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MARY ANN RENZELLI

v.

DOCKET NO. 17-87-259-2

HARRISON COUNTY BOARD OF EDUCATION

DECISION

Grievant, Mary Ann Renzelli, is employed by the Harrison County Board of Education as a teacher. Ms. Renzelli filed a level one grievance on September 8, 1987 in which she alleged that she had been transferred without notification in violation of W.Va. Code, 18A-2-7. Following an evidentiary hearing the matter was denied at level two, was waived by the board of education at level three and appealed to level four on October 9, 1987. By agreement of both parties the matter was submitted for decision based upon the record supplemented with proposed findings of fact and conclusions of law submitted by the grievant and a memorandum of law on behalf of the board received by January 22, 1988.¹

¹The record was forwarded to level four under cover of a letter dated February 9, 1988.

The grievant alleges that she was employed on a regular, full-time basis and assigned as a kindergarten teacher at Alta Vista Elementary School during the 1986-87 school term. That on August 19, 1987 she was transferred without any previous notification and is now assigned to both Alta Vista and Morgan Elementary Schools. Grievant argues that the transfer was in violation of the procedures for transfer as set forth in W.Va. Code, 18A-2-7 and requests reinstatement to a full-time position at Alta Vista Elementary School.

The board of education asserts that the question of whether or not there would be adequate enrollment for a full-time kindergarten position at Alta Vista could not be determined until July at which time the grievant verbally agreed to work at the Morgan school half-time. The board argues that it was not required to inform the grievant of transfer procedures stated in W.Va. Code, 18A-2-7 as it was acting in good faith and in the belief that everyone was in agreement to the move. Further, it is the position of the board that the procedural requirements of W.Va. Code, 18A-2-7 are not applicable in this instance which it characterizes as an emergency/regulatory transfer resulting from a lack of need of the teacher's services and in light

of a financial crisis facing the board. The board argues that its common law power to implement regulatory/emergency transfers in a reasonable manner when in the best interest of the school system was not entirely extinguished by Code, 18A-2-7 which applies only when it (the board) is aware of circumstances necessitating a transfer prior to the April deadline. Several cases which indicate that county superintendents were endowed with broad powers to implement regulatory/emergency transfers were cited to show that such power existed prior to the effective date of W.Va. Code, 18A-2-7 and to support the argument that it continues to exist.

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

Findings of Fact

1. Grievant has been employed by the Harrison County Board of Education for thirteen years and is presently assigned as a kindergarten teacher.

2. In August 1987 the grievant was notified that she would be transferred from a full-time position at Alta Vista

Elementary School to half-time positions at that school and at Morgan Elementary School.

3. The board of education could not accurately determine whether there would be adequate enrollment to maintain a full-time kindergarten at the Alta Vista school until after the April deadline for transfer of personnel.

4. The transfer was not in procedural compliance set forth in W.Va. Code, 18A-2-7 which requires that an employee be given notice of the recommended transfer on or before the first Monday in April.

5. The only exception provided by W.Va. Code, 18A-2-7 to the procedural requirements of that section is in emergency situations where the school building becomes damaged or destroyed through an unforeseen act which necessitates a transfer of personnel due to the condition of the building.

Conclusions of Law

1. 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. W.Va. Code, 18A-2-7.

2. The notice and hearing requirements prior to transfer as set forth in W.Va. Code, 18A-2-7 demand strict compliance. Morgan v. Pizzino, 256 S.E. 2d 592 (W.Va. 1979); Lavender v. McDowell County Board of Education, 327 S.E.2d 691 (W.Va. 1984).

3. The board of education has failed to comply with the statutory requirements of W.Va. Code, 18A-2-7 thereby rendering the transfer improper.

Accordingly, the grievance is **GRANTED** and the board is hereby ordered to reinstate grievant to a full-time kindergarten position at Alta Vista Elementary School.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Harrison 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 March 28, 1988

Sue Keller

SUE KELLER
HEARING EXAMINER