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

v.

Docket No. 26-87-121-1

MASON COUNTY BOARD OF EDUCATION

DECISION

Grievant, A. E. Sommer, was employed by the Mason County Board of Education as director of vocational education and filed a grievance when the school board terminated his contract and eliminated his position. An evidentiary hearing had been conducted by the school board on March 31 and grievant filed an appeal with the Education Employees Grievance Board on May 1, 1987. A level four evidentiary hearing was conducted on September 14, 1987.¹

¹ At level four the transcript of the hearing before the board was admitted into evidence (T.____) and proposed findings of fact and conclusions of law were submitted by counsel for the school board on September 23; none were submitted by the grievant.

On March 5, 1987 superintendent of schools Barker received formal notification that assessed property valuation had declined approximately \$17,000,000.00 as compared to 1986/87 (T.6) and that this deficiency translated into a shortfall of \$327,000.00 to the school board in revenues. One proposed method of dealing with this loss of revenue was a reorganization of the central office staff and administration which would amount to a savings of \$182,000.00 (T.7,8).

On March 26, 1987 grievant, a professional employee, was notified pursuant to W.Va. Code, 18A-2-2 and W.Va. Code, 18A-2-7 (T.9) that the position of director of vocational education was being eliminated and a position would be created combining the principal and vocational director positions. A hearing was conducted before the school board on March 31, 1987 at the conclusion of which the board went into executive session; in open session the board then voted to terminate grievant's contract and assign him to the transfer list for the 1987/88 school year (T.46).²

² The transcript of that hearing is very sketchy and incomplete and the notices given grievant were not made a part of the record of this grievance. One of grievant's allegations is that the board illegally went into executive session to discuss his grievance but this point is not documented or otherwise developed.

At the level four hearing it was established that grievant presently holds a position of supervisor and school administrator and supervises the vocational program. Grievant's employment term was not affected by the board action³ and his salary has not been affected. He contends that the person who was appointed as vocational administrator is now his immediate supervisor and does not have the required certification for the position.⁴ Grievant further contends that he was denied due process in the hearing afforded by the school board pursuant to W.Va. Code, 18A-2-2, that this action was a reduction in force necessitating the application of W.Va. Code, 18A-4-8(b) and that the school board failed to hold and "open" hearing as required by W.Va. Code, 6-9A-4.⁵

³ Although there was much discussion at level three of the reduction of employment terms of the other directors, (e.g., T. 21), the relevancy of this evidence to grievant's case was never established. Moreover, it had been established that superintendent Barker had followed the mandates of W.Va. Code, 18-9B-8 in the reorganization plan and that point would appear academic. See, generally for a discussion of W.Va. Code, 18-9B-8, Summers County Education Association v. Summers County Board of Education, No. 17625, decided by the Supreme Court of Appeals on November 17, 1987.

⁴ Counsel for the school board objected to the grievant's standing to raise an objection to the appointment of Mr. Chambers to the new position inasmuch as grievant did not elect to either bid upon the position when it was posted or file an additional grievance on that point. This point appears to be well taken.

⁵ Although it was requested that grievant document these points in the record and to develop them as best he could, nothing was received from grievant and he apparently stood upon the bald assertions of "illegality."

Counsel for the school board contends that the school board properly terminated grievant's contract pursuant to W.Va. Code, 18A-2-2 and that the reorganization of the central office was necessitated by the financial losses suffered by the school board; that, accordingly, the board did not act arbitrarily or capriciously in terminating the contract.

In addition to the foregoing factual narrative the following specific findings of fact are appropriate.

FINDINGS OF FACT

1. Grievant was employed by the Mason County Board of Education as director of vocational education and filed a grievance upon the termination of his contract.

2. Grievant was notified in March, 1987 in accordance with W.Va. Code, 18A-2-2 and W.Va. Code, 18A-2-7 of a proposed reorganization plan whereby his position was being eliminated and his contract terminated and that he was being placed upon the transfer list for the 1987/88 school year.

3. Grievant was given a hearing by the school board on March 31, 1987 at the conclusion of which the board voted to terminate grievant's contract. However, grievant's pay or employment term were not affected and he was thereafter awarded the position of supervisor and school administrator, supervising the vocational program.

4. Grievant raised several issues concerning the action of the board which were either not developed on the record at level three or not pursued thereafter. Accordingly, these issues are considered abandoned.

5. There is no evidence that the school board acted arbitrarily in terminating grievant's contract but, on the contrary, that the action was taken in response to a drastic decline in revenues.

CONCLUSIONS OF LAW

1. For good cause shown a county school board may, in accordance with W.Va. Code, 18A-2-2, terminate the contract of a teacher before April 1 of the then current year after the teacher has been given notice and the opportunity to be heard prior to the board's action. Sandra Fain and Cynthia Fazzini v. Harrison County Board of Education, Docket No. 17-87-082-2.

2. In the grievance procedure it is incumbent upon the grievant to prove the elements of the grievance by a preponderance of the evidence. Edith Harrison v. Kanawha County Board of Education, Docket No. 20-86-219. Elements or allegations of the grievance which are raised but not pursued or developed will be considered abandoned. Bennett Church v. McDowell County Board of Education, Docket No. 33-87-214.

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.



LEO CATSONIS

Chief Hearing Examiner

Dated: December 24, 1987