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LARRY P. SHAW

v.

Docket No. 15-87-004-3

HANCOCK COUNTY BOARD OF EDUCATION

DECISION

Grievant, Larry Shaw, is a teacher employed by the Hancock County Board of Education and is currently assigned to perform librarian duties at Oak Glen High School. On October 30, 1986 he filed a grievance alleging he had been involuntarily reassigned from a physical education (PE) position to the librarian post in violation of transfer and notice and job posting laws.<sup>1</sup>

The parties agreed in writing to submit the matter for decision upon the record; respondent declined to tender proposed findings and grievant's proposals were received April 3, 1987.

Grievant is certified to teach physical education and health 7-12 and school librarian K-12. In 1979 he joined the staff at Oak Glen as a boy's physical education teacher and remained in that position through the end of the 1984-85 school term.

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<sup>1</sup>The grievance was denied at level two on November 21, 1986, waived by the board of education on December 12, 1986 and appealed to level four in January, 1987.

At the level two hearing conducted November 17, 1986, grievant testified that in the spring of 1985 he heard rumors that he was going to be the librarian for the next school term (1985-86). Grievant said he confronted his principal and was told he would be replacing the present librarian who had resigned. In the fall of 1985-86 grievant was scheduled to replace the departed librarian and the head football coach/physical fitness director was given his previous physical education teaching assignment.<sup>2</sup> Grievant completed the 1985-86 term in the librarian position and was again assigned the post the 1986-87 school year.

Grievant cited several reasons for not acting upon the matter of the reassignment until October, 1986. He was too overwhelmed, hurt, and angry to immediately confront his superiors; his "aggrieved situation" is ongoing; and lastly his knowledge of recent interpretations of the school code in cases similar to his compels him to now pursue a grievance. Grievant did not elaborate on the third reason and did not cite specific cases, when they were decided or when he learned of them.<sup>3</sup>

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<sup>2</sup>Facts presented by grievant and not disputed by the respondent include:

- a. Grievant was never placed on the county's transfer list.
- b. The librarian position grievant holds was never posted.
- c. Grievant had more county seniority than the coach who replaced grievant in the physical education position.
- d. Grievant was never given any reasons why he as the senior person was not given the assignment he wanted.
- e. Grievant's evaluations as a PE teacher had been good.

<sup>3</sup>It is noted that grievant presumably was a member of WVEA, a teacher advocacy organization, and was represented in this grievance by a Uniserve Consultant. Under those circumstances, grievant's excuses for sitting on his rights for over a year spanning a complete academic year and well into another seem very weak and unconvincing.

Grievant's representative argues that grievant's transfer/reassignment involved a substantial change of duties and thus required compliance with the notice provisions of W.Va. Code, 18A-2-7. He contends that pursuant to W.Va. Code, 18A-2-8 grievant's principal is limited to making recommendations to the school superintendent on the matter of grievant's reassignment from PE teacher to school librarian. Grievant asks that his reassignment to librarian be rescinded and that he be returned to his former physical education assignment at Oak Glen.

According to the level two decision of November 21, 1986, the school administration's position is that the grievance was not timely filed and the grievable event does not meet the statutory definition of a "continuing practice giving rise to a grievance" set forth in W.Va. Code, 18-29-4(a)(1).<sup>4</sup> As to the merits of the grievance, the respondent maintains that the principal was empowered to assign grievant the librarian post via an intraschool rescheduling and had no duty to either post the librarian position nor follow the provisions of W.Va. Code, 18A-4-8b.<sup>5</sup>

In addition to the foregoing, the following specific findings of fact are incorporated herein.

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<sup>4</sup>The timeliness issue and challenge was not addressed in grievant's proposed findings of fact and conclusions of law.

<sup>5</sup>Respondent stated it relied on decisions of the State Superintendent of Schools and a Marion County Circuit Court decision. Due to the final disposition of this grievance, it is unnecessary to resolve the issues raised in the complaint or reach the parties' arguments on the merits of the case.

### FINDINGS OF FACT

1. Grievant has been employed by the Hancock County Board of Education as a teacher assigned to Oak Glen High School for the past several years.

2. Grievant is certified in PE and H(7-12) and as a librarian K-12. From 1979 through the end of the 1984-85 school term grievant taught boys PE at Oak Glen and received good evaluations for his performance.

3. A permanent vacancy was to occur in the school librarian position effective the end of the 1984-85 school term. In the spring of 1985, grievant heard rumors that he would be assigned the librarian duties come 1985-86, and when asked, his principal confirmed the story.

4. Grievant was never officially notified of his reassignment by school officials but was scheduled by his principal for the librarian position in the fall of 1985. Another Oak Glen teacher assumed grievant's former boys PE classes.

5. Although he professed to be hurt and angry about the situation and knowledgeable about certain interpretations regarding school laws, grievant ignored the matter of his involuntary reassignment until he filed this grievance on October 30, 1986, an entire teaching year and well into a second academic year after the grievable event.

6. The board of education contends the grievance was not timely filed and grievant has not shown just cause for his untimeliness.

#### CONCLUSIONS OF LAW

1. W.Va. Code, 18-29-4(a)(1) provides that before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought. Wanda Scarberry v. Mason County Board of Education, Docket No. 26-86-291-1.

2. W.Va. Code, 18-29-3(a) provides that a grievance must be filed within the times specified in section 4, above, and shall be processed as rapidly as possible. Evelyn Burton v. Boone County Board of Education, Docket No. 03-86-098; Wanda Scarberry v. Mason County Board of Education, supra.

3. It is incumbent upon an employee to timely pursue their rights through the grievance process and when timeliness is

questioned to demonstrate the reason for the delay and/or the applicability of W.Va. Code, 18-29-4(a)(1). Joseph Badgley v. Parkersburg Community College, Docket No. 54-86-064; Raymond Dunleavy v. Kanawha County Board of Education, Docket No. 20-86-240-1; Wanda Scarberry v. Mason County Board of Education, supra.

4. The grievance was not timely filed as a matter of law.

Accordingly, the grievance is DENIED.

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