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ROBERT VanGILDER

v.

Docket No. 28-87-320-2

MINERAL COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Robert VanGilder, is employed by the Mineral County Board of Education as an Attendance Director/Federal and Special Program Consultant. He filed a grievance in September 1987 alleging a change in his duties for the 1987-88 school term constituted a transfer in violation of W.Va. Code, 18A-2-7. Mr. VanGilder additionally alleged his then current duties as an Attendance Director entitled him to the same supplemental salary afforded other administrative personnel in the county school system. A decision following a Level II hearing on November 10, 1987 was adverse to the grievant and an appeal to Level IV was made on December 7, 1987 and the parties indicated at that time a decision could be made on the record developed at Level II.

Proposed findings of fact and conclusions of law were submitted by the grievant and the Board on February 16, 1988 and March 1, 1988, respectively.

Grievant was first hired by the Mineral County Board of Education in 1970 as a visiting teacher in a federally funded Title I program. One hundred percent of his salary at that time was paid by the federal government and it appears his duties were social work oriented focusing on problems in the home which hindered a student's performance in the school. Over the years Mr. VanGilder's duties changed somewhat and he became involved in various other aspects of the Title I program in Mineral County. The percentage of federal funding for his salary decreased gradually to thirty percent (30%) in 1987. (T.44) During the past seventeen (17) years some of his responsibilities have involved work with what is termed the "Outdoor School" in which fifth, sixth, seventh and eighth grade students are taken on field trips, tours and nature excursions.¹ These activities generally occupied approximately ten (10) to twelve (12) weeks of grievant's time during

¹ The testimony of Mr. Robert Harman, Director of Federal and Special Programs, indicated fifth graders have a day camp in the fall of the school year and sixth graders have an overnight camp in the spring. A ten day science camp for seventh and eighth graders in the region held during the summer is also part of this program.

the regular school term. (T.48)² Other responsibilities in grievant's position in the Title I program included participation in the organization of various workshops, social studies competitions and expositions for students and certain Title I conferences. In 1983 grievant was offered and accepted the position of Attendance Director and in addition to the duties associated with that position, he continued his work with the "Outdoor School" program.

In September 1987 Mr. VanGilder was presented a schedule which indicated he would no longer be required to assist in the organization or planning for the fifth and sixth grade Outdoor School activities and the majority of his time would be allocated to Attendance Director duties and responsibilities. These duties were to be primarily performed at Frankfort High School and Keyser High School where he would work with assistant principals in contacting students and parents about attendance problems. He alternated between these two schools and provided assistance in attendance matters to other schools in the county as the need arose. (Grievant's Exhibit No.8)

It is the grievant's contention that the deletion of the Outdoor School duties from his schedule constituted a transfer and that he was not given notice and a right to a hearing prior

² Apparently grievant was given ten (10) additional days in his contract for work during the summer on the science camp.

to April 1987 as required by W.Va. Code, 18A-2-7, which in pertinent part reads:

...However, an employee shall be notified in writing by the superintendent on or before the first Monday in April if he is being considered for transfer or to be transferred...Within ten days of the receipt of the statement of reasons, the teacher or employee may make written demand upon the superintendent for a hearing on the proposed transfer before the county board of education.

The West Virginia Education Employees Grievance Board has held this provision applicable when a county board of education makes changes in an employee's assignment which are so substantial as to change the nature of said employee's position but schedule adjustments which do not include duties or responsibilities outside of an employee's presently utilized area of certification, discipline or department have not been held to be assignments amounting to a transfer. Gerstner v. Gilmer County Board of Education, Docket No. 11-87-303-3; Pansmith v. Taylor County Board of Education, Docket No. 46-86-057; Dotson v. Greenbrier County Board of Education, Docket No. 13-87-321-4. In the grievant's case it is clear the adjustment in his schedule which continued many of his Title I duties but placed greater emphasis on his function as Attendance Director was not a substantial change in his assignment. Mr. VanGilder still coordinates parent activities, organizes local Title I conferences and handles news releases on Title I matters. (T.51,52) He is also allowed an additional ten (10)

days on his regular contract to work on the summer science camp project. The deletion of responsibilities associated with the fifth and sixth grade outdoor activities was the only alteration made in grievant's schedule and this change cannot logically be construed as a transfer within the meaning of W.Va. Code, 18A-2-7.

In regard to grievant's second allegation that his duties over the past seventeen (17) years including those associated with his job as Attendance Director have been administrative in nature, the evidence is similarly unsupportive. It appears he did assume some managerial duties at various times in certain projects connected with Title I but there were none performed on such a consistent basis as to justify his claim that he should be placed on an administrative salary schedule. There was no evidence presented on grievant's behalf at the Level II hearing to show that he was responsible for the supervision of other employees or made budget considerations or operated any programs. There were documents submitted into evidence which revealed grievant had completed some personnel evaluations and time sheets for substitute cooks employed at the Outdoor School in 1983 (Grievant's Exhibits 3,4,5,7) but this was the extent of any supervisory responsibility. His job as Attendance Director also did not entail supervision of other employees although it did involve preparation of reports on attendance records at various schools. (T.64) It is clear Mr. VanGilder has performed beyond what was expected by his supervisors on numerous occasions but

it is also apparent no member of the Mineral County School administration led him to believe such extra meritorious work would automatically entitle him to a different salary classification. The implications of the title, Director, which Mr. VanGilder holds, are not those of similarly classified personnel in the Board's central office as evidenced by the provisions of W.Va. Code, 18-8-3. That section of the West Virginia Code contains no language which operates to place employees certified in the attendance field on the same level as directors responsible for the operation of programs, management of budgets and supervision of large numbers of employees. When attendance directors do not have the same responsibilities as other directors employed by the board of education this section of the West Virginia Code does not require that they be paid the same salary. Riner v. Berkeley County Board of Education, Docket No. 02-87-306-2; Wright v. Mason County Board of Education, Docket No. 26-86-029.

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

FINDINGS OF FACT

1. Grievant, Robert VanGilder, is employed by the Mineral County Board of Education as an Attendance Director/Federal and Special Program Consultant.

2. Prior to the beginning of the 1987-88 school term grievant's duties and responsibilities included assistance to the

Director of Federal and Special Programs in the planning and organization of the Outdoor School program.

3. At the beginning of the 1987-88 school term these duties were deleted from grievant's schedule and he was given more assignments related to the function of Attendance Director for the Mineral County Board of Education.

4. As an assistant in the Federal and Special Program (Title I, Chapter I) and as Attendance Director, grievant had no responsibilities for the supervision of other employees, budgetary matters or overall operation of programs.

CONCLUSIONS OF LAW

1. Schedule adjustments by a county board of education which do not include duties or responsibilities outside of an employee's presently utilized area of certification, discipline or department are not assignments amounting to transfers within the meaning of W.Va. Code, 18A-2-7. Gerstner v. Gilmer County Board of Education, supra; Pansmith v. Taylor Board of Education, supra; Dotson v. Greenbrier County Board of Education, supra.

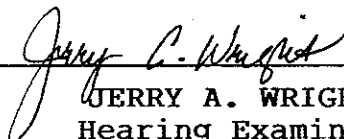
2. The deletion of duties connected with the Mineral County Board of Education Outdoor School program from grievant's 1987-88 school term schedule and the emphasis placed on his function as Attendance Director did not constitute a transfer within the

meaning of W.Va. Code, 18A-2-7.

3. The responsibilities of grievant's past and present positions and those of other directors employed by the Mineral County Board of Education are not like assignments and duties requiring compliance with the uniformity in pay provisions of W.Va. Code, 18A-4-5b.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Mineral 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 intent to do so in order that the record can be prepared and transmitted to the Court.


JERRY A. WRIGHT
Hearing Examiner

Dated: June 16, 1988