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CYNTHIA TANZEY
and
KATHYRN MASON

v.

Docket No. 17-87-258-2

HARRISON COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants, Cynthia Tanzey and Kathryn Mason, are teachers employed by the Harrison County Board of Education assigned to first grade classes at Van Horn Elementary School. They filed grievances in September 1987 alleging their class sizes exceeded the limits established by West Virginia Board of Education policy. A Level II hearing was held on September 15, 1987 and a decision at that level was adverse to grievants. The Board waived participation at Level III and an appeal was made to Level IV on October 9, 1987 which indicated a decision could be rendered on the evidence submitted at Level II. Receipt of this appeal was acknowledged by letter dated October 13, 1987 and the parties were advised to furnish the record and any

memorandum of law. Subsequent correspondence from counsel for the Board indicated difficulties in the preparation of a transcript of the Level II hearing. Further delays in the production of the record necessitated the scheduling of a Level IV hearing on February 19, 1988 but the parties reiterated their requests that the matter be decided on the record and the hearing was cancelled. The transcript was received by the West Virginia Education Employees Grievance Board on February 16, 1988. Proposed findings of fact and conclusions of law were submitted by the grievants and the Board on February 25, 1988 and March 15, 1988, respectively.¹

The facts giving rise to this grievance are essentially undisputed. On the first day of classes of the 1987-88 school term,

¹ The Board's proposals contained a motion that the grievance be held in abeyance until such time as Superintendent of Schools, Robert Kittle, could appear before the West Virginia Board of Education and make a request for a waiver to exceed the student limit on the particular classes involved herein. Upon review of said motion and the objections of grievants thereto, the motion was denied by order dated April 4, 1988.

It should also be noted that the representative for the grievants made several written objections to what he perceived as unreasonable and intentional delays in the production of the record in this matter.

Ms. Tanzey's class had thirty-one (31) students and Ms. Mason's class had thirty (30) students. As W.Va. Code, 18-5-18a establishes a twenty-five (25) student limit for first grade classes, the Board took certain steps to resolve the problem. It was discovered some of these students were living outside Van Horn Elementary School's designated catchment area and they were transferred to other schools. Parents were asked to voluntarily take students to other schools and by September 14, 1987 the two teachers had twenty-eight (28) students each.² The Board then made a request of Dr. Thomas McNeel, State Superintendent of Schools, for a waiver of the maximum student/teacher ratio pursuant to West Virginia Board of Education Policy 2442.3 citing extreme financial hardship as justification for the waiver.³ By letter dated November 10, 1987 Dr. McNeel denied the request indicating

² The grievance was filed on September 2, 1987 alleging the Board was not taking sufficient action at that time to correct a problem it was aware of or should have been aware of in the spring of 1987.

³ This policy provides exceptions to the limits imposed by W.Va. Code, 18-5-18a in extraordinary circumstances but the waiver cannot permit more than twenty-eight (28) students in a first grade class.

financial hardship and/or budgetary cuts were not considered extraordinary circumstances under Policy 2442.3 or W.Va. Code, 18-5-18a. The Board asked Dr. McNeel to reconsider this decision and by letters dated December 21, 1987 and January 29, 1988 he refused to adopt any other interpretation of the term "extraordinary circumstances". Superintendent of Schools for Harrison County, Robert Kittle, then requested a meeting with the West Virginia Board of Education in order that that body might review the denials.⁴

The grievants contend the Board knew of the excess number of students as early as June 1987 and took no action until classes began in September 1987. They request as relief that the Board simply do what is required by the West Virginia Code, namely, reduce the size of the classes to twenty-five (25) and reimburse them for the period of time the classes exceeded the limit.

The Board takes the position that the West Virginia Education Employees Grievance Board should either delay a ruling on grievant's allegations (see footnote number 1) or in the alternative, find Dr. McNeel's interpretation of W.Va. Code, 18-5-18a erroneous and thus overrule his decision to deny the waivers. The West Virginia Education Employees Grievance Board has held it has jurisdiction of

⁴ The record does not indicate whether or not Mr. Kittle made such an appearance.

grievances involving the State Department of Education when the basis of the grievance is that department's interpretation of a law or policy affecting the grievant, Walker v. Kanawha County Board of Education and the West Virginia Department of Education, Docket No. 20-86-157-1; Cook v. Wyoming County Board of Education and the West Virginia Department of Education, Docket No. 55-87-251-1, but in the present case it is not Dr. McNeel's interpretation of policy but the Board's refusal to comply with it that forms the basis of the grievance. The Harrison County Board of Education had a duty to comply with the decision of the State Superintendent of Schools when it was first issued in November 1987 and the disruption to the two first grade classes at that time would have been minimized. Because of the repeated delays in bringing this matter to Level IV, administrative notice must be taken of the serious disruption which a reduction in the size would cause to these classes at this time. Such an order by the West Virginia Education Employees Grievance Board would have the effect of placing six first grade students under the supervision of a new teacher for the remaining six or seven weeks of the 1987-88 school term and while this would serve the rights of the grievants, it would be a disregard for the students' rights to an uninterrupted course of instruction.

It does not appear, however, that any other teachers at Van Horn Elementary School were required to teach classes with

excess student enrollment and such preferential treatment at the school amounts to favoritism on the part of the Board. The grievants are, therefore, entitled to additional compensation for teaching the larger classes.

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

FINDINGS OF FACT

1. Grievants, Cynthia Tanzey and Kathryn Mason, are teachers employed by the Harrison County Board of Education and assigned to Van Horn Elementary School.

2. At the beginning of the 1987-88 school term grievants first grade class sizes exceeded the limits established by W.Va. Code, 18-5-18a and West Virginia Department of Education Policy 2442.3.

3. By September 14, 1987 the Board had taken action to reduce the sizes of the classes to twenty-eight (28) students each, a number still in excess of statutory and policy limits.

4. The Board made a request for a waiver of the class size limits and by letter dated November 10, 1987 the request was denied by Dr. Thomas McNeel, State Superintendent of Schools.

CONCLUSIONS OF LAW

1. W.Va. Code, 18-5-18a contains a provision for exceptions to the twenty-five (25) student limit in first grade classes but those exceptions can only be granted by the State Superintendent of Schools.

2. Pursuant to W.Va. Code, 18-29-5(b) the West Virginia Education Employees Grievance Board has the authority to grant relief in a particular grievance which is fair and equitable to the parties involved and not inconsistent with regulation or law. Crow v. Marshall County Board of Education, Docket No. 25-87-273-3; Woodson v. Harrison County Board of Education, Docket No. 18-87-229-3.

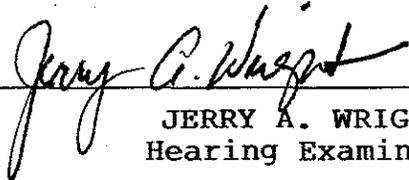
3. The failure of the Harrison County Board of Education to take action on the decision of the State Department of Schools not to grant waivers for the grievants' classes in November 1987 and its failure to timely prepare and submit to Level IV the record developed in the present grievance, have operated to preclude an order which would reduce the size of grievants' classes and seriously disrupt the educational process for six students in first grade classes for the remainder of the 1987-88 school term.

4. When teachers are forced to assume the extra duties and responsibilities associated with class sizes which exceed the

limits imposed by W.Va. Code, 18-5-18a, said teachers are entitled to additional compensation for the total number of days said classes exceed the statutory limits.

Accordingly, the grievance is **GRANTED** in part and **DENIED** in part and the Harrison County Board of Education is hereby **ORDERED** to reimburse the grievants, Cynthia Tanzey and Kathryn Mason, for each day their class sizes exceeded or continue to exceed the statutory limit in an amount to be determined by calculating a daily salary rate per child based on the grievants' current yearly salaries.

Either party may appeal this decision to the Circuit Court of Harrison County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of said decision. (W.Va. Code, 18-29-7) Please inform this office of your intention to do so in order that the record can be prepared and transmitted to the Court.



JERRY A. WRIGHT
Hearing Examiner

DATED:

April 25, 1988