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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**  
ARCH A. MOORE, JR.  
Governor

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THOMAS ROACH, et al.

v.

Docket No. 26-87-070

MASON COUNTY BOARD OF EDUCATION

DECISION

Grievants are thirty four service personnel employees of the Mason County Board of Education with 240 or 261 day employment contracts. They filed a grievance when their contracts were terminated to reduce their employment terms to 246 days for 261 day employees and to eliminate paid vacations for the 261 day employees and to reduce to 230 days the employment terms of the 240 day employees. The school board approved the action and grievants appealed to the Education Employees Grievance Board; an evidentiary

hearing was conducted on September 14, 1987.<sup>1</sup>

On March 12, 1987 superintendent William A. Barker notified the grievants that it was his intent to recommend to the school board that their contracts be terminated in order to adjust their employment time and salary; that this would not change their position or assignment. The letter continued:

(T)he change will be the deletion of the paid vacation which is allowed under county policy (817 Vacation Policy). Furthermore, the number of days worked will be reduced to 246.

The cause of the pending recommendation to delete paid vacation and reduce work days is a loss of assessed valuation in Mason County of \$17,405,883. or \$327,902. in actual local receipts. Due to this loss of revenue measures must be taken to provide methods of cutting expenses in order to balance the budget. The removal of paid vacation days will save approximately \$49,000.<sup>2</sup>

The letter advised grievants that they were entitled to a hearing by the school board in accordance with W.Va. Code, 18A-2-6 and a hearing was conducted on March 26, 1987. At the hearing

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<sup>1</sup> The level three transcript was admitted into evidence (T.\_\_\_\_) along with a Stipulation of Facts submitted by counsel for the parties on October 1, 1987.

Although the individual grievants were not identified as to classification, ostensibly they are maintenance, custodial and secretarial employees (T.10,11).

<sup>2</sup> Under local board policy 261 day employees were granted fifteen days paid vacation accumulated during the year making their actual working days 246; the 240 day employees did not receive the vacation time (T.11).

superintendent Barker testified that he had also followed the procedural guidelines of W.Va. Code, 18-9B-8 and an opinion of the State Superintendent of Schools in reducing the employment terms of the grievants notwithstanding the questionable applicability thereof.<sup>3</sup>

The board of education approved the recommendation of superintendent Barker to reduce 261 day employees to a 240 day employment term, eliminate paid vacation for these employees and to reduce 240 day employees to 230 day employment terms. New contracts were issued to the affected employees and those formerly holding 261 day contracts were issued 246 day contracts and their vacations were eliminated; employees formerly holding 240 day contracts were issued 230 day contracts. All affected employees retained employment with the board at their former work station and in the same classification.

Counsel for the grievants contends that the school board could terminate the contracts pursuant to W.Va. Code, 18A-2-6

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<sup>3</sup> W.Va. Code, 18-9B-8 deals generally with the State Board of School Finance and the revision of a county budget. It requires that any budget revision be done only after several other measures were taken so as to provide as much of the employment term as possible. See, Barker et al. v. Ritchie County Board of Education, State Superintendent decision, February 1, 1985.

At the level three hearing there were differences of opinion as to the applicability thereof to county school boards but for whatever the relevancy it suffices to note that the section was followed in this case. (T.15,20,22,33).

but that it amounted to a reduction in force which, by virtue of W.Va. Code, 18A-4-8(b), was required to be based upon seniority, not employment terms. Counsel further contends that although the school board has treated this action as a termination of a contract it is more realistically a modification of the contract which, by virtue of W.Va. Code, 18A-4-8, requires the written consent of the service employee.<sup>4</sup>

Counsel for the school board contends that the provisions of W.Va. Code, 18A-2-6 were properly followed by the board in terminating the contracts herein and neither W.Va. Code, 18A-4-8 nor W.Va. Code, 18A-4-8(b) are controlling or pertinent.

In addition to the foregoing factual recitation the following specific findings of fact are included in this decision.

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<sup>4</sup> Counsel concludes that the action of the board in reducing the employment terms prior to terminating the contracts denied grievants a meaningful hearing as required by W.Va. Code, 18A-2-6, citing Becky Wood, et al. v. Mason County Board of Education, Docket No. 26-87-095. However, this point was not developed at level three and there is insufficient evidence to decide this issue in this grievance.

## FINDINGS OF FACT

1. The thirty four grievants herein are employees of the Mason County Board of Education with 240 or 261 day employment contracts who were notified by the superintendent on March 12, 1987 that their contracts would be terminated in order to reduce their employment terms to 246 days for 261 day employees and eliminate paid vacation for the 261 day employees and to reduce to 230 days the employment terms of 240 day employees.

2. The recommendation of the superintendent was predicated upon the loss of \$327,902.00 in actual local receipts to the school system and the grievants were apprised of the resulting financial plight.

3. Recommendation for termination was based upon the particular employee holding a 261 day or 240 day contract rather than seniority. All school service employees with a 261 day or 240 day contract were notified of impending termination and employees within the same classifications (secretarial, custodial and maintenance) with less seniority than the affected employees but who did not hold 261 day or 240 day contracts were not terminated.

4. On March 18, 1987 superintendent Barker sent a memorandum to all 261 day employees informing them of board approval of the reduction in employment terms and the abolishment of the paid vacation policy. The affected employees requested a hearing before the

school board and a hearing was conducted on March 26, 1987.

5. At the hearing on March 26, 1987 superintendent Barker outlined the procedure utilized in the reduction of employment terms and it was in conformity with W.Va. Code, 18A-9B-8 and an opinion of the State Superintendent of Schools. He also outlined the financial dilemma created by the loss of funding and tax revenue and the school board approved the recommendation to reduce 261 day employees to 240 day employment terms, to eliminate paid vacation for those employees, and to reduce 240 day employees to 230 day employment terms. Notification of this decision was sent to the affected employees pursuant to W.Va. Code, 18A-2-6.

6. Thereafter, new contracts were issued to the affected employees and employees formerly holding 261 day contracts were issued 246 day contracts with vacations eliminated; employees formerly holding 240 day contracts were issued 230 day contracts. All affected employees retained employment with the school board at their former work station and in the same classification.

#### CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-8 provides, in part, that the employment term for service personnel employees shall be no less than ten months, a month being defined as twenty employment days.

2. W.Va. Code, 18A-2-6 provides, in part, that the employment contract of a service personnel employee shall remain in full force and effect except as modified by mutual consent of the school board and the employee unless and until terminated with written notice, stating the cause or causes, to the employee, by a majority vote of the full membership of the board before the first day of April of the then current year.

3. The employment terms of school service personnel can be modified without their consent by terminating the contract with written notice, stating the cause to the employee and otherwise complying with the provisions of W.Va. Code, 18A-2-6, thereby supplanting the old contracts with the modified contracts. Fayette County Board of Education v. Hunley, 288 S.E.2d 524 (W.Va. 1982).

4. The school board complied with the provisions of W.Va. Code, 18A-2-6 in the instant grievance and attempted to retain all the grievants in a modified capacity rather than terminate some of the positions; the action was not arbitrary and was for cause contemplated by said provisions.

Accordingly, the grievance is Denied.

Either party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Mason County and such appeal must be filed within thirty 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.

A handwritten signature in cursive script, appearing to read "Leo Catsonis", is written over a horizontal line.

LEO CATSONIS  
Chief Hearing Examiner

Dated: November 30, 1987