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FRANCES MAGNONE

v.

Docket No. 15-87-007-3

HANCOCK COUNTY BOARD OF EDUCATION

DECISION

Grievant, Frances Magnone, has been employed as a teacher by the Hancock County Board of Education since August, 1975. On October 30, 1986 she filed a level one grievance alleging the board had improperly transferred her to a teaching position that was not posted and that she did not want. The grievance was denied at levels one, two and three and appealed to level four in early 1987. The parties waived an evidentiary hearing and submitted the matter for decision based on the existing record.¹

¹ A level two hearing was conducted on November 17, 1986 and the respondent stands on the level two determinations and decision filed approximately one week later; grievant's representative filed proposed findings of fact and conclusions of law on or about April 15, 1987.

Reference to the level two hearing shall be cited as (T.____).

Grievant is certified to teach social studies, 7-12, drivers education, 7-12, and Spanish, 7-9. For several years prior to the 1985-86 school year, grievant had taught full-time drivers education at Oak Glen High School. In the spring of 1985 she was given a transfer notice and was later assigned to teach drivers ed part-time at Oak Glen and to teach Spanish part-time at two different junior high schools.²

Grievant expressed a host of reasons why she thought the transfer was improper: there were less senior teachers at Oak Glen who retained drivers ed courses and who had schedules more desirable than hers; the junior high positions, to her knowledge, had never been posted; she had instituted a driving program at Oak Glen that others would not implement; the high school assigned many teachers to teaching areas for which they were not certified, but would not let her teach Spanish there because she was only certified for junior high; and finally, she did not feel qualified or competent to teach Spanish again since it had been four or five years since she last taught the subject, it was her minor teaching field, and she never liked teaching it anyway.³

² Prior to her assignment to Oak Glen she had taught Spanish at New Cumberland Junior High School. The new assignment returned her to New Cumberland and also Wells Junior High School.

³ Grievant also stated that she had coached at the high school "as a favor" to some people but resigned after several years. She believes that had she continued her coaching activities she would not have been transferred from her full-time assignment at Oak Glen.

Grievant also testified that she had had a transfer hearing in 1985 but did not embark upon a grievance at that time since she thought she had no recourse. She stated that she had recently learned of cases like hers and that the laws had changed and she would now "give it a shot." (T.14).⁴

Grievant asserts that under the existing circumstances, her transfer was arbitrary, capricious, unnecessary and not in the best interest of the school system. She asks that she be reinstated to her full-time drivers education position at Oak Glen High School.

The respondent board first and foremost raised a timeliness issue in this grievance and refutes grievant's contention that the grievable event can be termed "a continuing practice giving rise to a grievance."⁵

The respondent further determined in its level two decision of November 21, 1986 that it properly transferred grievant in 1985 in accordance with law and regulation.

In addition to the foregoing recitation the following findings of fact and conclusions of law are appropriate.

⁴ Prior to the enactment of W.Va. Code, 18-29-1 et seq., there was a grievance procedure in place in Hancock County but grievant did not avail herself of any possible remedy for over one and one-half years.

⁵ Grievant contends in her level four brief that she "first became aware that she had been aggrieved" after reading a NEA school journal in late 1986. However, her earlier testimony at the level two hearing clearly established that she did not agree with the 1985 decision to transfer her to the three-school assignment; that she participated in a transfer hearing and, of her own volition, decided not to protest further.

FINDINGS OF FACT

1. The grievant is a multi-certified teacher who has been employed by the Hancock County Board of Education since 1975.

2. Grievant originally taught Spanish and other courses on the junior high level; she taught a split school assignment of Spanish and drivers education for a time and full-time high school drivers ed at Oak Glen from 1981 to 1984-85.

3. In 1985 grievant was placed on a transfer list, pursuant to W.Va. Code, 18A-2-7, in anticipation of transfer to a split teaching assignment which included one-half time teaching drivers ed to students at Oak Glen High School and the remainder of her schedule teaching Spanish to students in two different county junior high schools.

4. Grievant protested the pending transfer and had a hearing on the matter before the board of education. The transfer action proceeded and grievant taught the split schedule during the 1985-86 school year, was rescheduled in like manner for the 1986-87 school year and remains in that position.

5. In 1985 grievant was unhappy with the proposal to transfer her and did not agree with the board's decision to do so. Although she said she believed she had no recourse to the board's action, just cause was not demonstrated for her failure to exercise her grievance rights at that time.

6. Grievant has failed to timely file a grievance and presents no facts, evidence or law to warrant a consideration of the grievance issues at this time.

CONCLUSIONS OF LAW

1. W.Va. Code, 18-29-4 requires that grievance proceedings be initiated within fifteen (15) days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance. Tammy Scroggs v. West Virginia University, Docket No. BOR1-87-054-2.

2. It is incumbent upon an employee to timely pursue his rights through the grievance process or to demonstrate a valid reason for the delay. Ruth Murphy v. Mingo County Board of Education, Docket No. 29-86-341-4; Scarberry v. Mason County Board of Education, Docket No. 26-86-291-1.

3. The grievant has failed to timely file a grievance or to demonstrate a valid cause for the delay.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock 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:

September 3, 1987

Nedra Koval

NEDRA KOVAL
Hearing Examiner