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**ALAN TOWNSHEND**

**v.**

**DOCKET NO. 12-88-065-2**

**GRANT COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Alan Townshend, is employed by the Grant County Board of Education and has been assigned as a teacher at Petersburg Elementary School for the past eighteen years. Mr. Townshend filed a level four grievance appeal on April 22, 1988 in which he alleged that he had been placed upon the transfer list in violation of W.Va. Code, 18-29-2(m) and (o), 18A-4-8b and State Board of Education Policies 5300 and 5310. Both parties agreed to submit the matter for decision based upon the record developed at level three and written arguments which were submitted on June 10, 1988.

The facts in this matter are undisputed. During the 1987-88 school year the grievant was assigned as a teacher at Petersburg

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Elementary School. In October the grievant's wife applied for the position of principal at that school. When the position was offered to her she was made aware of county policy GCI which prohibits employee assignments placing one member of a family in a direct supervisory and/or evaluative relationship with another member of the immediate family. Should this situation occur as a result of a promotion, the other family member is to be transferred at the earliest possible date. Mrs. Townshend consulted with the grievant and accepted the position. Superintendent David Adkins notified the grievant by letter dated March 15, 1988 that he was being considered for transfer or to be transferred for the 1988-89 term in compliance with policy GCI. At his request the grievant was given a hearing upon the proposed transfer after which the board voted unanimously to place the grievant on the transfer list.

The grievant argues that the policy GCI transfer is discriminatory, results in favoritism as defined by statute and that it is violative of W.Va. Board of Education Policy 5300(6)(a) and 5310 as nothing in his evaluation indicates any rational reason for the transfer. He was rated as satisfactory or above in all areas and his evaluator had no reservations in recommending that he be reemployed in his current position for the 1988-89

school term. He argues that the transfer is in violation of W.Va. Code, 18A-4-8b which requires that classroom positions be filled on the basis of qualifications and seniority and that there is no better qualified special education teacher with more seniority.

The board asserts that the transfer was properly exercised within its discretion as the action was in the best interest of the school system. The board also argues that teachers have no vested right to any particular assignment and the transfer was a reasonable method of maintaining the ethical integrity of the system and would prevent the appearance of impropriety.

The W.Va. Supreme Court of Appeals has identified personnel transfers to be disciplinary or administrative in nature. Disciplinary transfers require greater protection be afforded the individual under the procedures set forth in State Board of Education Policies 5300 and 5310. Administrative transfers are simply actions to better promote the functioning of the school system without consideration of the employee's job performance and require less individual protection and therefore are not subject to the aforementioned policies. Since this is a matter of transfer and does not involve the filling of a vacant position,

the question of whether the grievant is the most qualified for the position at Petersburg Elementary or is the most senior special education teacher is also not relevant.

W.Va. Code, 18-29-2 defines favoritism as unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another employee(s). Presumably the grievant sees the remaining faculty members as receiving preferential, exceptional or advantageous treatment as demonstrated by their not being placed on the transfer list. This argument is not persuasive as the transfer was determined by the application of an objective factor which was triggered by the action of a third party (grievant's spouse) in accepting the principalship at that school. Although this action affected only the grievant it does not establish partiality towards the remaining faculty.

Discrimination is defined as any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees. Without question the grievant is being treated differently than other employees at Petersburg Elementary School. As principal, it is Mrs. Townshend's responsibility to evaluate professional personnel. During the 1987-88 term the grievant was evaluated and assigned duties

by Joe Cunningham, co-operating principal. While this situation creates the appearance of separation the fact remains that Mrs. Townshend is the only administrator present during most of the day and as principal it is her responsibility to manage the operation of the school. It is inescapable that her administration will not affect the grievant and unreasonable to expect that his presence could be ignored by her. If indeed it was, then she would be neglectful in performing her duties to the school as a whole. The separation of the grievant from the remainder of the faculty lends itself to other problems such as potential grievances from other faculty members who may perceive that he is being treated with favoritism or that they are being discriminated against.

The inability of Mrs. Townshend to evaluate or assign duties to her spouse interferes with her ability to perform her duties as principal. Even should a split of authority with another administrator be permitted it could not be implemented at schools with only one principal resulting in an inequitable application of the policy determined by the size of the school.

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 is employed as a teacher by the Grant County Board of Education and has been assigned to Petersburg Elementary School for the past eighteen years.

2. In October 1987 the grievant's spouse applied for the position of principal at Petersburg Elementary School. At the time the position was offered to Mrs. Townshend she was advised that county board of education policy GCI would require that her husband be transferred should she accept the position as principal.

3. After discussing the matter with the grievant, Mrs. Townshend accepted the position of principal at Petersburg Elementary School.

5. The grievant was notified in March 1987 that he would be recommended for transfer for the 1988-89 school term in compliance with policy GCI.

4. The grievant was evaluated and assigned duties by co-operating principal Joe Cunningham. These duties were performed by Mrs. Townshend for the remainder of the professional staff.

### Conclusions of Law

1. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and

promotion of school personnel so long as that discretion is exercised reasonably, in the best interest of the schools and in a manner which is not arbitrary and capricious. Dillon v. Wyoming County Board of Education, 351 S.E. 2d 58 (W.Va. 1986); Haines v. Mineral County Board of Education, Docket No. 27-87-275-2 and Riley v. Monongalia County Board of Education, Docket No. 30-88-015-2.

2. Teacher transfers may be either administrative or disciplinary in nature. Holland v. Board of Education of Raleigh County, 327 S.E. 2d 155 (W.Va. 1985). As the grievant's performance evaluations were entirely satisfactory and the action was based entirely upon board policy this transfer was administrative in nature. Guidelines for administrative transfers are those set forth in Conclusions of Law No. 1, i.e., that it be reasonable, in the best interest of the schools and not arbitrary or capricious.

3. Disciplinary transfers require the greater protection afforded by West Virginia Board of Education Policy 5300. Holland v. Board of Education of Raleigh County, supra. A county is not required to follow this policy in administrative transfers.

4. The transfer of the grievant in compliance with board

policy does not indicate preferential, exceptional or advantageous treatment of the remaining faculty or constitute favoritism as defined by W. Va. Code, 18-29-2(o).

5. As the different treatment received by the grievant is related to his and other employees actual job responsibilities the transfer does not constitute discrimination as defined by W.Va. Code, 18-29-2(m).

Accordingly, the grievance is **DENIED**.

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

July 25, 1988

Sue Keller

SUE KELLER  
HEARING EXAMINER