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RITA PACK

v.

Docket No. 45-87-071

SUMMERS COUNTY BOARD OF EDUCATION

D E C I S I O N

Rita Pack, grievant, was employed by the Summers County Board of Education as a mathematics teacher at Hinton High School prior to her termination as the result of a reduction in force action in March 1987.<sup>1</sup> Her level four grievance appeal to that action was heard October 5, 1987 in Beckley; evidence consisting of the deposition of a party who was unable to testify at the proceedings was filed November 13, 1987. Grievant's brief was filed December 14, 1987 and the board's brief, December 17, 1987.

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<sup>1</sup> There was some controversy regarding whether grievant's protest hearing before the board in March was, in fact, a level three grievance hearing, her counsel arguing that the grievant believed it was a grievance hearing and that the issues, witnesses and arguments would be identical. However, counsel for the board aptly counters that prior to the hearing, there would be no grievable event and the grievance proceedings pursuant to W.Va. Code, 18-29-1, et seq., would not be appropriate prior to a grievable event. The provisions of W.Va. Code, 18-29-1, et seq., are quite clear and the parties to a grievance, i.e., school officials, a board of education and employee, may negotiate, remedy or litigate actions perceived to be violative and grievable by an employee and to circumvent the procedures would be to render the law useless.

During the 1986-87 school year school administrators determined that the school system was overstaffed and underfunded and began a lengthy process to find ways and means to remedy the situation for the 1987-88 term. The school superintendent asked for input from the county's various school principals and administrators and conducted public hearings and other deliberations to articulate, consider alternatives and agree upon a plan.

On February 26, 1987 the board acted upon recommendations to eliminate some positions and programs, the homebound teaching program employing two full-time teachers being one such program. One of the teachers was placed in an elementary school and the least senior teacher on that staff was released. J. D. Fox, another of the homebound teachers who held math certification, was to be transferred to grievant's position, she being the county teacher with the least seniority in Fox's areas of certification.

The crux of grievant's protest to her termination was that the board did not act in the best interests of the school in eliminating her math position because, in her opinion, it saved no money in doing so and, further, was contrary to her projected student math enrollment figures for the high school and there were students who had no math classes. Another position grievant took was that she was more qualified to teach math than Mr. Fox as he had never taught in a classroom and her classroom math teaching experience exceeded his.

Fox meanwhile filed a grievance, James Fox v. Summers County Board of Education, Docket No. 45-87-175 protesting the elimination of his position and transfer on the grounds, in part, that the board's final action to eliminate the homebound program directly impacted upon his position and prejudiced him with respect to his transfer hearing before the board. Mr. Fox prevailed in his grievance due to the fatally flawed procedures the board employed regarding the personnel changes. Therefore, the order to reinstate Fox to his homebound position frees up grievant's math position and her grievance is thus moot.

It must be noted that had the board acted properly in the personnel actions it implemented, grievant's termination would stand. Her termination would occur by operation of law as the school board had a non-discretionary duty to notify and release the least senior teacher holding mathematics certification (or the teacher with the least seniority of any certification Fox held), State Ex Rel. Board of Education v. Casey, 341 S.E.2d 436 (W.Va. 1986). The evidence did not support a finding that a math position was eliminated as grievant contends, that retaining two full-time homebound teachers was least costly to the board or more beneficial to students nor that Mr. Fox was incompetent to teach in the classroom as she seemed to suggest.

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

### FINDINGS OF FACT

1. Grievant was terminated from her employment in a reduction of force action when a teacher more senior than she had lost his position due to the elimination of his curricular program.

2. The board took final action on programmatic changes prior to notice and hearing requirements of personnel whose positions were threatened, eliminated or altered as a result of the effected reorganization.

3. Although the board characterized its actions as "proposed cuts" because it later reconsidered some of the personnel actions, notice and hearing requirements prior to final action must be met to eliminate any suggestion of prejudice on the board's part during subsequent protest hearings as a matter of law.

## CONCLUSIONS OF LAW

1. When a school board elects to identify a professional position it wishes to cut in a reduction in force situation and proceeds to make such a reduction, W.Va. Code, 18A-4-8b(a) requires that the employee whose position has been cut must be transferred into the position of the least senior employee in their respective area(s) of certification(s) and the board properly identified grievant herein as the classroom teacher to be terminated when the homebound teaching position was eliminated. State Ex Rel. Board of Education v. Casey, 341 S.E.2d 436 (W.Va. 1986).

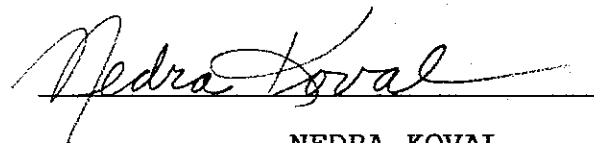
2. School law requires that a board of education notify an employee of a proposed transfer or termination and conduct a hearing, if requested, prior to any final action on the proposal(s). W.Va. Code, 18A-2-7; James Fox v. Summers County Board of Education, Docket No. 48-87-175.

3. The Board's vote on February 26, 1987 to eliminate the homebound teacher program/positions and transfer one displaced teacher into grievant's high school position effectively rendered his subsequent transfer and her subsequent termination protest hearings meaningless. Fox v. Summers County Board of Education, supra.

Accordingly, as the personnel procedures terminating grievant was fatally flawed, the grievance is **GRANTED** and the Summers County Board of Education is ordered to reinstate the grievant to her former position of mathematics teacher at Hinton High School with back pay less any appropriate set off.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Summers 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: December 30, 1987

A handwritten signature in cursive script, reading "Nedra Koval", written over a horizontal line.

NEDRA KOVAL  
Hearing Examiner