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CARL STEELE

v. Docket No. 50-87-261-1

WAYNE COUNTY BOARD OF EDUCATION

D E C I S I O N

Carl Steele, grievant, is employed by the Wayne County Board of Education as a vocational instructor at North Wayne Vocational School. He filed a level one grievance in early August 1987 alleging improper notification of change of contract in violation of W.Va. Code, 18A-2-7 when he was not permitted to teach a second summer school session in July. The grievance was denied at the lower administrative levels and appealed to level four in October 1987. At the January 7, 1988 hearing in Charleston, the parties tendered several exhibits and agreed to submit the matter for decision based upon the existing record and the newly received evidence.[1]

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[1] The board submitted findings of fact and conclusions of law on January 11, 1988 and grievant's West Virginia Education Association representative filed proposals on February 19, 1988. Grievant filed exceptions to the board's proposals on January 19, 1988 and an addendum to those of his representative on February 29, 1988. The case was transferred to the undersigned examiner on April 28, 1988.

Grievant's employment with the county commenced in 1982 at South Wayne Vocational School. By letter dated March 28, 1985, the then superintendent, Mr. Joe Nolan, notified grievant of his intention to recommend that grievant be transferred to a continuing contract of 200 days with an addendum providing for extended employment of 40 days if a minimum of ten students enrolled for and attended the summer program for the courses taught by grievant at South Wayne School. The superintendent stated that the rationale was to "provide uniform contracts of employment for all teachers assigned to vocational schools" and still continue summer vocational programs for interested and willing students. (Exhibit D). According to the minutes of the May 1, 1985 board meeting when the transfers were approved, all of the listed vocational teachers had contractual adjustments "from present contracts of employment to 200 days employment," as was grievant's case and three others, or "from 240 days employment to 200 days employment," as were the contracts of several other vocational instructors, all to a uniform 200 day term with an added note at the end of the listing:

> This contract will have an addendum providing for extended employment of forty (40) days if a minimum of ten (10) regular full-time students are enrolled and attending the summer program in the course you teach at your school. (Grievant's Exhibit No. 2, 1/7/88).

The contract executed by grievant and school officials on August 19, 1985 states that grievant's continuing employment is for a 200 day term and there is no reference to extended employment days for summer school teaching. (Exhibit H, 9/10/87).

Grievant testified that during all of his previous four years of employment at South Wayne he taught 40 days each summer. He stated the procedure he followed was to report for work on the first day of each summer session and if 10 or more students were present, he would teach the class.

Grievant transferred to North Wayne Vocational School for the 1986-87 school year.[2] When he reported for work to teach his class on the first day of summer school June 22, 1987, he stated, he was told to go home and the same thing happened the next day. He said he then went to the superintendent who permitted him to conduct his class if he returned to his class on Wednesday (day 3) and at least 10 students were present for classes. Grievant, having met the requirements, taught the first session but was not permitted to teach a second 20-day session even though, he asserted, he had over ten students signed up. He offered as evidence the class rolls that had been compiled by school officials. (Exhibits C,F, 9/10/87).

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[2] No documents were submitted giving the particulars of this transfer.

According to Larry Heck, principal at North Wayne, grievant did not follow newly established procedures for pre-enrollment of his students and did not have a sufficient number of regular, full-time students enrolled in his courses, therefore, grievant was not recommended for nor initially hired by the board for extended summer employment.[3] He said only one summer session was conducted at his school in 1987, therefore, there were no classes to be taught beyond the 20 days grievant did teach.

Mr. Heck explained that the new guidelines for enrollment of students were given to all of the staff including the grievant in April. Teachers were to notify their regular students in class who were to complete the pre-enrollment forms and return them to their teachers. The teachers were to submit them to the principal by May 26 for further processing by the principal who would then send requests to the county office for determinations of who would get extended contracts. He admitted that the pre-enrollment system limited the enrollment period for prospective students. However, in the past students could walk in for classes when they began and if only two or three students were present, the teachers taught them. He said he had informally attempted to establish a pre-enrollment system at North Wayne for several years.

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[3] Mr. Heck stated that grievant had nine regular students for first sessions and six for the second, but he was not even sure if they were full-time or part-time. (T.33-36).

Jim Hale, Director of Vocational Education, explained he had only held the position for a year and wanted to set up procedures for a proper and smooth operation of the vocational program. He said that after he received the required data and requests for employment extensions from the principals at both North and South Wayne, he would determine classes which would not meet and instructor's whose teaching time would not be extended and only 20 days would be extended for summer classes in 1987. One of his responsibilities when classes began was to visit each class and check the student count, confirm whether the pre-enrollment figures materialized and determine whether to keep or cancel the class. He said he was surprised to see grievant present to teach class the first day of summer school as grievant's employment had not been extended when the proper quota was not met. Mr. Hale stated that grievant did not have 10 students but grievant told him that more were coming. After verifying through the school principal and counselor that grievant's additional students were adults and one student with a grant who needed to finish up some hours, he informed grievant and the students he would let the class be taught for that 20 day session only, so they would have time to complete their hours. Later, grievant's 20 day extended employment was formally approved by the board upon the superintendent's recommendation (Exhibit K) and grievant was notified by letter dated July 1, 1987 of the extension, "as per bid." (Exhibit G, 9/10/87).

Grievant proposes that his contract of employment with the board "is for 200 days with 'an addendum providing for extended employment of (40) days if a minimum of ten (10) regular full-time students are enrolled and attending the summer program in the course you teach at your school.'" He asserts that he had 18 students enrolled for the first term and 10 for the second and the board's refusal to let him teach the second term "violated my contract of employment." Grievant's representative argues that a contract modification is subject to the notice and transfer procedures of W.Va. Code, 18A-2-7. Grievant urges that he is entitled to lost wages for the 20 days employment denied him in 1987.

On behalf of the board, the level two grievance decision issued September 16, 1987 found and determined that grievant's continuing contract of employment is for a 200 day term and extended employment requires a recommendation of the superintendent and approval by the board as per W.Va. Code, 18A-2-1.[4]

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[4] While this finding and conclusion may be legally correct if it were also correct that grievant had only a 200 day contract, and there was no "addendum", the record is silent as to whether this procedure for granting and awarding summer employment was in fact carried out in practice during grievant's prior years with the board when he was granted the extended 40 days. With respect to the 1987 procedures, prudence dictates that summer school contract extensions not be acted upon by the board until pre-enrollment data is verified by actual attendance of the required ten regular, full-time students if that quota requirement is to be strictly enforced as the Vocational Director suggests, supra.

In an abrupt turnabout, the board's counsel proposes at level four that it was true that grievant had a forty day contract but only at "South" Wayne and the contract extension of "3/28/85" was not granted when grievant voluntarily transferred to "North" Wayne in 1986. (Emphasis noted by board's counsel).[5] This proposal of fact and law not considered or supported by the evidence presented at level two is without merit and cannot be considered in the determinations herein.

The compelling issue to be determined herein is the nature of grievant's continuing contract. Based on the evidence grievant does not have a 240 day contract which he freely admits, rather it is a 200 day contract which permits an extension for 40 days if certain conditions are met. Whether a continuing contract with a contingency clause is legally permissable is somewhat questionable, but it appears that grievant and other vocational teachers accepted the situation with respect to summer teaching and such an arrangement is not inconsistent with the provisions

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[5] The proposition is probably what prompted grievant to file his exceptions to counsel's filing whereby he correctly states that his contract of employment is with the board and not with either South or North Wayne schools and the May 1, 1985 board minutes which lists the vocational teachers whose contracts were adjusted were not named by school. Two names who appear on that list with grievant, Charles Curnutte and Michael Dillon, are teachers at North Wayne according to the June 4, 1987 list of personnel for whom Mr. Hale recommended contract extensions (Exhibit I, 9/10/87) for summer 1987. Moreover, counsel for the board cited and referred to the March 28, 1985 letter to the grievant from the superintendent (Exhibit D, 9/10/87) which was merely a properly executed notice of a pending recommendation and not reflective of the board's final action as per the May 1, 1985 minutes.

of W.Va. Code, 18-5-39 or previous decisions of this Grievance Board that a board of education may establish a needs based summer school program and terms thereof and employ certified teachers who shall be separately contracted for their services. Ford et.al. v. Wood County Board of Education, Docket No. 54-87-077-3; Davis et.al. v. Monongalia County Board of Education, Docket No. 30-87-223.

While grievant was permitted to accomodate his students, regular and adult, for the first summer term, there appears to be no justification to grant him an additional 20 days. Administrative notice can be taken that most county boards of education are presently faced with declining students and revenues and the implementation of regulations and procedures to operate a vocational summer school program efficiently and economically is commendable as school officials herein have admitted that past practice resulted in waste where one teacher would serve only a few students. Grievant was cognizant that his conditional 40 days extended summer employment stipulated that "ten regular full-time students enroll and attend." Thus, grievant as well as all of the vocational instructors had a duty to comply with and meet the new regulations and procedures to effect this requirement even though the requirement was not strictly enforced in the past.

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

FINDINGS OF FACT

1. Grievant began his initial employment with the board as a vocational instructor teaching at South Wayne Vocational School in 1982 and remained at South Wayne until he transferred to North Wayne for the 1986-87 term.

2. By board action in May 1985 grievant was granted a 200 day continuing contract of employment and other vocational instructors were given 200 day contracts with a contingency clause granting 40 days extended summer employment providing ten full-time regular students enrolled for and attended the courses taught by each teacher at their respective schools. Grievant taught the full 40 days for the four summers he was located at South Wayne.

3. In April 1987, school officials initiated regulations and procedures to insure minimum enrollment of regular, full-time students for summer courses by May 26, 1987 and prior to a formal process to recommend those teachers whose classes met quota for extended summer employment as per board action of June 8, 1987. (Exhibit J, 9/10/87).

4. Several instructors at North Wayne were recommended for summer employment in 1987. Grievant herein had 18 students listed for the first summer session at North Wayne but only nine were regular students and the principal was not sure if

they were full-time or part-time regular students. Eleven signed up for the second session but only seven were regular students and grievant was not recommended for summer employment. (T.33-36).

5. The vocational director was instructed to attend the initial class meetings of summer school and verify whether enrollment figures met attendance quota requirements for the scheduled courses to determine whether the class would be retained or cancelled. (T.45). However, the record is silent as to what would occur if a teacher whose pre-enrollment figures did not materialize, as board action had formally granted the contract extensions prior to the day the classes met. (Exhibit J, 9/10/87).

6. Grievant reported for work for the first summer class even though his employment had not been previously extended by board action. School officials made an exception and approved grievant's class when it was learned that several of the students in attendance needed the hours to finish up their program and he was notified at that time he would be granted employment for 20 days only. (T.45,46).

7. Grievant was cognizant of the precise enrollment requirements for extended summer employment and although not strictly adhered to in the past in terms of the type or number of students in attendance, he and other vocational teachers were given ample notice that enrollment justification was expected for 1987 summer teaching and contract extensions.

CONCLUSIONS OF LAW

1. A board of education may establish a needs based summer school program and employ certified teachers who shall be separately contracted for their services. W.Va. Code, 18-5-39; Davis et.al. v. Monongalia County Board of Education, Docket No. 30-87-233; Ford et.al. v. Wood County Board of Education, Docket No. 54-87-077-3.

2. Absent a proper termination of grievant's present 200 day contract which includes a contingency clause for 40 days extended summer employment, the board is bound to offer said employment to grievant for the period of time in which grievant meets proper quota. Ford et.al. v. Wood County Board of Education, supra; Fain and Fazzini v. Harrison County Board of Education, Docket No. 17-87-082-2.

3. It is incumbent upon grievant herein and all affected county vocational instructors to comply with student enrollment requirements necessary to effect a responsible, efficient, needs based summer school program.

4. Grievant herein has failed to establish by a preponderance of the evidence that he was entitled to 20 days extended employment in 1987 beyond the 20 days he did receive.

Accordingly, this grievance is **DENIED.**

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wayne 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 31, 1988

Nedra Koval

NEDRA KOVAL
Hearing Examiner