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KATHY MILLER

v.

Docket No. 54-86-298-3

WOOD COUNTY BOARD OF EDUCATION

DECISION

Grievant, Kathy Miller, is employed by the Wood County Board of Education as an aide. She filed a grievance in August 1986 alleging violation of W.Va. Code, 18A-2-6 in that she was not provided a continuing contract upon completion of three years of acceptable employment. The grievance proceeded to level four and was submitted for decision based on the existing record and supplementary argumentative materials, the last of which was received March 16, 1987.

The facts in this grievance are not in dispute. Grievant was employed by the respondent board in 1982 as a substitute aide and during the 1982-83 school term worked just a few days. During the next year, 1983-84, she worked full-time at one assignment/site but retained the substitute aide designation. In 1984-85 grievant was employed as a regular full-time aide assigned to Parkersburg High School where she has remained. She contends that upon completion of her third year of full-time and acceptable

employment, i.e., at the end of the 1985-86 school term, she was entitled to continuing contract status pursuant to W.Va. Code, 18A-2-6: "After three years of acceptable employment, each service personnel employee who enters into a new contract of employment ... shall be granted continuing contract status". Grievant maintains that the plain language of the statute is clear and without ambiguity and she meets the criteria set forth. Grievant also relies on a ruling made by the State Superintendent of Schools wherein it was determined that when a substitute teacher worked on a full-time basis rather than merely as needed, the teacher was entitled to continuing contract status and that the same rule applies to service personnel.

Counsel for respondent contends that according to W.Va. Code, 18A-2-5 school service personnel contracts must distinguish between regular full-time employment and substitute employment and also designate the employment status as probationary or continuing. Respondent relies on the existence of W.Va. Code, 18A-4-15 which sets forth the criteria for employment of substitute service personnel to further the argument that substitute and regular employment differ.¹ Accordingly the position of the Wood County Board of Education is that grievant's first and second probationary contract (1982-83, 1983-84) was for the position of substitute

¹Counsel overlooks the essence of W.Va. Code, 18A-4-15 which clearly indicates how substitute and regular employment differ. The statute provides that substitutes shall be employed for temporary assignments and basically limits such assignments to twenty or thirty days. Obviously, respondent's employment of grievant as a substitute aide in a full-time capacity at Gilhon School in 1983-84 did not abide by these mandates.

aide and that subsequently she worked under two probationary contracts (1984-85, 1985-86) as a regular full-time aide, thus in the present (1986-87) year she is working under her third full-time probationary contract and would not be entitled to a continuing contract as regular full-time aide until she has completed this, her third year.

Finally, counsel points out the illogical results of pursuing grievant's line of reasoning. A substitute service personnel having only worked several days in each of three years of probationary employment could then claim he or she had satisfied the requirements for a continuing regular contract when in fact had only done so for a continuing contract in substitute employment.²

Decisions and interpretations rendered by the State Superintendent of Schools and relied upon by both parties to this grievance were contradictory and not in conformance with the facts of grievant's dispute and were therefore inconclusive and not applicable.

In addition to the foregoing factual recitation, the following specific findings of fact are appropriate.

²This argument ignores the factual basis of this grievance. Grievant's employment in 1983-84 at Gilhon School may have been under a substitute's contract but her assignment and performance was in a regular full-time capacity. She does not argue that the "on call," sporadic and temporary substitute work assignments of the previous 1982-83 school year be credited as having met the requirements for fulfilling any portion of probationary tenure for regular, full-time employment.

FINDINGS OF FACT

1. Grievant, Kathy Miller, has been employed by the Wood County Board of Education since 1982. During the 1982-83 school term she worked as a substitute aide for only a few days.

2. During the 1983-84 school term, her second year of employment, grievant held a probationary substitute aide contract but was assigned to work full-time at one school site.

3. Grievant was then employed as a regular full-time aide assigned to Parkersburg High School for the 1984-85 and 1985-86 school terms.

4. When presented to her in the summer of 1986, grievant's contract for the 1986-87 school term designated her employment as probationary.

5. Grievant has proven that she worked three years as an aide at a permanent site and in a full-time capacity with the completion of the 1985-86 school year.

CONCLUSIONS OF LAW

1. The assignment of service personnel substitutes for temporary duties on an "as needed" basis is accomplished via a rotating system with the most senior substitute in the particular category of employment given priority. W.Va. Code, 18A-4-15.

2. Pursuant to W.Va. Code, 18A-4-15, substitute service personnel are generally limited to twenty or thirty working days employment on each temporary assignment.

3. Substitute service employees employed on a regular basis to fill the position of an absent regular service employee shall be given regular employee status when the tenure of employment extends beyond twenty days. W.Va. Code, 18A-4-15(2).

4. Grievant worked three years under regular employment status and after three years of acceptable employment, each service personnel employee who enters into a new contract of employment with the board shall be granted continuing contract status. W.Va. Code, 18A-2-6.

Based on the foregoing and the record in its entirety, this grievance is GRANTED and grievant shall be accorded a continuing contract for regular service personnel employment as an aide effective the 1986-87 school term.

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

May 13, 1987

Nedra Koval

NEDRA KOVAL
Hearing Examiner