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Y. MADELINE RINER

v.

DOCKET NO. 02-87-306-2

BERKELEY COUNTY BOARD OF EDUCATION

DECISION

Grievant, Y. Madeline Riner, has been employed by the Berkeley County Board of Education as Assistant Director of Attendance for eleven years. Ms. Riner filed a level one grievance on September 22, 1987 in which she alleged violations of W.Va. Code, 18-8-3 and 18-8-4 as the county does not have a full-time attendance director and violations of W.Va. Code, 18A-4-5a and the Berkeley County Board of Education central office salary schedule as she has been assigned the duties of the attendance director but is compensated based upon the teachers rather than the directors salary schedule. The grievance was denied at levels one and two and appealed to level four on November 20, 1987. A level four hearing was conducted on March 3 and proposed findings and conclusions were submitted by March 31, 1988.

The administrative organization presently implemented by the Berkeley County Board of Education provides for a Director of Pupil Services who supervises the attendance/social workers, alternative school coordinator, JTPA coordinator, school nurses, counselors, testing program, research, policy development and use of facilities. The director's activities in the area of attendance involves meeting with and evaluating the three staff members, acting as a liaison between court officials and the staff, working in policy development, consulting with school administrators, working with community agencies and developing resources. The present director testified at the level four hearing that he occasionally becomes actively involved in truancy problems but that he spends a minimal amount of time in the area of attendance. He is not a certified attendance director.

All three attendance/social workers (including the grievant) are certified in the area of attendance and provide full service to their geographic areas. They are responsible for having all individuals between six and sixteen years of age enrolled in school and attending on a regular basis. Their duties include the investigation and documentation of illegal or unexcused absences, filing warrants against parents in magistrate court,

preparation of monthly and annual reports and to incorporate social work duties while performing their attendance duties. This job description essentially follows the duties of attendance director set forth in W.Va. Code, 18-8-4 and would indicate that each of the three staff members is the attendance director for his area of the county.

The grievant opines that while the two other staff members function primarily as social workers, she functions primarily as the attendance director. In addition to the duties recited above she states that she represents the county at regional or state meetings and compiles the monthly and annual reports. The grievant argues that since she performs the duties of the attendance director she should be awarded that title at a salary comparable to other directors with back pay and interest.

In support of her position the grievant submits two interpretations of the State Superintendent of Schools solicited pertaining to this situation. In a March 31, 1987 response to the grievant's inquiries the Superintendent determined that an attendance director must be certified for social services and attendance and not be serving in a combined position. In a

letter to Superintendent Jackson Flanigan dated October 8, 1987 the State Superintendent indicated that the individual responsible for attendance did not have to be titled in a specific form although W.Va. Code, 18-8-3 does contemplate one attendance worker as the director and any others as his assistant(s). This individual should coordinate the work of the staff for the director of pupil services.

The board argues that it has fulfilled three times the requirement of W.Va. Code, 18-8-3 which directs that any county with a net enrollment in excess of four thousand pupils employ the equivalent of a full-time county director of attendance. The board asserts that it has provided the "equivalent" by hiring a Director of Pupil Services and three individuals who perform substantially the same function in substantially the same way to obtain the same result as a full-time county director of attendance.

A reading of W.Va. Code, 18A-8-3 and 18A-8-4 strongly indicates that a single individual be appointed as director of attendance and in most counties this is what occurs. However, Section 18-8-3 explicitly states the "equivalent of a full-time

county director of attendance". This wording permits a county board to exercise some measure of discretion in fulfilling its responsibilities monitoring school attendance. Berkeley County has chosen to divide the county geographically and, essentially, hire three attendance directors. While the grievant does complete administrative reports that the remaining staff members do not, it is apparently by her own choice.¹ It does not appear that she functions in any type of supervisory or administrative capacity beyond that required of the other attendance/social workers.

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

Findings of Fact

1. The grievant has been employed by the Berkeley County Board of Education in the position of assistant director of attendance since 1977.

¹According to Assistant Superintendent Janice Christopher, the grievant began writing the reports when she was the only attendance worker. Dr. Christopher states that she has advised the grievant that this responsibility could be rotated but that she has continued to do them. (T. Level II pp 41-42)

2. The grievant and two additional attendance/social workers monitor student attendance throughout Berkeley County.

3. The attendance workers are supervised by the Director of Pupil Services who is not a certified attendance director and spends a minimal amount of his time working in the area of attendance.

4. The duties and responsibilities of the attendance/social workers as stated in their job description is in substantial compliance with those listed for the attendance director in W.Va. Code, 18-8-4.

5. The three attendance workers are each responsible for their own geographic area of the county.

6. In addition to the responsibilities assumed by all of the attendance workers the grievant compiles the monthly reports and completes an annual report. She has been advised that this responsibility could be rotated among the three but continues to complete them herself. She has no supervisory authority over the other staff members or any other administrative duties for the overall program.

Conclusions of Law

1. As all three attendance/social workers are responsible for the duties listed in W.Va. Code, 18-8-4 they each function as attendance director in their own geographic area of Berkeley County.

2. The board's action dividing the county-wide duties for the position of attendance director among three qualified individuals is in compliance with W.Va. Code, 18-8-3 which requires that a county with more than four thousand pupils employ "...the equivalent of a full-time county director of school attendance...".

3. W.Va. Code, 18-8-3 provides the attendance director shall be paid a monthly salary as fixed by the county board. If attendance directors do not have the same responsibilities (budgetary, supervisory, etc.) as other directors the board of education is not required by W.Va. Code, 18A-4-5a to award them the same salary. Taylor v. Mason County Board of Education, Docket No. 26-86-030.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Berkeley 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

May 26, 1988

Sue Keller
SUE KELLER
HEARING EXAMINER