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ANNE GERSTNER

v.

Docket No. 11-87-303-3

GILMER COUNTY BOARD OF EDUCATION

D E C I S I O N

Anne Gerstner, grievant, is employed by the Gilmer County Board of Education as an itinerant school librarian serving all five county elementary schools. She filed a level four grievance appeal in November 1987 alleging violation of relevant school laws and policy when she was assigned some instructional duties by the principal at one of her schools. The parties indicated that a decision could be based upon the record at levels two and three; the school board stood on its level two decision and grievant submitted a brief on December 22, 1987.¹

¹The level two hearing was conducted October 22, 1987 and exhibits entered at the hearing were appended to the level two decision.

The basic facts giving rise to this dispute are not in contention. At the onset of the 1987-88 school term, Principal Dorothy Rhoades at Tanner Elementary assigned grievant an afternoon teaching schedule on Monday, the day grievant visited that school in performance of her librarian duties. From 12:30 until 3:25 p.m., grievant was assigned blocks of instructional time in which she was to teach library science skills to the school's kindergarten through eighth grade students.

At level two grievant testified on her own behalf and reviewed her responsibilities as librarian for the past eighteen years which did not include any direct instructional duties. The typical librarian chores included the inventory, selection, purchase, cataloging, circulation and care of library materials, providing reference and advisory services to staff, students and adults in the community, and initiating and coordinating activities with parents and staff to promote book reading and library use. Until the reduction in force actions effective this school term eliminated library aides, grievant supervised their duties; grievant stated that she now has to assume their work. She testified that no other itinerant teacher has been assigned additional duties

at Tanner nor has she been assigned instructional duties at any other of her five schools. Grievant is disturbed that one of the classes she was assigned to teach contains more students than permitted by state law and policy; she also voices objection that she has no ongoing designated immediate supervisor.²

Grievant claims that it has been past practice and remains continuing practice for language arts teachers to teach library science skills, a curricular component mandated by state education policy. She contends that instructional duties are not designated librarian responsibilities and the inclusion of those duties impedes her ability to deliver the stated librarian's services and adversely affects her job performance, a grievable matter as per W.Va. Code, 18-29-2.³

²It appears that grievant has identified this situation as an issue of the grievance and has requested as relief that she be provided a designated immediate supervisor. She testified that over the years her evaluations were rendered by either the superintendent, assistant superintendent, various principals or assistant principals. Absent a proper prosecution of the issue and an allegation or showing of policy or legal violation, it would be improper for the hearing examiner to intrude into matters of administrative policy and this request will not be addressed.

³Grievant testified that as a result of the teaching schedule, she had only three hours daily to complete her librarian functions. In addition she claims that she now has no "flexibility" in her schedule when she works at Tanner and could not leave the school for other matters such as coordinating a book fair at another school when the occasion demanded her presence.

Grievant argues that the instructional assignment was in contravention of accepted practice thus compromising her rights under State Board Policy 5300 which states that employees have, "certain rights and responsibilities as provided in statute, in contract or accepted practice."⁴ Grievant further urges that Principal Rhoades exceeded her authority by making the assignment which amounted to a substantial change in her (grievant's) duties and responsibilities requiring compliance with the notice and hearing provisions of W.Va. Code 18A-2-7 and cites several West Virginia Education Employees Grievance Board decisions in support thereof.⁵ She requests that her instructional duties at Tanner Elementary be eliminated.

Principal Rhoades testified on behalf of the respondent board and refuted grievant's theory that direct instructional duties were not permissible for a librarian simply because County Policy No. 4116.4 does not explicitly cite such responsibilities under "Illustrative Examples of Work" and noted that examples stated in that manner did not exclude other relevant duties. She contends that a trained librarian would be the most qualified person to teach library science and library reference skills. Mrs. Rhoades

⁴ Administrative notice can be taken that "past practice" cannot be controlling in some current educational situations. For example, a decline in student enrollment and available financial resources has dictated a drastic reduction in present school staffing in all counties and may result in unwelcome changes imposed on all remaining school personnel.

⁵ The cited cases involved teacher reassignments to a new curricular area or grade level and are not in accord with the facts of the grievance herein.

testified that Tanner school was quite small but still understaffed as a result of the RIFs last spring and a scheduling adjustment of grievant's duties at Tanner was necessary in order that the school's permanent staff be provided a planning period pursuant to W.Va. Code, 18A-4-14.⁶

The board contends that the principal properly acted within her statutory scope of duties when she assigned grievant some instructional duties effective this school year as the adjustment was necessary to best serve the students at Tanner Elementary School.⁷ It argues that the schedule adjustment did not amount to a transfer as contemplated by law or policy and cites several West Virginia Education Employees Grievance Board decisions in support of its position.

In addition to the foregoing narration, the following findings of facts and conclusions of law are appropriate.

⁶Grievant herself disputed her contention that Principal Rhoades did nothing to cooperate in carrying out the provisions of W.Va. Code, 18A-4-14, i.e., providing planning periods. Grievant testified that Mrs. Rhoades assumed some instructional activities several days a week to provide her staff planning periods. The Tanner schedule shows that Mrs. Rhoades also has classroom responsibilities as a remedial reading teacher.

⁷Grievant's allegation that she was assigned one class which exceeded pupil/teacher ratios without permit was not borne out as an exception application was filed to state officials in early October 1987.

FINDINGS OF FACT

1. For approximately eighteen years grievant has been an itinerant librarian assigned to Gilmer County's five elementary (K-8) schools. During that time she had no direct instructional responsibilities and when state education requirements mandated the inclusion of library skills as a curricular component of all levels of public education, language arts teachers assumed that responsibility in at least the county elementary-middle school area.

2. In the past grievant's duties did include activities, usually conducted in concert with administrators, students, school staff and parents, to promote book reading and library usage and this responsibility comports with County Policy 4116.4, - "Job Description - Elementary Librarian."

3. School year 1987-88 was the first time in many years that grievant has not had the assistance of library aides (eliminated positions in the 1987 RIF actions) and parental assistance has not lived up to expectations. Tanner Elementary school, K-8, has a small total student population but grievant admitted that the RIF actions rendered it shortstaffed.

4. At the onset of the 1987-88 school year, the principal of Tanner Elementary (which grievant serves on Mondays) assigned grievant to teach library science-reference skills to the school's seventy-three students in instructional blocks of time from 12:30 until 3:25 p.m., a duty that would encourage book reading and library usage. One class exceeded the allowable pupil/teacher ratio and a request to state officials for an exception to the permitted limits was completed by the school principal at Tanner on October 6, 1987. With the inclusion of grievant's weekly three hour teaching schedule and the principal's assumption of classroom activity beyond her remedial reading courses she (the principal) was able to schedule her permanent staff's required daily planning periods.

5. With respect to the schedule adjustment, grievant has not alleged or shown personal hardship or onerous duties. Neither has she demonstrated how the delivery of library services is adversely affected aside from her assertions of overcrowding in the library during instruction and that she no longer had a flexible schedule, negating the possibility that she could leave Tanner school on Monday afternoon if a task might require her presence elsewhere.

6. The evidence preponderates that the three hour weekly teaching assignment given grievant at Tanner school comports with county and state goals for the delivery of library services and was within the scope of Principal Rhoades' authority to make the schedule adjustment.

CONCLUSIONS OF LAW

1. School principals shall assume administrative and instructional supervisory responsibility for the planning, management, operation and evaluation of the total educational program of the school to which he or she is assigned. W.Va. Code, 18A-2-9; Schafstall v. Brooke County Board of Education, Docket No. 05-86-347-3.

2. A teaching schedule adjustment not including changes outside of a teacher's presently utilized area of certification, discipline, department or grade level of many years standing are not changes of assignment amounting to a transfer as contemplated by W.Va. Code, 18A-2-7. Schaftstall v. Brooke County Board of Education, *supra*; Burge, Worrell v. Mercer County Board of Education, Docket No. 27-86-113. Grievant's altered schedule to teach library science for three hours weekly comports with state and county policy goals for an elementary librarian and was within grievant's curricular area and grade level of eighteen years standing.

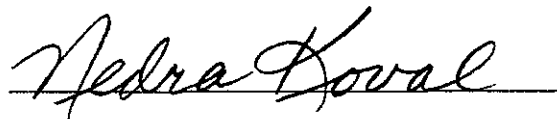
3. Grievant has not proven that her assignment at Tanner for the 1987-88 school term to teach library science classes in addition to her other librarian responsibilities imposed substantial changes in her duties, responsibilities and subject matter over that of her previous years assignments solely as a non-instructional librarian at all schools.

4. Grievant has not proven by a preponderance of the evidence or shown by prevailing statute, law or policy any basis for her claim that she is entitled to the restoration of her pre 1987-88 librarian's schedule at Tanner school.

Accordingly, this grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Gilmer 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: February 17, 1988

A handwritten signature in cursive script, reading "Nedra Koval", is written over a horizontal line.

NEDRA KOVAL
Hearing Examiner