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BARBARA OSBORNE

v.

DOCKET NO. 55-87-200

WYOMING COUNTY BOARD OF EDUCATION

DECISION

Grievant, Barbara Osborne, is employed by the Wyoming County Board of Education as a substitute teacher's aide. Ms. Osborne filed a level one grievance on March 19, 1987 in which she alleged a violation of W.Va. Code, 18A-4-15 when she was bumped from an assignment by another substitute aide. The grievance was denied at level two and appealed to level four on July 10, 1987. A level four hearing was conducted on September 22, 1987.

The grievant began work as a substitute aide assigned to a special education class on October 1, 1986. The regular aide was ill and the first substitute, Catherine Rose, had trans-

ferred to a kindergarten position.¹

The grievant continued to work in the special education position until March 5, 1987 when she was replaced by Ms. Rose.² The grievant argues that there is no statutory provision for bumping by service personnel, making the reassignment of Ms. Rose back to the special education position improper and that she was deprived of any due process in removing her from the position.

The respondent argues that the grievant was not bumped but had been erroneously assigned to the position when Ms. Rose was improperly transferred. As county policy requires that a substitute remain assigned to a position and does not allow "transferring" Ms. Rose was reinstated to her original assignment.

¹The undisputed testimony of the grievant was that Ms. Rose had worked as the special education substitute one or two days before she voluntarily transferred to the kindergarten assignment. The position of kindergarten aide was vacant at that time and Ms. Rose was apparently hoping to be awarded the position. Approximately a week to a week and a half after transferring the kindergarten position was filled by another individual.

²Ms. Rose initiated grievance proceedings on January 9, 1987 resulting in her being reinstated and into the special education position to which she was originally assigned. According to Assistant Superintendent William Bailey, Ms. Rose had not previously filed a grievance as she was unaware of her right to do so.

In addition to the foregoing it is appropriate to make the following specific findings of fact and conclusions of law.

Findings of Fact

1. The grievant is employed by the Wyoming County Board of Education as a substitute teacher's aide.

2. The grievant was assigned to substitute in a special education class beginning October 1, 1986.

3. Another aide, Catherine Rose, had previously accepted the special education position and had worked one or two days before transferring to a kindergarten position. At this time the grievant was called for the special education assignment.

4. Ms. Rose was replaced by a regular employee shortly after assuming the kindergarten position. In January 1987 she filed a grievance which resulted in her reinstatement to the special education position.

5. The reinstatement of Ms. Rose to the special education position has resulted in the grievant losing a long-term substitute assignment.

Conclusions of Law

1. W.Va. Code, 18A-4-15 provides for the employment of service personnel substitutes but does not permit "bumping" of these employees.

2. The replacement of the grievant by another substitute aide in a position which she had held for more than five months was improper.

Accordingly, the grievance is GRANTED with the grievant to be reinstated to the position if it remains filled by a substitute and recovering all lost wages, less any appropriate set off.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wyoming 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 November 23, 1987

Sue Keller

SUE KELLER
Hearing Examiner