



REPLY TO:
101 Harper Park Drive
Suite D
Beckley, WV 25801
Telephone: 255-6155

Members
James Paul Geary
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone: 348-3361

JOYCE DAVIS

v.

Docket No. 29-87-327-4

MINGO COUNTY BOARD OF EDUCATION

D E C I S I O N

Joyce Davis has been employed as a teacher by the Mingo County Board of Education for approximately eight (8) years. During the 1986-87 school term Ms. Davis filed a grievance alleging she was teaching reading classes at Gilbert Junior High School without certification in that field. A Level IV hearing on that grievance was held January 13, 1987 and the Mingo County Board of Education was subsequently ordered to place grievant in a position within her teaching certification. Joyce Davis v. Mingo County Board of Education, Docket No. 29-86-338-4. Ms. Davis filed the present grievance alleging her transfer to Matewan Junior High School at the beginning of the 1987-88 school term was an act of reprisal on the part of the Board. A Level II hearing was held October 23, 1987 and the Board waived

Level III proceedings. A Level IV evidentiary hearing was held January 25, 1988.

Ms. Davis was first assigned to Gilbert Junior High School as a reading teacher in September 1982 with a provisional certificate. She was certified to teach English grades 7-12 and her application for her professional certificate in 1985 was denied because she had been teaching reading which was out of her field. She prevailed when she filed the previous grievance requesting that the Board place her in an English teacher position.¹ On April 2, 1987 Ms. Davis received a telephone call from Harry Cline, Superintendent of Schools, informing her that in accordance with that decision she would be replacing a Ms. Donna Cline, an English teacher at Gilbert Junior High School. Mr. Cline requested that grievant finish the 1986-87 school term as reading teacher and make the change to English teacher in the fall and she agreed to do so.² On April 3, 1987 Ms. Davis received a letter of proposed transfer and reassignment for the upcoming school term and requested a hearing before the Board and was told the letter had been sent for the sake of compliance with W.Va. Code,

¹The decision in that case was rendered April 1, 1987.

²The Board did not deny this and other conversations actually took place and made no objection to their consideration as reliable evidence.

18A-2-7. On May 18, 1987 she received a letter from Mr. Cline indicating it was his intention to place her in the "Gilbert area." (Grievant's Exhibit No. 2) In July 1987 the Board posted two English/Reading teacher positions at Gilbert Junior High School and grievant again called Mr. Cline and was told to apply indicating one of the positions was "her job". Grievant was the only applicant for the positions but received no communication about her application. Shortly thereafter, grievant learned that two Reading teacher positions at Gilbert had been posted and in another telephone conversation with Mr. Cline she was told her original application was sufficient for consideration for one of those positions. At this time grievant indicated to Mr. Cline that since certain West Virginia Department of Education certification policies had changed and she could thereby teach reading classes and attain permanent certification, she would take one of the reading positions at Gilbert and forego the enforcement of the April 1, 1987 hearing examiner's decision. On April 19, 1987 grievant was assigned to a English teacher position at Matewan Junior High School which is approximately a one hour drive from her home.³

Grievant contends that although she was placed in an English teacher position in accordance with the decision of the West Virginia Education Employees Grievance Board, her placement at Matewan was

³The two persons receiving the positions at Gilbert were not certified in Reading.

an act of reprisal for the following reasons:

1. She was given promises she would be reassigned to Gilbert Junior High or the Gilbert area by Superintendent Cline and she relied on these assurances when she agreed to forego enforcement of the decision until the end of the 1986-87 school term.
2. The Reading/English positions at Gilbert Junior High were posted and when she was the only applicant the posting was withdrawn and different positions were posted.
3. Her further agreement to forego enforcement of the decision if she would be assigned to one of the newly posted Reading teacher positions at Gilbert was ignored even though she was at least as qualified as the two persons hired.
4. Her placement at Matewan imposes a hardship on her in that it now takes over an hour to reach her school.

Grievant requests placement in one of the Reading teacher positions at Gilbert Junior High School as relief since the West Virginia Department of Education policies regarding certification have changed.

The Board responds by emphasizing that the West Virginia Education Employees Grievance Board's order of April 1, 1987 requires the Mingo County Board of Education to place her in an English teacher position and pursuant to that order the least senior English teacher in the county was terminated to make a vacancy for the grievant and it just happened that this least senior English teacher was assigned to Matewan. The Board further asserts that Ms. Davis did not apply for the posted Reading teacher positions and she could not have been placed in one if she had because it was this very same assignment which precipitated her first grievance. There was no response or

rebuttal to grievant's claim she relied on Mr. Cline's promises to place her in an English teacher position at Gilbert when she agreed to forego enforcement of the decision of April 1, 1987.

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

FINDINGS OF FACT

1. Grievant, Joyce Davis, has been employed by the Mingo County Board of Education since September 1, 1982.

2. Ms. Davis filed a grievance in September 1986 because of her assignment to teach Reading at Gilbert Junior High School.

3. A decision rendered on April 1, 1987 by the West Virginia Education Employees Grievance Board ordered the Mingo County Board of Education to assign grievant to an English teacher position.

4. On April 2, 1987 grievant and Mingo County Superintendent of Schools, Harry Cline, reached a verbal agreement whereby grievant would remain in her Reading teacher position at Gilbert for the remainder of the 1986-87 school term and would be reassigned to the position of English teacher at Gilbert at the beginning of the 1987-88 school term.

5. On April 3, 1987 grievant received a letter of proposed transfer and reassignment for the 1987-88 school term.

6. Grievant requested and was given a transfer hearing before the Mingo County Board of Education.

7. On May 18, 1987 grievant received a letter from Superintendent Cline indicating he would "do what he could to keep grievant in the Gilbert area."

8. On or about July 9, 1987 two English/Reading positions at Gilbert Junior High School were posted and grievant made an application for either position and was the only applicant.

9. Grievant received no communication regarding her application for these positions and subsequently became aware the two jobs were reposted as Reading Teacher positions.

10. Grievant again contacted Mr. Cline on or about July 13, 1987 and was told her previous application would be sufficient for the two new postings.

11. On August 19, 1987 grievant was informed she was assigned to the position of English teacher at Matewan Junior High School which is approximately a one hour drive from her home.

CONCLUSIONS OF LAW

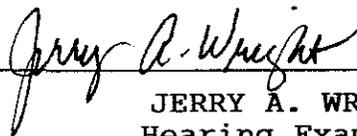
1. W.Va. Code, 18-29-2(p) defines reprisal as the retaliation of an employer or agent toward a grievant or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.

2. In order to sustain an allegation of reprisal a grievant must prove by a preponderance of the evidence the existence of a causal connection between a real or perceived injury to the employer and subsequent retaliatory actions by the employer and that such actions have resulted in injury to his or her compensation, terms, conditions, or privileges of employment.

3. Grievant, Joyce Davis, has proven by a preponderance of the evidence that the actions of the Mingo County Board of Education in placing her at Matewan Junior High School despite representations to the contrary constituted a reprisal for the initial grievance filed in September 1987.

Accordingly, the grievance is **GRANTED** and the Mingo County Board of Education is hereby **ORDERED** to instate the grievant, Joyce Davis, in the position of Reading teacher at Gilbert Junior High School.

Either party may appeal this decision to the Circuit Court of Mingo County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) of receipt of said decision. (W.Va. Code, 18-29-7). Please inform 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: March 14, 1988