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DONALD KOPP, II

v.

DOCKET NO. 17-87-148-2

HARRISON COUNTY BOARD OF EDUCATION

D E C I S I O N

The grievant, Donald Kopp, II, was hired by the Harrison County Board of Education on August 27, 1982 and was assigned to the position of Driver Education Instructor at Washington-Irving High School for the 1982-83 school term; he served in that position through the 1986-87 school term. He was also hired as Assistant Boys Basketball Coach at the school and performed those duties for the same school terms and has also been Head Girls Basketball Coach for Washington-Irving since the beginning of the 1983-84 term.

In the spring of 1987 he was notified that he was being considered for transfer and was granted a hearing before the Harrison County Board of Education on April 29, 1987. After the hearing, the Board voted to accept the recommendation of the Superintendent

of Schools to transfer the grievant to Presley Ridge School.

The grievant then proceeded through Levels I and II of the grievance procedure and the Board waived Level III proceedings; both parties agreed to submit the case for decision on the record and briefs on July 13, 1987.

The Harrison County Board of Education in the spring of 1987 apparently decided reductions in its professional staff were needed and rather than first terminating the least senior professional employees countywide, it identified positions it wished to eliminate and those positions were held by senior employees. One such position was the Drivers Education Instructor position at Roosevelt-Wilson High School. Mr. Mark Dieringer held this position and he was placed on a transfer list. Mr. Dieringer is certified in the areas of Health Education K - 12 and Safety Education 7 - 12 and when the Board initiated its so-called "bumping process" and because Mr. Dieringer had more seniority, he was allowed to replace the grievant in his position as Drivers Education Instructor at Washington-Irving High School. The grievant then went through the same process and replaced a Physical Education Instructor at Presley Ridge School.

Both parties substantially agree to these facts and essentially focus their arguments on differing interpretations of Harrison County Board of Education Policy for Professional Personnel Transfer (Policy GBM) and its applicability to the grievant's transfer from Washington-Irving High School.

The pertinent part of Policy GBM reads as follows:

Transfers will be made for regulation of the school system and in emergencies. The best interests of the school system must be intended. When the purpose of a transfer is to reduce the number of professionals assigned to a school or program, the professional(s) with the least amount of county seniority in the referenced licensure or certification who is(are) teaching in the referenced subject, or is(are) teaching in the referenced program will be the first candidate(s) for transfer and subsequent assignment. However, when the candidate(s) is(are) identified by the Superintendent as being involved with extracurricular assignment of head football, basketball or baseball coach, or has a certification which would cause it not to be in the best interest of the school system to propose a transfer or when a teacher has been teaching in a subject area at the request of the principal, as a temporary assignment, in order to solve a staffing problem in the school and where the subject is not the teacher's "usual or regular assignment"; and when this teacher is the least seniored and the subject area is one that has been identified for reduction, then the next candidate with the least amount of county seniority in the referenced licensure or certification subject area will be proposed.

The grievant takes issue with the Board's action in this case and argues:

1. When transfers are made in Harrison County, Policy GBM comes into play and that policy grants certain employees a preference, namely, those employees who coach a major sport at a particular school.
2. The grievant meets the Policy GBM's requirements for this preference since he was the Head Girls Basketball Coach at Washington-Irving.
3. The Harrison County Board of Education is required to strictly adhere to the policies and

laws governing school employees which it lawfully adopts, citing Powell v. Brown, 228 S.E.2d 220 (W.Va. 1977).¹

The Board responds and argues:

1. Its actions were in compliance with Policy GBM and other suggested steps proposed by the grievant would have violated W.Va. Code, 18A-4-8b(a), which the Board interpreted as providing the proper procedure for transfers when a board votes to reduce its professional staff.
2. A reduction in force was initiated at Roosevelt-Wilson High School and not at grievant's school, Washington-Irving, and Policy GBM applies only to cases where a transfer becomes necessary at a particular school because of a need for a reduction in force at that same school.
3. In effect the Harrison County Board of Education has interpreted its own personnel policy and that interpretation should be granted deference upon review at Level IV.

When read in its entirety, it is clear Policy GBM was intended to provide preferences in the transfer process for coaches of major sports and other teachers engaged in special assignments. The language is not so clear on when the preference is to be granted. The parties to this grievance disagree on the policy's meaning in regard to the type of transfer which must be initiated before

¹The Powell decision involved a probationary teacher who was denied a hearing when his contract was not renewed. The Court ruled, despite the absence of a statutory right to a hearing at the time, the Ritchie County Board of Education personnel policy afforded "all employees" the right to such a hearing and the Board must "abide by the remedies and procedures it properly establishes to conduct its affairs".

the exemption can be given. The Board contends W.Va. Code, 18A-4-8b(a) provides a procedure for any transfers made in this case since the Board was seeking to reduce its number of professional staff. That section of the W.Va. Code only requires a school board to terminate the least senior employees countywide and W.Va. Code, 18A-2-7 sets forth the guidelines for transfers. Regardless of whether or not the least senior employees in a county are terminated, there is only one type of transfer, namely, those made for the regulation and benefit of the school system. The Board in this case became involved in a "bumping process" only because it chose to eliminate positions before terminating the least senior employees. It follows that Policy GBM became operative when the Board decided to transfer the grievant, a Head Girls Basketball Coach, despite the characterization of that transfer as one under a "reduction in force action." The Board was required by its own policy to look elsewhere for a position for the displaced teacher of Health and Safety Education at Roosevelt-Wilson High School.

The Harrison County Board of Education, in adopting Policy GBM, obviously felt a preference granted coaches in major sports would provide a measure of stability in those extracurricular activities and was for the benefit and regulation of the school system as a whole. It was not required by law to do so but a school board is held to the remedies and procedures it properly establishes to conduct its affairs. Powell v. Brown, supra.

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

FINDINGS OF FACT

1. The grievant, Donald Kopp, II, was hired by the Harrison County Board of Education on August 27, 1982 and was assigned to the position of Drivers Education Instructor at Washington-Irving High School and held that position through the 1986-87 school term.

2. The grievant was hired as Head Girls Basketball Coach at Washington-Irving High School at the beginning of the 1983-84 term and has held that position continuously since that date.

3. The Harrison County Board of Education eliminated the position of Drivers Education Instructor at Roosevelt-Wilson High School in the spring of 1987 and transferred the person holding that position, Mark Dieringer, to the position of Drivers Education Instructor at Washington-Irving High School.

4. The Board then transferred the grievant to the position of Physical Education Instructor at Presley Ridge School.

CONCLUSIONS OF LAW

1. A county school board must abide by the remedies and procedures it properly establishes to conduct its affairs.

Powell v. Brown, supra.

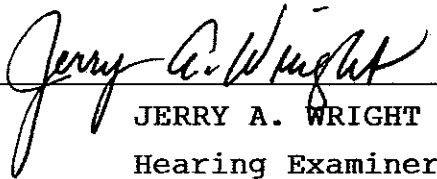
2. Harrison County Board of Education Policy for Professional Personnel Transfer, Policy GBM, grants a teacher exemption from transfer when that teacher is also the head coach of football, basketball or baseball at a particular school.

3. Grievant was Head Girls Basketball Coach at Washington-Irving High School when transferred to Presley Ridge School and as such should have been granted the exemption under Policy GBM.

4. A county school board's adherence to the transfer provisions of W.Va. Code, 18A-2-7 and its own properly established personnel policies is not a violation of W.Va. Code, 18A-4-8b(a), which requires a board to terminate the least senior employees county-wide when it is required to make reductions in its professional staff.

Accordingly, the grievance is **GRANTED** and the Harrison County Board of Education is **ORDERED** to reinstate the grievant, Donald Kopp, II, to his former position at Washington-Irving High School.

Either party may appeal this decision to the Circuit Court of Harrison 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: 12/11/87