



REPLY TO:
111 - 19th Street
Wheeling, WV 26003
Telephone: 233-4484

Members
James Paul Geary
Chairman
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone: 348-3361

GEMMA TWADDLE

v.

Docket No. 25-88-115

MARSHALL COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Gemma Twaddle, is employed by the Marshall County Board of Education as a teacher. She filed a level four grievance on June 22, 1988 alleging that she had been illegally terminated in a reduction of force (RIF) action and asking that she be reinstated as a teacher in the county. Hearings were scheduled but, in the intervening time, grievant's reemployment to a teaching position was approved by the board; thus, the incident giving rise to the grievance was mooted. However, grievant's representative requested that related issues be decided based upon the record developed at level two.¹

¹ The request was made by letter dated July 20, 1988 and neither party has submitted additional or supplementary materials.

The parties are in agreement about the basic facts giving rise to the grievance. Grievant initiated her employment with the board as a substitute teacher. During the 1985-86 school year she worked as "permanent" substitute the entire year. At an August 26, 1986 school board meeting, the school superintendent nominated and recommended the employment of four teachers, including grievant. The employments were approved by the board. One of the teachers, Martha Hill, had worked at her primary school assignment August 25 and 26 and her 200-day contract was made effective August 25, 1986. Grievant and the other two teachers were given 198-day contracts effective August 27, 1986. This spring (1988) grievant was the subject of a RIF action when the board determined she was less senior than Ms. Hill. Subsequent to filing a grievance on the termination matter, grievant was reemployed. However, she feels her employment status remains in jeopardy because the board, she contends, improperly determined her seniority as less than Ms. Hill's.

Grievant argues that Ms. Hill commenced regular employment at her assigned school prior to the board's formal employment action of her (Ms. Hill) and that that assignment was contrary to W.Va. Code, 18A-2-2. The statute requires that "before entering upon their duties" teachers must execute a contract of employment with the board. Thus, grievant contends, she and Ms. Hill have equal seniority as they were actually hired the same day. Grievant argues that the board must utilize a random selection system

"to determine the priority" of two or more employees with identical seniority as per the statute, W.Va. Code, 18A-4-8b(a). Grievant also states that due to her permanent substitute teaching during the 1985-86 school year, she had satisfied one year of probationary employment and will be eligible for a continuing contract at the end of the 1987-88 school year. She cites, in part, Harkins v. Ohio County Board of Education, 369 S.E.2d 224 (W.Va. 1988).

The school board agrees that board approval for employment was granted both grievant and Ms. Hill on August 26, 1986. It found at level two:

Martha Hill entered into her teaching duties on August 25, 1986 and her contract signed on August 26, 1986 was made effective on August 25, 1986. Martha Hill has one day of seniority more than the grievant.²

School officials declared that, because Ms. Hill was assigned to a primary school, she had to commence her duties two days before the other hired staff in order to ready her classroom. The board's counsel also discounted grievant's reliance on Harkins and stated that a petition had been filed to the West Virginia Supreme Court of Appeals that it reconsider the Harkins case.

²Just when any of the newly-hired employees signed their contracts is subject to question. While Ms. Hill's contract was not made part of the record, grievant's contract was and the date the contract was signed is not noted on the document. In any event, it must be concluded that Ms. Hill worked during the school hours on August 26 before the board met later that evening to approve her employment.

The respondent's position in this particular case with respect to grievant's seniority cannot be upheld, as a determination by the board to give one employee an advantageous position over other similarly situated employees without a compelling reason is arbitrary. All four teachers were hired at the same time for the same school year and, while Ms. Hill's extra two days of employment was somewhat justified and the contract had to spell out her employment term for payroll purposes, the determination that she is more senior than the other three employees is clearly unwarranted. The employment of Ms. Hill was without legal force until she had been nominated by the superintendent and approved by the board and had executed her employment contract with the board.

With respect to grievant's other concern, the Grievance Board has upheld the State Superintendent's advisory that yearly substitute teaching of more than 131 days can be used to satisfy the requirements of probationary teaching. The determination is consistent with the holdings in Harkins v. Ohio County Board of Education, supra. See, Talerico v. Harrison County Board of Education, Docket No. 17-88-026-3; Davis v. Marshall County Board of Education, Docket No. 25-88-096.

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

FINDINGS OF FACT

1. Grievant was employed as a substitute teacher for the 1985-86 school year on a permanent substitute teaching basis and she worked more than 133 days.

2. The grievant was regularly employed for the 1986-87 school year by board action on August 26, 1986. She signed a probationary teaching contract for that year's service on a 198-day term and entered into her teaching duties on August 27, 1986.

3. Three other teachers besides grievant were approved for employment on August 26, 1986. One of the teachers, Martha Hill, had begun her teaching duties prior to the board's approval and prior to the execution of her contract of employment. When Ms. Hill's contract was executed she was given a 200-day teaching term and the designated employment term was permissible and necessary for payroll purposes.

4. The only teachers hired for the 1986-87 school year who may be more senior than grievant are those who entered into their duties prior to August 27, 1986 and who had all of the legal requirements for their professional employment satisfied.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-8b(a) provides that the seniority of professional personnel shall be determined on the length of time the employee has been professionally employed by the county board of education.

2. W.Va. Code, 18A-2-1 requires that the employment of professional personnel by a school board be made upon the nomination and recommendation of the superintendent. W.Va. Code, 18A-2-2 requires that teachers execute a contract of employment with their board of education before entering upon their duties. For the purposes of accumulating seniority for professional employment, the statutory requirements for the employment of the teacher must be met.

3. A random selection system established by the employees and approved by the board shall be used to determine the priority if two or more professional employees accumulate identical seniority. W.Va. Code, 18A-4-8b(a).

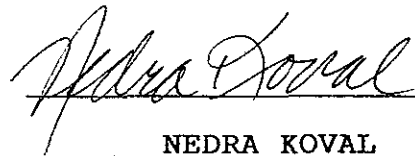
4. Substitute teachers working on a substantially full-time basis shall attain regular employment benefits during said employment, including the accrual of seniority credit toward a continuing contract of employment. Harkins v. Ohio County Board of Education, 369 S.E.2d 224 (W.Va. 1988); Talerico v. Harrison County Board of Education, Docket No. 17-88-021-3; Davis v. Marshall County Board of Education, Docket No. 25-88-096.

5. After three years of acceptable full-time employment, if a teacher and a board of education enter into a new contract of employment, it shall be a continuing contract of employment. W.Va. Code, 18A-2-2. See, Harkins v. Ohio County Board of Education, supra.

Accordingly, this grievance is **GRANTED** and the board is Ordered to recognize grievant's 1987-88 employment as her final probationary year of employment and to utilize a random selection process, if need be, to determine grievant's seniority priority in relation to three other teachers hired on August 26, 1986 for the 1986-87 school year.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Marshall 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: October 12, 1988



A handwritten signature in cursive script, appearing to read "Nedra Koval", is written over a horizontal line.

NEDRA KOVAL
Hearing Examiner