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DOCKET NO. 26-87-095-1

JIM TAYLOR
LEONARD BRAMER
GENE LAYTON

DOCKET NO. 26-87-096-1

DANNY DEWHURST
ROGER RAINEY

DOCKET NO. 26-87-097-1

ALBERT STEPHENS
CAROL MILLER
GARY MITCHELL
MICHAEL WHALEN
SALLY DARST

DOCKET NO. 26-87-098-1

JAMES REYMOND

DOCKET NO. 26-87-099-1

RICHARD HAYCRAFT and

DOCKET NO. 26-87-104-1

DORA ATKINSON

DOCKET NO. 26-87-105-1

v.

MASON COUNTY BOARD OF EDUCATION

D E C I S I O N

During the 1986-87 school term grievants Sally Darst, Carol Miller, Gary Mitchell, Albert Stevens and Michael Whalen were employed as directors of county wide programs; Richard Haycraft was assigned as principal of the Mason County Vo-Tech Center;

Dora Atkinson was the Coordinator of Mathematics and Becky Wood was employed as a diagnostician. They have filed grievances as a result of their positions having been eliminated for the 1987-88 school year.

Grievants Gene Layton, Leonard Bramer, Jim Taylor, Danny Dewhurst and Roger Rainey are employed as vocational-agriculture teachers; Jim Raymond is assigned as principal at Wahama High School. These individuals have filed grievances as a result of the board of education reducing their employment term from 240 to 230 days per year. A level four hearing was waived by all parties and the matters were submitted for decision based upon a joint stipulation of facts and exhibits and briefs filed by all parties. Due to a common origin and a similarity of issues the grievances were consolidated for decision.

At a meeting held on March 18, 1987 the board of education approved a recommendation made by Superintendent William A. Barker that all personnel employed for 261 days be reduced to 246 days and all personnel employed for 240 days be reduced to 230 days employment.

At a meeting held on March 25, 1987 the board approved thirteen changes in the preliminary budget which included a reorganization of the central office staff. On March 26 the

board approved the proposed administration (re)organization chart and established three new director positions and five new supervisory positions as reflected on the chart.

Later in that meeting Superintendent Barker recommended and the board approved the termination of Becky Wood, Dora Atkinson, Richard Haycraft and Sally Darst, abolished the positions which they held and placed their names on the transfer list.

On March 27 the board terminated the contracts of Roger Rainey and Danny Dewhurst, Leonard Bramer, Jim Taylor and James Reymond to reflect the change in their employment terms from 240 to 230 days, effective July 1, 1987. The board also approved the termination of Michael Whalen and Gary Mitchell, their positions were abolished and they were placed on the transfer list.

On March 31, 1987 the board terminated the contracts of Carol Miller and Albert Stephens, placed them on the transfer list and abolished the positions they had previously held.

The grievants argue:

(1) A violation of W.Va. Code, 18A-2-2 as they were not afforded hearings prior to the board's approval of a reorganizational chart and the Superintendent's recommendation that all 261 and 240 day employment terms be reduced to 240 and 230

days, respectively. While this action did not terminate or reduce the employment terms of named individuals there was no question of which specific employees were affected as they were identified by position or by the length of their employment term.

(2) The actions of the board of education were arbitrary and capricious in that the only reason given for the personnel revisions was a loss of \$327,000 in local tax revenue while the budget was actually reduced by \$811,000. Only \$135,000 would be saved by the changes in the director and coordinator positions and \$25,000 from the reduction of 240 day employment term to 230 days. Numerous alternatives other than these personnel changes were available when revising the budget to meet the lower revenue estimates.

(3) A violation of W.Va. Code, 6-9A-4 when the board of education adjourned to executive session to consider these personnel matters. Grievants had requested open hearings and cite a circuit court decision which they interpret to prohibit executive sessions in such instances.

(4) A violation of Mason County Board of Education Policy 812 which requires that a reduction of staff is to be determined by seniority.

(5) A violation of W.Va. Code, 18A-4-8b by its failure to place grievant Haycraft in the position of the least senior principal.

(6) A violation of W.Va. Code, 18-9A-10 in the planned remuneration for diagnostician services from Step 7 funding. The board is statutorily required to use these monies "to improve instructional programs". Grievant Wood cites the Oxford Universal Dictionary definition of instruction as the act of instruction, or teaching; the imparting of knowledge or skill. She contends that this position does not include teaching or instructing and therefore cannot be considered as an instructional program.

(7) The board of education acted in contradiction of its own policy by reducing the employment terms of grievants Stevens, Miller and Darst to 230 days when it had approved a recommendation on March 18 to reduce all 261 day employment terms to 246 days.

(8) A violation of State Board of Education Policy 4100 in the reduction of grievants Dewhurst's and Rainey's employment terms to 230 days as section 4100.36 of that policy requires that teachers be allowed sufficient time to supervise the occupational experience programs, that for a number of years sufficient

time has meant 240 days of extended employment and that no evidence has been introduced to indicate a decrease in duties or workload which would warrant a reduced employment term. Section 4100.3i lists activities to be completed by the teachers over a twelve month employment term and the respondent has failed to show any decrease in need of these services.

The grievants request that they be reinstated to the positions and employment terms held during the 1986-87 school year and be compensated for all salary or benefits lost from July 1, 1987.

The respondent asserts that the loss of \$327,000 of local revenue funding led to the reorganization which required the elimination of positions and to the reduction of extended employment terms. Although not specifically stated, an additional financial constraint was created when \$542,000 of Step 7 funds was required to be set aside.

The respondent contends that all contracts were properly terminated under W.Va. Code, 18A-2-2 as the prior approval of a reorganizational chart did not result in any individual personnel changes and all grievants were afforded a hearing prior to any

termination action. The reduction of non-instructional extended employment from 240 to 230 days per year was to avoid layoffs and to equitably distribute the shortfall.

The respondent argues that W. Va. Code, 18-9B-8 does not apply in the instant matters, however, these statutory guidelines for budgetary reduction were followed in any event.

In addition to the foregoing it is appropriate to make the following specific findings of fact and conclusions of law.

Findings of Fact

1. At a meeting held on March 18, 1987 the Mason County Board of Education approved the recommendations of Superintendent William Barker to reduce 261 day employment terms to 246 days and 240 day employment terms to 230 days.

2. As a result of the action taken in finding number one the contracts of grievants Dewhurst, Rainey, Layton, Bramer, Taylor and Reymond were terminated and their terms of employment reduced to 230 days.

3. On March 26 the board of education approved new director and supervisor positions and a proposed reorganizational chart

did not list the positions held at that time by grievants Darst, Whalen, Mitchell, Stevens, Miller, Atkinson, Wood and Haycraft. Later in that same meeting grievants Wood, Atkinson, Haycraft and Darst were placed on the transfer list and their positions abolished. Similar action was taken regarding grievants Whalen, Mitchell, Stevens and Miller at meetings held on March 27 and 31.

4. Although all parties have stipulated that the grievants were given timely written notification of the intention to terminate the evidence supports the conclusion that the board had already made the decision to terminate prior to conducting hearings for the grievants.

Conclusions of Law

1. 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) and Hedrick v. Pendleton County Board of Education, 332 S.E. 2d 109 (W.Va. 1985).

2. W. Va. Code, 18A-2-2 provides that a continuing contract of any teacher shall remain in effect unless and until terminated by the board of education after the teacher has received written

notice stating the cause(s) and has been given the opportunity to be heard at a meeting of the board prior to the board's action.

3. The board's action to reduce the employment terms of all 261 and 240 day employees and to accept the proposed reorganizational chart prior to terminating the grievants denied them a meaningful hearing as required by W.Va. Code, 18A-2-2 inasmuch as the decisions regarding their employment had been effectively made.

4. Failure of the school board to comply strictly with this statutory provision vitiates its action in termination of the grievants contracts. Wayne County Board of Education v. Tooley, 276 S.E. 2d 826 (W.Va. 1981); Morgan v. Pizzino, 256 S.E. 2d 592 (W.Va. 1979).

Accordingly, these grievances are **GRANTED** and the school board is **ORDERED** to reinstate the grievants to the positions and employment terms which they held during the 1986-87 school year and to compensate them for any loss of work incurred as a result of the improper terminations, less any appropriate set off.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mason 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 September 8, 1987

Sue Keller