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**WEST VIRGINIA EDUCATION
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DEBRA WEST, et al

v.

Docket No. 52-86-279-3

WETZEL COUNTY BOARD OF EDUCATION

DECISION

On or about September 30, 1986 grievants herein, Debra West, Patricia Bland and Linda Alexander, all teachers employed by the Wetzel County Board of Education, filed a level four grievance appeal alleging that the respondent board of education had improperly computed their seniority status in violation of W. Va. Code, 18A-4-8b.

Grievant West had previously instituted proceedings, Civil Action No. 85-C-115-N, in the Circuit Court of Wetzel County upon a seniority issue and on behalf of similarly situated personnel with respect to future reduction in force actions. Petitioner West's recent motion to that Court to remand the case to the West Virginia Education Employees Grievance Board was not granted.

Various motions and requests concerning the disposition of this grievance have been made by both respondent's counsel and grievant's WVEA representative. By letter dated March 27, 1987, counsel for the respondent board represented to the undersigned hearing examiner that all preliminary matters in the civil action

had been completed; the case was mature for decision upon the merits and the parties were awaiting the judge's ruling. However, counsel could give no indication of when a ruling would be forthcoming or any assurance of a prompt resolution as is contemplated by the grievance procedure law, W.Va. Code, 18-29-1 et seq. Accordingly, this decision is rendered pursuant to letter of April 7, 1987 from grievant's representative urging that the West Virginia Education Employees Grievance Board not ignore its statutory authorization and requirement to hear and decide education personnel grievances.¹

The grievants all taught in the Wetzel County Schools and then formally resigned their full-time employment. Each returned to employment at a later time but discovered that their seniority was being calculated from the date of their most recent employment and credit for their earlier teaching years was extinguished. All grievants have been affected or fear being affected by the most recent date of employment calculations of their seniority including possible and actual reduction of force (RIF) actions and failure to obtain a desired position via utilization of total seniority.

Grievants allege violation of W.Va. Code, 18A-4-8b which states that "seniority of professional personnel shall be determined on the basis of the length of time the employee has

¹Grievant's representative filed proposed conclusions on March 23, 1987. Respondent's previous motion that the grievance be dismissed on the concurrent jurisdiction issue was denied by the hearing examiner by letter dated February 18, 1987 due to concern that the matter be determined in accordance with the statutory requirements of a "simple, expeditious" resolution. Respondent then waived a level four hearing by letter dated February 26, 1987.

been professionally employed by the county board of education". Grievants maintain that the statute is clear and unambiguous and does not include any reference to an employee's length of unbroken service, nor does it tie seniority to an employee's most recent period of employment. Grievants cite several circuit court cases in support of their position and ask that their seniority be calculated on the basis of their total years of county employment.²

The position of the board of education is that the relevant portion of W.Va. Code, 18A-4-8b relates to the then current term of employment and that terminations for cause and resignations operate to extinguish any accrued seniority; that this position is consistent with the interpretations of the State Superintendent of Schools and that these interpretations are entitled to great weight. It further contends that Wetzel County is not bound by the Gilkerson decision, supra, at footnote 2.³

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

²In Gilkerson et al. v. Wayne County Board of Education, which is analogous, the Circuit Court held that Code, 18A-4-8b was clear and unambiguous and required that seniority be computed from initial employment prior to resignation as well as years worked after reemployment.

³In Hark v. Kanawha County Board of Education, Docket No. 20-86-225-1, this Board adopted the State Superintendent's interpretation of split seniority. That ruling was overturned by the Circuit Court of Kanawha County which held that W.Va. Code 18A-4-8b(a) was clear and unambiguous and the statute should be applied rather than construed.

FINDINGS OF FACT

1. Grievant Alexander was employed by the Wetzel County Board of Education in 1976 and resigned in 1980; she was reemployed as a full-time teacher in 1984.

2. Grievant West was initially employed in 1973 through 1981. 1981-82 she was on leave of absence and substituted that year and in 1982-83. She resigned her full-time position January 25, 1983 but substituted during the 1983-84 school term. During 1984-85 she worked a half-time regular position, and in March 1985 was advised she would not be hired for the 1985-86 school year.

3. Grievant Bland worked from 1974 to her resignation in 1980. She substituted three years and resumed regular full-time teaching the 1983 school year.

4. The State Superintendent of Schools has rendered several interpretative rulings that seniority relates to the current term of employment and that terminations for cause and resignations operate to extinguish accrued seniority. Wetzel County Schools has adopted regulations incorporating the State Superintendent's interpretation of seniority.

CONCLUSIONS OF LAW

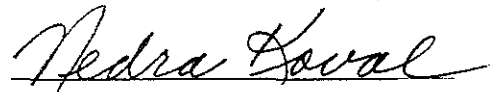
1. The administrative interpretation placed upon Code, 18A-4-8b by the State Superintendent of Schools is considered as persuasive authority unless such interpretation is clearly erroneous. Smith v. Logan County Board of Education, 341 S.E.2d 685 (W.Va. 1985).

2. W.Va. Code, 18A-4-8b provides, in part, that the seniority of professional personnnel is to be determined on the basis of the length of time the employee has been professionally employed by the county board of education. Employment for less than the full employment term of one year shall be prorated.

3. Where a statute is clear and unambiguous, it will be applied and not interpreted. Lavender v. McDowell County Board of Education, 327 S.E.2d 691 (W.Va. 1984); Cooper v. Greenbrier County Board of Education, Docket No. 13-86-192-4.

Accordingly, this grievance is **GRANTED**; W. Va. Code, 18A-4-8b shall be applied and the board of education is directed to compute the grievants' seniority according to the total length of time each has been professionally employed by the board.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wetzel 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", written over a horizontal line.

NEDRA KOVAL
Hearing Examiner

DATED May 7, 1987