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JEAN WADE

v.

Docket No. 24-86-248-3

MARION COUNTY BOARD OF EDUCATION

DECISION

Grievant, Jean Wade, has been employed by the Marion County Board of Education for thirty years and is presently assigned to East Fairmont High School as a biology teacher. On June 2, 1986 grievant filed a level one grievance alleging violation of statutes and accusing school officials of reprisal (since 1973 when she filed a previous grievance) and favoritism in that she had not been permitted to teach a certain science class of her choosing but was instead assigned to teach undesirable classes no one else wanted to teach. Grievant did not prevail in the lower administrative proceedings and a level four appeal was filed in August, 1986. By letter dated March 13, 1987 the assistant superintendent represented that the parties were in agreement to submit the grievance for decision based upon the record. Written supporting materials were received on March 18, 1987 and March 30, 1987 from the respondent and grievant's WVEA representative, respectively.

Grievant holds an AB degree in Education, is certified to teach biological science and has a total of thirty-five years teaching experience. According to her, she originated the human physiology course in the county and taught it for eleven years. At the end of that time the course was eliminated and was not offered again for a year or two. Following the resumption of the physiology course offering grievant has been assigned to teach only regular biology, for average students, or basic biology, for students with learning problems, but never advanced biology classes nor a physiology course despite her ongoing request to teach physiology.¹ She characterizes the assignments to teach average and below average students as a form of ongoing harassment and claims the scheduling actions are reprisal on the part of the principal due to a grievance she had in 1973.² She maintains that the principal shows favoritism to teachers assigned all the advanced students.³

¹The record does not reflect the actual dates grievant first taught physiology or when the course was eliminated or resumed.

² Grievant's testimony that she had exercised her right to grieve at a previous time raises questions as to why she waited fourteen years to file another grievance if in the interim period she felt she was being harassed³ or that school officials acted in retaliation to her earlier action. She did not assert fearfulness or any other reason preventing her from grieving the scheduling matter until now.

³The pertinent provisions of W.Va. Code, 18-29-2: (n) "Harassment" means repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession. (o) "Favoritism" means unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees. (p) "Reprisal" means the retaliation of an employer or agent toward a grievant or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.

Grievant and her two witnesses, peers who also teach, maintain that teaching above average students is more rewarding and, in some respects, easier than teaching lower level students. Assignment to teach advanced students therefore amounts to a promotion, according to the grievant. Grievant contends that her principal's rationale that she may not teach physiology because of her grading policies is improper and not warranted since promotions must be based on evaluations and not extraneous factors. Grievant points out that her evaluations reflect that she meets or exceeds teaching standards in every category. Finally, grievant relies on case law which prohibits a county superintendent from arbitrary and capricious use of his powers to transfer and assign teachers. Grievant requests that she be assigned to teach a human physiology class.

Respondent denies favoritism or reprisal in relation to grievant's teaching assignments. It contests grievant's claim that the dispute at issue has any bearing on state or county policies and regulations governing teacher promotions. Further, the respondent avers that no individual teacher has seniority or any other rights to be assigned to teach specified classes of his or her own choosing. Instead, it cites W.Va. Code, 18A-1-1 and maintains that a school principal has the authority and discretion to supervise, manage and control his or her school and to prepare staff teaching schedules in the best interests of the students.

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

FINDINGS OF FACT

1. Grievant is a science teacher with thirty years experience in Marion County schools; she is presently assigned to East Fairmont High School and scheduled to teach biology classes for which she is duly certified. In 1973 she had a grievance of an undisclosed nature.

2. Grievant initiated a human physiology course apparently many years ago and taught physiology for eleven years until it was dropped from the curriculum at some undisclosed time. After a year or two human physiology was returned to the curriculum but grievant was not assigned to resume teaching the course and remained teaching biology courses. The record does not disclose whether grievant has attained relevant academic course hours beyond her bachelor's degree but she claimed continuing qualification to teach the physiology classes by keeping up with her reading of the Harvard Medical Bulletin.

3. Grievant previously filed a grievance in 1973 and her stated belief that school administrators harassed her or retaliated against her with undesirable teaching assignments does not seem plausible in light of her fourteen year delay to launch a protest over the alleged reprisal.

4. A twenty-eight year veteran science teacher also assigned to East Fairmont high was regularly scheduled to teach biology courses to lower level students. He resigned from the school system when the principal could not or would not comply with an agreement that he could teach the classes he desired, chemistry, physics, and human physiology for the 1986-87 school term, but was instead scheduled to teach physiology and biology students.

5. Grievant requested but was not scheduled to teach physiology for the 1986-87 school term. She was assigned regular biology classes for average or "C" students and one basic biology course for lower level students or those who previously failed the course.

6. Grievant and her principal discussed her dissatisfaction with her schedule and she was told that physiology could not be taken from a teacher who had already been assigned to teach the class. Grievant's grade distribution was also cited as a factor preventing her assignment to teach a physiology class. She was told if a third class was formed she could have it.

7. Grievant's final evaluation for the 1985-86 school year indicated she met or exceeded performance standards in every category and there was no reference to her grade distribution.

8. When the science teacher already holding a physiology class resigned, grievant was not offered the class to teach and she filed the instant grievance. In his level one response to grievant, the principal stated that six persons worked together to produce the final master schedule. He also stated that all six concurred that grievant should not be assigned to instruct (elective) advanced science courses since students would not sign up for her classes and enrollment would decline significantly. As a result of grievant's complaints, school officials removed the basic biology course (lower level students) from her teaching schedule leaving only the average students' courses.

9. At the level two hearing respondent introduced evidence pertaining to grievant's grade distribution over the past several years which demonstrates an inordinate number of student failure or near failure in her classes not entirely explained by the students' collective abilities nor entirely understood by grievant herself. (Administration Exhibit No. 1, June 30, 1986.)

10. Grievant's unfulfilled desires and requests to be assigned to teach a certain class of her choosing cannot be construed to amount to a denial of a promotion as a matter of law.

11. Grievant has not shown by a preponderance of the evidence that her principal has retaliated against her for a past grievance or shown favoritism to others in exercise of his course scheduling responsibilities.

CONCLUSIONS OF LAW

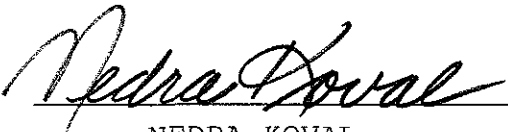
1. A certified school principal(s) shall assume administrative and instructional supervisory responsibility for the planning, management, operation and evaluation of the total educational program of the school to which he or she is assigned. W.Va. Code, 18A-2-9; Mona Schafstall v. Brooke County Board of Education, Docket No. 05-86-347-3.

2. The grievant has failed to establish that the respondent's actions in scheduling her science teaching courses constitute harassment as defined by W.Va. Code, 18-29-2(n), favoritism as defined by W.Va. Code, 18-29-2(o), or reprisal as defined by W.Va. Code, 18-29-2(p).

3. Grievant has failed to prove the essential elements of the grievance issue that she was denied a promotion contrary to her evaluations and has failed to establish a legal basis upon which to grant her the relief she requests.

Accordingly, this grievance is **DENIED**.

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.

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

NEDRA KOVAL

Hearing Examiner

Dated: July 27, 1987