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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
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NORA K. WARREN

v.

Docket No. 23-86-375-1

LOGAN COUNTY BOARD OF EDUCATION

DECISION

Grievant, Nora K. Warren, is employed by the Logan County Board of Education as a school aide. In September, 1986, she filed a grievance alleging that she had been laid off improperly and sought reinstatement and pay for one month she was deprived of work. A level two hearing was conducted on October 13, 1986, and an adverse decision was received by grievant on December 19, 1986. Grievant appealed to the Education Employees Grievance Board and an evidentiary hearing was conducted on June 9, 1987.¹

¹ By letter dated January 5, 1987, grievant's WVEA representative requested that a copy of the level two transcript of evidence be submitted to the hearing examiner. However, the transcript was unavailable and the grievance was heard de novo at level four.

The evidence was uncontested that grievant commenced work as a substitute special education bus aide in 1983 and in December 1985 bid on a regular position on Bus 68; in January 1986 she was hired for the position. This run accommodated the students attending Peach Creek School for Exceptional Children and was considered a permanent run. By letter dated March 24, 1986, Superintendent Sentelle informed grievant that due to the uncertainty of sufficient funds he would not recommend the renewal of her contract for the 1986-87 school year in accordance with W.Va. Code, 18A-2-8a;² that the school board would offer her the opportunity of a hearing on April 24, 1986.

Grievant did not attend the meeting and received no further communication from the school officials regarding her employment

² W.Va. Code, 18A-2-8a provides, in pertinent part, that

The superintendent at a meeting of the board on or before the first Monday in May of each year shall provide in writing to the board a list of all probationary teachers that he recommends to be rehired for the next ensuing school year...The board at this same meeting shall also act upon the retention of other probationary employees...Any such probationary ...employee who is not rehired by the board at that meeting shall be notified in writing, by certified mail...of their not having been rehired...

Any...employee who has not been reemployed may... request a hearing before the board.

but continued to work in her position through August 7, 1986.³ However, the position was posted on July 13 or 14 and grievant bid for it; the position was awarded to Brenda Keaton, a more senior employee. In August grievant was placed on the preferred recall list but when school commenced substitute aides were selected for work at Holden Grade School and Justice Grade School instead of grievant.⁴ Grievant returned to work at Justice Grade School on September 29, 1986, as a school aide and has remained in that position.

Grievant contends that she was improperly terminated from her position as a transportation aide on bus 68 because the school board failed to notify her of its action on the recommendation of the county superintendent as required by W.Va. Code, 18A-2-8a;

³ Apparently these termination letters are an annual ritual in Logan County especially with the aides but they are consistently recalled to work. Grievant felt secure in the notion that she had a permanent job and would be the one recalled if the funding was received.

⁴ Associate Superintendent Garrett agrees that he called from the substitute list on the Holden School position because it is unclear to him in certain situations if employees on the preferred recall list should be called ahead of those on the substitute list for positions other than vacancies and/or new positions. He noted that clarification was needed but counsel for the school board contends there is insufficient evidence in this case that grievant was at the top of the preferred recall list and thus any opinion would be advisory in nature.

The Education Employees Grievance Board does not render advisory opinions but for clarification on this point, see Meade v. Mingo County Board of Education, 356 S.E.2d 479 (W.Va. 1987).

that having failed to follow this provision her name should be removed from the list of employees not rehired for the 1986-87 school term and an award of back pay for the period she was unemployed should be made.

Counsel for the school board concedes that the board did not notify grievant of its action but that she was not deprived of any due process rights because she received the first notice, was aware of her rights and there was substantial compliance with W.Va. Code, 18A-2-8a.⁵

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

⁵ Mr. Garrett testified that the second letter had always been sent in previous years but grievant was aware of her rights, etc. Grievant acknowledged that she received a letter every year and had always gone to work in the Fall with the exception of this year.

In the level two decision the grievance evaluator, Superintendent Sentelle, noted that W.Va. Code, 18A-2-8a provides for certified notification following board action on the recommendation and that the "Board agrees to send required notifications after Board action rather than before." (Joint Exhibit 2).

FINDINGS OF FACT

1. Grievant was employed by the Logan County Board of Education in 1983 as a substitute special education bus aide.

2. In December 1985 grievant bid on a regular position on bus 68 which transported students to the Peach Creek School for Exceptional Children. She was awarded the position in January 1986.

3. On March 24, 1986, grievant was duly informed by Superintendent Sentelle that he would not recommend the renewal of her contract for the 1986-87 school year and that the board would offer her a hearing on April 24, 1986.

4. Grievant did not attend the hearing because she believed that she had a permanent position and would be recalled if funding was obtained. These types of letters are routinely sent to aides employed by Logan County Schools and funding is routinely obtained.

5. Grievant received no further communication from school officials and continued to work her position beyond the regular school year, i.e., June 30, 1986, until August 7, 1986, when the position was posted for bids. Grievant bid for the position but it was awarded to a more senior employee.

6. The school board acknowledges that W.Va. Code, 18A-2-8a provides for notification prior to and subsequent to board action and has followed that procedure in previous years. The omission to notify grievant of the action of the school board appears to be through inadvertance and there is no evidence that the failure to notify grievant was arbitrary or capricious.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-2-8a provides, in part, that a school board notify any probationary employee of their not having been rehired or not having been recommended for rehiring. This provision is clear and unambiguous and must be given full force and effect. Lavender v. McDowell County Board of Education, 327 S.E.2d 691 (W.Va. 1984).

2. School personnel regulations and laws are to be strictly construed in favor of the employee. Morgan v. Pizzino, 163 W.Va. 454, 256 S.E.2d 592 (1979); Hedrick v. Pendleton County Board of Education, 332 S.E.2d 109 (W.Va. 1985).

3. Failure of the school board to comply strictly with the notice provisions of W.Va. Code, 18A-2-8a vitiates its action in nonrenewal of grievant's employment contract.

Accordingly, the grievance is GRANTED and the school board is Ordered to remove grievant's name from the list of employees not rehired for the 1986-87 school year and to compensate grievant for the loss of work for the month of September 1986, less any appropriate set off.

Either party may appeal this decision to the Circuit Court of Logan County or Kanawha 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: July 14, 1987