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ROSEMARY PHILLIPS

v.

Docket No. 24-87-188

MARION COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Rosemary Phillips, is employed by the Marion County Board of Education and was assigned to the Jayenne Elementary School for the 1986-87 school year. She filed a level four grievance on or about July 2, 1987 in which she alleged that she had been improperly transferred as a result of the board's erroneous method of calculating seniority. The parties mutually agreed to submit the matter for decision based upon the existing record and were directed by the administrative office of the West Virginia Education Employees Grievance Board to complete submission of explanatory briefs by August 14, 1987.<sup>1</sup> The matter

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<sup>1</sup> A brief was filed on behalf of grievant by her WVEA representative. An amicus curiae brief was filed by another WVEA representative on behalf of another teacher WVEA member, Janice Higinbotham, whose employment status would be affected by a favorable decision for grievant herein.

was assigned to the undersigned hearing examiner for disposition and was received August 27, 1987.<sup>2</sup>

During the 1986-87 school year, grievant was assigned to teach at Jayenne Elementary School. She was timely notified that she was being considered for placement on the transfer and reassignment list and the board subsequently conducted a hearing on the proposed transfer.

The administration's rationale for the proposed transfer was that declining enrollment at Jayenne School required the elimination of one teacher from Jayenne's teaching staff. Grievant's selection for transfer was based on a determination that she was the least senior teacher at Jayenne and was ostensibly in compliance with board policy to transfer the least senior employees. At the conclusion of the hearing, the board voted to place grievant on the transfer list.

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<sup>2</sup> It is noted that the record before the examiner does not include any of the lower level filings but does contain a transcript of the level two proceedings conducted June 1, 1987 and the decision adverse to grievant dated June 10, 1987. The board did not submit any further written materials on the level four appeal.

Grievant contends that the board improperly calculated the seniority of another teacher at Jayenne, Janice Higinbotham, and that Higinbotham was less senior than she. Since her original employment on September 24, 1973 Janice Higinbotham has been regularly employed each year, and has served every day of an entire employment term, on both a half-day and full-day basis. She has taught seven years at half-time (her first year was a half-time position but since she began after inception of the school year the time was prorated to .9 years), and seven years at full-time. The board accorded her 13.9 years total seniority.

Grievant has worked full-time since her initial starting date of October 25, 1976 (the initial year was prorated to .8 years) and had acquired 10.8 total years seniority at the time of the grievance. It is grievant's theory that the years Higinbotham worked half-time (half days) should only be counted as one-half years seniority thus her total should amount to 10.45 years.

Grievant contends that the legislature intended for employment less than a full term to be prorated, W.Va. Code, 18A-4-8b(a), that a full employment term is an instructional period of not less than 180 nor more than 185 instructional days, W.Va. Code, 18-5-15, and that an instructional day must be at least 315

minutes or five and one-fourth hours, State Board Policy 2510. Thus, grievant argues, since Ms. Higinbotham did not always teach a full day, as per Policy 2510, her instructional days did not meet standards defining a day and it follows that her half-time employment for a year does not equal a full employment term and must be prorated as per the statute.<sup>3</sup>

Grievant maintains that for all purposes, compensation, retirement, school aid formula, non-teaching responsibilities and continuing education requirements, a half-time employee is distinguished from a full-time employee. Grievant finally argues that it makes good public policy to grant full-time teachers one year seniority and half-time teachers one-half year's seniority as seniority is a reward and recognition for years served, the determinative factor in a reduction in force action and a critical factor in filling classroom positions. Relief requested is that Ms. Higinbotham's seniority be prorated to reflect the years she did not work full-time, that grievant's transfer be voided and that she (grievant) be reinstated to her position at Jayenne School.

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<sup>3</sup> This argument is not convincing. State Board Policy 2510, adopted 1984-85, establishes qualitative standards for pupil education and, in part, sets the minimum minutes for various grade levels which must constitute those students' instructional days. A required instructional day thus is tailored to grade levels and pupils and may be provided by many teachers.

The board states that it has consistently applied the concept of total county seniority to determine an employee's seniority when reducing staff within a building via the administrative transfer list. The board relies on an interpretation by the State Superintendent of Schools which identifies half-days as days of work when a full-time employee has a regular position throughout the employment term regardless of hours or method of pay. The board argues that present law only requires that employment for less than a full employment term be prorated but makes no mention of full-time or part-time employment.

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

#### FINDINGS OF FACT

1. Grievant was assigned to teach at Jayenne Elementary School during the 1986-87 school year.

2. All procedural requirements were met to transfer grievant out of Jayenne for year 1987-88. The board selected grievant for transfer after a determination that she was the least senior Jayenne teacher as per prevailing board policy regarding computation of employee seniority for staff reductions via administrative transfer.

3. Grievant disputed the board's method of calculating the seniority of another teacher at Jayenne who had more total years of teaching in the county but whose employment was on a half-time basis for several years.

4. Grievant is in agreement that she has 10.8 years seniority since her hiring date of October 25, 1976. The school board has calculated Janice Higinbotham's seniority to be 13.9 years, 7 years of full-time service and nearly 7 years of half-time service since her hiring date of September 24, 1973.

#### CONCLUSIONS OF LAW

1. The board of education's determination that employment for a full employment term, regardless of length of the work day, be counted as one year of seniority is not contrary to the requirements of W.Va. Code, 18A-4-8b(a) that employment for less than an employment term be prorated.

2. Interpretations of statutes by administrators or bodies charged with their administration are to be given great weight unless clearly erroneous. Smith v. Logan County Board of Education, 341 S.E.2d 685 (W.Va. 1985); Clayburn Walker v. Kanawha County Board of Education, Docket No. 20-86-157-1.

3. In this instance, the grievant has failed to prove misinterpretation of any statute, law or policy in regard to the board's computation of employee seniority for administrative transfer purposes.

Accordingly, the grievance is **DENIED** in its entirety.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Marion 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 20, 1987

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

NEDRA KOVAL  
Hearing Examiner