



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

SUE EDMAN

v.

DOCKET NO. 24-87-255-2

MARION COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Sue Edman, has been employed by the Marion County Board of Education for sixteen (16) years. She has been assigned to the Transportation Office as a Secretary III for the past five (5) years. She filed the present grievance on June 26, 1987 alleging she was misclassified as additional duties assigned to her had substantially altered her job function within the Transportation Office. Her grievance was denied at Level I and a Level II hearing was held on July 31, 1987; an adverse decision was rendered at that level on August 4, 1987. Grievant appealed to Level III and a hearing before the Board was held on September 17, 1987 and her grievance was again denied on the Board's finding that her current

duties conformed to her job description. Grievant appealed to Level IV on October 7, 1987 and the parties agreed to submit the case for decision on the transcripts and records developed at the lower levels.¹

When grievant was first assigned to the Transportation Office in 1982 she was given a document entitled "General Instructions for Monthly Reports" and was told it covered all of the duties she was expected to perform as a Secretary III in that office. Shortly thereafter, a part-time secretary was also assigned to the office and she assumed some of those duties. Apparently, confusion arose over the responsibilities of this new employee and a meeting was held on February 19, 1985 with an Assistant Superintendent, Director of Transportation, grievant, the half-time secretary and WVEA and WVSSPA representatives to determine the efficient distribution of work between the two secretaries. Duties were defined

¹The transcripts of the Level II and Level III proceedings will herein be referred to as T.1 and T.2 respectively.

It should be noted that the Level II hearing was conducted in such a way that the transcript of that proceeding provides little, if any, probative evidence in support of grievant's claims nor does it help clarify the Board's position in this grievance. The contentions of both parties is necessarily and primarily adduced from the transcript of the Level II hearing for the purposes of the decision in this case.

and reduced to writing in the form of a memorandum from Dennis Edge, Assistant Superintendent, to all the concerned parties. (Grievant's Exhibit No. 6). This memorandum is specific in that it states grievant's secretarial duties shall basically remain the same with the following modifications:

- A. Curricular/Extracurricular State Reports shall be assigned to Mrs. Bingamon's (half-time secretary) desk.
- B. Credit card steps/related tasks shall be assumed by Ms. Edman.
- C. Various secretarial tasks shall be shared with Mrs. Bingamon as assistance is needed to meet timelines, etc.

The part-time secretary's duties were designated as:

- A. Bus Driver/Aides/Substitutes time cards and sheets.
- B. Field Trip applications/related tasks.
- C. Curricular/Extracurricular State Reports.
- D. Assignments from the Director of Transportation (as necessary).
- E. Secretarial tasks from Ms. Edman's desk (as needed and as time permits).

The part-time secretary took a position in the Central Board of Education Office sometime after the issuance of this memorandum and the grievant verbally agreed to assume her duties and indicated to Mr. Edge, Assistant Superintendent, that she could handle part of

the extra workload and the vacant position was never filled. (Tl. 14, 15). This agreement was never reduced to writing and the grievant does not complain about her assumption of the part-time secretary's duties. She does allege that responsibilities over and above those of that secretary and those she originally agreed to perform when she was first assigned to the Transportation Office have been systematically assigned to her, including:

1. Preparation of payroll sheets for staff at the office and making determinations as to the source of funding for each payroll sheet entry (Tl. 7, 8).
2. Preparation of extracurricular driving reports and making determinations of the source of funding for payment for those extracurricular activities (Tl. 8, 9).
3. Preparation of an additional three-page report on attendance of bus drivers and office staff (Tl. 9, 10).
4. Preparation of first-aid reports (Tl. 10).
5. Preparation of physical reports (Tl. 10).
6. Development of a seniority list of bus drivers as it relates to the assignment of extracurricular trips (Tl. 11).
7. Maintenance of a bus drivers list (Tl. 12).
8. Maintenance of an office employees list (Tl. 12).
9. Preparation of a vehicle information list (Tl. 12).
10. Preparation of National Safety Council records (Tl. 12).
11. Preparation of state school bus safety certification records (Tl. 12).
12. Copying and assembling garage and driver forms (Tl. 13).

Grievant testified to these additional assignments at the Level II hearing without objection or rebuttal by the Board's representative, Mr. Edge.² Because of the assignment of these additional duties to her position, Ms. Edman alleges three separate violations of the W.Va. Code and makes corresponding demands for relief as follows:

- A. The written agreement contained in the memorandum of February 28, 1985, which stated the grievant's secretarial duties would remain basically the same with the stipulated changes, has not been fulfilled by the Board and W.Va. Code, 18-29-2 defines a grievance as a "violation (of a)....written agreement." As relief grievant asks that the Board be held to its promises and realign her present duties to conform to said memorandum.
- B. The assignment of extra duties to grievant has, in fact, amounted to a transfer and as such must be governed by W.Va. Code, 18A-2-7. As alternative relief, Ms. Edman asks that the transfer be found in violation of that section and that she be returned to her original duties and responsibilities of the 1982-83 school term.
- C. The extra duties and responsibilities performed by grievant conform to those of an Executive Secretary as defined by W.Va. Code, 18A-4-8 and she should be reclassified as such or at least be placed in the multi-classification of Secretary III/Executive Secretary.

²Mr. Edge did make a statement at the hearing to to effect that the memorandum of February 19, 1985 was issued with the understood assumption that the part-time secretary would remain in the Transportation Office and it could not be literally read to mean the duties of the grievant would always remain the same. He provided no testimony or other evidence to contradict grievant's assertion that the additional responsibilities were in fact assigned to grievant.

The Board's response to these arguments of the grievant is that:

- A. The memorandum of agreement tacitly included the assumption that the part-time secretary would remain at the Transportation Office and once she was assigned to another office the agreement could not be binding and regardless of the wording of the document, it was understood by all parties that the duties of any employee of a board of education cannot remain static and the nature of this job implies the future assignment of other duties as required by changes in state law and board policy.
- B. Although grievant received additional responsibilities, the nature of the position, namely, Secretary III, never changed and grievant has not been reassigned or asked to perform duties inconsistent with the functions of a secretary and therefore no transfer as contemplated by the W.Va. Code has taken place.
- C. While some of the duties and responsibilities of grievant's present position are the same as that of an Executive Secretary, the two positions are substantially different in that Executive Secretaries are employed as a county school superintendent's secretary.

It is incumbent on the grievant to substantiate charges made in a grievance by a preponderance of the evidence. Wade v. Marion County Board of Education, Docket No. 24-86-248-3; Butta v. Ritchie County Board of Education, Docket No. 43-86-315-3; Harrison v. Kanawha County Board of Education, Docket No. 20-86-219. In the present case grievant has failed to meet that burden of proof in regard to her claim that her duties and responsibilities have so substantially been altered that she should have been considered transferred to a new position and afforded the rights of notice and hearing pursuant to W.Va. Code, 18A-2-7. She presented no

evidence of reassignment but only substantiated a claim that her workload had increased dramatically. Each additional duty assigned to her by definition was one normally performed by a secretary albeit Executive Secretaries performed some of the same tasks. Moreover, grievant failed to show by a preponderance of the evidence that she performed significant administrative duties, an integral part of the definition of Executive Secretary under W.Va. Code, 18A-4-8.

It follows grievant also failed to substantiate her claim that she should be given the multi-classification of Secretary III/Executive Secretary. The job description of the two positions are very similar (Board's Exhibit Nos. 1 and 2) as they are defined in the Board's own personal policy, but definition given the position by W.Va. Code, 18A-4-8 is controlling and it is clear in that section Executive Secretaries are assigned to the superintendent's office and perform the administrative duties already discussed.

The grievant has, however, substantiated her claim that the Board violated the provisions of the written agreement of February 28, 1985. Generally personnel policy must be reduced to writing and made available to all county school personnel but agreements reached for the resolution of controversies and compromises for the settlement of grievances are encouraged and favored by law. Sanders, et al. v. Roselawn Memorial Gardens, et al., 159 S.E.2d 784 (W.Va. 1968); The Board of Education of the County of Monongalia,

etc., et al. v. The Honorable Larry Staker Judge, etc., 343 S.E.2d 673 (W.Va. 1986), cited in Bennett v. Fayette County Board of Education, Docket No. 10-87-045-4. W.Va. Code, 18-29-1 also encourages the resolution of grievances at the lowest level. In this case such an agreement was reached and reduced in writing and should be enforced.

Grievant has met her burden of proof on her claim that the Board assigned her substantial extra duties over and above those enumerated in the agreement of February 25, 1985.

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

FINDINGS OF FACT

1. Grievant has been employed by the Marion County Board of Education for sixteen (16) years and for the last five (5) years has been assigned to the Transportation Office as a Secretary III.

2. On February 19, 1985 a meeting was held in the Transportation Office with grievant, a part-time secretary, Dennis Edge, Assistant Superintendent, and WVEA and WVSSPA representatives for the purpose of making an efficient distribution of work between grievant and the part-time secretary.

3. The agreements reached at that meeting were reduced to writing in the form of a memorandum dated February 28, 1985 issued by Dennis Edge, Assistant Superintendent, and a copy thereof

distributed to all involved parties and said agreement specified the duties of grievant and the part-time secretary.

4. The memorandum of February 28, 1985 constituted a written agreement between the Marion County Board of Education and grievant intended to resolve certain difficulties within the Transportation Office.

5. The part-time secretary was assigned to another office and grievant verbally agreed to and did assume the duties of that employee but no written agreement was made or official action taken by the Board on this matter.

6. In addition to the extra duties agreed to by grievant, the Board placed substantial additional duties and responsibilities upon grievant without her consent.

7. These additional duties exceeded those originally given the grievant when she was first assigned to the Transportation Office and also exceeded those contained in the written agreement of February 28, 1985.

8. The extra duties and responsibilities placed upon grievant did not change the nature of her job function or constitute a transfer to another position or require a Board to place her in a multi-classification job description.

CONCLUSIONS OF LAW

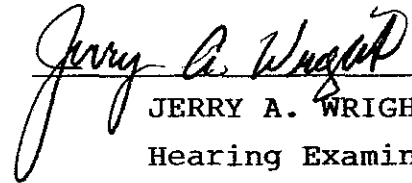
1. W.Va. Code, 18-29-1 contemplates the resolution of problems between employees and boards of education at the lowest possible administrative level and boards of education may enter into written agreements with service personnel for that purpose. The law favors agreements reached for the settlement of grievances and controversies. Sanders, et al. v. Roselawn Memorial Gardens, et al., supra; The Board of Education of the County of Monongalia, etc., et al. v. The Honorable Larry Staker, Judge, etc., supra.

2. The Board's assignment of extra duties and responsibilities enumerated herein were in violation of the agreement reached by the parties during the meeting held on February 19, 1985.

3. The grievant's verbal indication that she would assume the duties of the reassigned part-time secretary was not reduced to written form or formally acknowledged by the Board and is not binding on grievant.

Accordingly, the grievance is **GRANTED** and the Marion County Board of Education is hereby **ORDERED** to assign the grievant only those duties and responsibilities she agreed to perform pursuant to the memorandum from Dennis Edge, Assistant Superintendent, dated February 28, 1985.

Either party may appeal this decision to the Circuit Court of Marion County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this 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: Jan 19, 1968