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MARY ANN CANTERBURY

v.

Docket No. 22-88-138

LINCOLN COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Mary Ann Canterbury, is employed by the Lincoln County Board of Education as a teacher assigned to Branchland Elementary School. She filed a grievance on May 5, 1988 alleging she had been transferred without notice and a hearing in violation of W.Va. Code, 18A-2-7. A Level II hearing was held on June 10, 1988 and the decision at that level was adverse to the grievant. Upon appeal to Level IV the parties agreed a decision could be made on the record developed at lower levels.

The case presents no factual dispute and the parties agree that in May 1987 Chris Baker, principal at Branchland Elementary informed grievant she would be teaching the fifth grade at the

start of the 1988-89 school term instead of the second grade to which she had previously been assigned during the 1987-88 school term. Grievant was not afforded a hearing and the Lincoln County Board of Education took no action on the matter. Ms. Canterbury alleges the reassignment is a transfer in violation of the express provisions of W.Va. Code, 18A-2-7 requiring notice right to a hearing and action by the Board.¹

The Board takes the position that a principal, pursuant to W.Va. Code, 18-2-9, has certain administrative and supervisory responsibilities including the authority to reassign teachers to grades within their area(s) of certification. This position represents a reversal of Mr. Baker's earlier held opinion

¹ W.Va. Code, 18A-2-7 specifically provides:

The superintendent, subject only to approval of the board, shall have authority to assign, transfer, promote, demote or suspend school personnel and to recommend their dismissal pursuant to provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before the first Monday in April if he is being considered for transfer or to be transferred. Any teacher or employee who desires to protest such proposed transfer may request in writing a statement of the reasons for the proposed transfer. Such statement of reasons shall be delivered to the teacher or employee within ten days of the receipt of the request. Within ten days of the receipt of the statement of reasons, the teacher or employee may make written demand upon the superintendent for a hearing on the proposed transfer before the county board of education. The hearing on the proposed transfer shall be held on or before the first Monday in May. At the hearing, the reasons for the proposed transfer must be shown.

that principals had no such authority based on an interpretation of certain decisions by the West Virginia Supreme Court of Appeals.

The issue of a principal's authority in such matters was most recently addressed in State of West Virginia, ex rel. Larry Rose v. Raleigh County Board of Education, 367 S.E.2d 223 (W.Va. 1988) in which the Court reiterated its holding in Marion County Board of Education v. Leonard Bonafantino, 366 S.E.2d 650 (W.Va. 1988) that pursuant to W.Va. Code, 18A-2-9 a principal's statutory role is limited to "submit[ting] recommendations to the superintendent" regarding such personnel decisions. The West Virginia Education and State Employees Grievance Board has previously addressed the question of what types of assignments of teachers are in effect transfers requiring county boards of education to follow the procedural guidelines of W.Va. Code, 18A-2-7. In Burge and Worrell v. Mercer County Board of Education, Docket No. 27-86-113 it was held changes in two teachers' assignments from fifth grades to first and second grades were transfers and beyond a principals' authority. Similarly in Gallaher v. Taylor County Board of Education, Docket No. 46-87-233-2 it was ruled that a change in assignment from sixth grade to third grade constituted a transfer triggering the application of notice and hearing rights. It follows that the action taken by Mr. Baker in the present case to reassign grievant to a fifth grade teaching position was likewise one which should have been taken upon recommendation of the Superintendent of Schools and the Lincoln County

Board of Education.

In addition to the foregoing, the following findings of fact and conclusions of law are made.

FINDINGS OF FACT

1. Grievant, Mary Ann Canterbury, is employed by the Lincoln County Board of Education as a teacher assigned to Branchland Elementary School.

2. In May 1988 grievant's principal, Mr. Chris Baker, re-assigned her from her previously held second grade teaching position to a fifth grade teaching position effective at the beginning of the 1988-89 school term.

3. Said reassignment was not recommended by the Superintendent of Schools or voted upon by the Lincoln County Board of Education.

CONCLUSIONS OF LAW

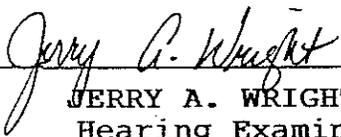
1. A principal may make recommendations regarding personnel changes but it is the superintendent, subject only to approval of the board who has authority to assign, transfer, promote, demote or suspend school personnel. State of West Virginia ex rel. Larry Rose v. Raleigh County Board of Education, supra; Marion County Board of Education v. Leonard Bonafantino, supra.

2. A change of assignment from a second grade position to a fifth grade position is a substantial change in duties and responsibilities and constitutes a transfer requiring compliance with procedures contained in W.Va. Code, 18A-2-7. Pan-smith, et al. v. Taylor County Board of Education, Docket No. 46-86-57; Burge and Worrell v. Mercer County Board of Education, supra; Gallaher v. Taylor County Board of Education, supra.

3. The reassignment of the grievant, Mary Ann Canterbury, to a fifth grade teaching position by her principal was a violation of the express procedural provisions of W.Va. Code, 18A-2-7.

Accordingly, the grievance is **GRANTED** and the Lincoln County Board of Education is hereby **ORDERED** to reinstate the grievant, Mary Ann Canterbury, to her previously held position at Branchland Elementary School.

Either party may appeal this decision to the Circuit Court of Lincoln County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of said 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.



JERRY A. WRIGHT
Hearing Examiner

Dated: August 26, 1988