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GARRY R. TENNEY

v.

DOCKET NO. 01-87-166-2

BARBOUR COUNTY BOARD OF EDUCATION

DECISION

Grievant, Garry R. Tenney, is employed by the Barbour County Board of Education and is presently assigned as principal of Philip Barbour High School. On June 16, 1987 Mr. Tenney filed a grievance alleging that he had been illegally and improperly placed on the transfer list. The board of education waived consideration of the matter at level three; a level four hearing was conducted on August 28 and both parties were given the opportunity to submit a final brief.

The grievant argues that the transfer is in violation of State Board of Education Policy No. 5300 as he is being demoted while performing satisfactorily as principal; W.Va. Code, 18A-2-7 as the superintendent failed to show how the transfer of the grievant was necessary for reorganization of the central office; W.Va. Code, 18A-4-8b which does not provide for the hiring of

an individual into a position for which he has not submitted application and W.Va. Code, 6-9A-1, 6-9A-2(1) and 6-9A-42(2) as the board improperly discussed the matter and reached a decision in executive session and then announced the results in open session.

The board of education argues that the grievant is highly qualified for the position of director and that it has fully and completely met the requirements of W.Va. Code, 18A-2-7 and 18A-4-8b insofar as it is applicable. It asserts that State Board of Education Policy No. 5300 which prohibits the discharge, demotion or transfer of an employee for reasons of misconduct or incompetency is not relevant as the grievant is not being transferred for those reasons. Finally, the board argues that consideration of the matter in executive session was proper and not prohibited by W.Va. Code, 6-9A-24(a) which does not apply to quasi-judicial, administrative or Court of Claims proceedings.

Documentation provided by the board of education indicates that the grievant was notified by letter dated April 1, 1987 that his name "...may be placed on the Administrative Transfer and Subsequent Assignment List for the 1987-88 school year."

The reason for this action, provided at the request of the grievant, was "[t]o comply with the West Virginia statutes and procedural mandates necessary to insure the availability of the most qualified county personnel for potential placement within a proposed reorganizational structure."

A hearing regarding the proposed transfer was conducted on April 30, 1987. Minutes of that meeting indicate that the board adjourned to executive session and upon return to regular session announced that upon review of the evidence it was the opinion of the board that all guidelines had been met and the transfer was valid. A motion was then made and seconded to approve the administrative transfer of five employees, including the grievant. The grievant was notified of this action by letter of May 7, 1987.

At a meeting conducted May 19, 1987 the board approved a reorganizational proposal and the position description of Director of Administrative Services. Although it was anticipated that the grievant would be assigned to this position he was temporarily reassigned as principal at Philip Barbour High School pending the outcome of a grievance filed on May 18, 1987.

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

Findings of Fact

1. The grievant has been assigned as principal at Philip Barbour High School for the past eight years. During that time he has received favorable performance evaluations.

2. The grievant was notified on April 1, 1987 of a possible recommendation that he be placed on the transfer list. Following a hearing held on April 30 the recommended transfer was approved by the board of education.

3. The reason given for the transfer was administrative rather than disciplinary.

4. The position of Director of Administrative Services was approved by the board of education on May 19, 1987. The position was subsequently advertised; however it was intended that the grievant be reassigned to that position.

5. The grievant characterizes the transfer as a demotion in that he would supervise possibly one individual as opposed to sixty-five, he would not be dealing with students or the public and he would suffer a drastic decrease in responsibilities. The board of education views the transfer as a promotion as it is a central office administrative position, there will be some increase of salary and it will provide training for further promotions.

Conclusions of Law

1. W. Va. Code, 18A-2-7 vests great discretion in the county superintendent and board of education to transfer and assign teachers to designated schools and the Supreme Court of Appeals will not interfere with the exercise of that discretion when an action is taken in good faith for the benefit of a school system and is not arbitrary. Hawkins v. Tyler County Board of Education, 275 S.E. 2d 908 (W.Va. 1980).

2. Transfers may be either administrative or disciplinary in nature. Holland v. Board of Education, 327 S.E. 2d 155 (W.Va. 1985)

3. The board of education has met all procedural requirements of W.Va. Code, 18A-2-7 in placing the grievant on the transfer list for subsequent reassignment.

4. The board of education has met the requirements of W.Va. Code, 18A-4-8b by posting the vacant position. This section does not prohibit the transfer of a qualified employee into a vacant position even though the employee did not submit an application.

5. A transfer to a county wide, director level position does not constitute demotion and does not trigger application of State Board of Education Policy 5300.

6. The transfer of the grievant is proper and valid.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Barbour 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 13, 1987

Sue Keller

SUE KELLER
Hearing Examiner