate statutory provision is W.Va. Code, 18A-2-7.

In addition to the foregoing factual account the following specific findings of fact are incorporated herein.

FINDINGS OF FACT

1. Grievant was employed by the Wyoming County Board of Education in 1981 as inventory supervisor in the transportation department and thereafter assumed the duties of assistant transportation director in 1984.

2. On March 27, 1987, Gerald L. Short, interim superintendent of schools, informed grievant that it would be his recommendation that grievant's position be eliminated, effective July 1, 1987.

3. Grievant requested a formal hearing on April 21 and on April 22 Mr. Short made arrangements for a hearing on April 27, 1987. Grievant agreed to the hearing date but learned later the same day that a lawyer familiar with school service personnel law

and procedure was not available to assist grievant at the hearing on April 27. Grievant communicated that to Mr. Short and requested that the hearing be rescheduled for April 30 or May 1.

4. Mr. Short was unable to reschedule the hearing on April 30 or May 1 due to the unavailability of three of the board members and the hearing took place on April 27 without grievant's participation.

5. Grievant made a good faith effort to protect his rights under the limited time afforded grievant to assert those rights.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-2-7 and W.Va. Code, 18A-2-6 each afford a school service employee the right to a meaningful hearing prior to final action of the school board thereunder.

2. The giving of two working days notice to an employee of a hearing whereby the employee's position is in jeopardy and the refusal to reschedule said hearing in order that the employee can obtain counsel familiar with school law is an arbitrary act and is violative of due process and W.Va. Code, 18A-2-6 and W.Va. Code, 18A-2-7. Hedrick v. Board of Education, 332 S.E.2d 109 (W.Va. 1985).

3. The notice and hearing provisions of W.Va. Code, 18A-2-6 and W.Va. Code, 18A-2-7 must be complied with strictly. Morgan v. Pizzino, 256 S.E.2d 592 (W.Va. 1979); Wayne County Board of Education v. Tooley, 276 S.E.2d 26 (1981).

The grievance is granted and it is accordingly **ORDERED** that the action of the school board in abolishing grievant's position and terminating his employment is void and of no force and effect. Grievant is reinstated to his former position as assistant transportation director with appropriate back pay, less any appropriate set off.

Either party may appeal this decision to the Circuit Court of Kanawha County or Wyoming County and such appeal must be filed within thirty 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.

A handwritten signature in cursive script, reading "Leo Catsonis", is written over a horizontal line.

LEO CATSONIS
Chief Hearing Examiner

Dated: October 30, 1987