



REPLY TO:
101 Harper Park Drive
Suite D
Beckley, WV 25801
Telephone: 255-6155

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

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

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

ROSEMARY WILLIAMS

v.

DOCKET NO. 11-87-182-3

GILMER COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Rosemary Williams, has been employed as a guidance counselor for the Gilmer County Board of Education since 1973 and has been assigned to Gilmer County High School. She filed the present grievance when the Board, in April 1987, voted to reduce her 210 day contract to 200 days. The parties agreed to submit the case for decision at Level IV on the record and supporting briefs.

Grievant and the respondent Board do not dispute the facts involved but do disagree on their legal effect. In 1973 Ms. Williams signed her probationary contract with the Gilmer County Board of Education and was given supplemental pay in the amount of \$1,000.00.¹ This contract provided for a 200 day school term.

¹The record does not reveal the reason for this supplement and it is not an issue in the grievance as the Board voted to continue it for the 1987-88 school term.

Shortly thereafter, grievant was given ten (10) additional days of employment and another corresponding pay supplement.² Grievant continuously worked under a 210 day contract until the Board's recent action in 1987. On July 28, 1986, however, grievant was requested to and did sign a "Contract of Employment for Extracurricular Duty Assignment", which in pertinent part reads:

1. The period of this assignment shall be for the 1986-87 school year only.
2. This contract shall terminate at the end of the designated school year or may be terminated at any time...by mutual consent of the parties.
3. The parties to this contract hereby acknowledge that this assignment agreement is entered into pursuant to the West Virginia Code §18A-4-16.
4.

<u>Duties of ...</u>	<u>Compensation and/or</u>
<u>Employee</u>	<u>Other Consideration</u>
a. Guidance Counselor	\$1,000.00
10 Additional Days	
<u>@ \$120.30</u>	<u>1,203.00</u>

(Superintendent's Exhibit No. 8) (Emphasis added)

²Grievant's brief indicates these additional days were added in 1974 but grievant testified at a hearing before the Board on April 21, 1987 they were added several years after she signed her first probationary contract. (T.10) Both parties agree her continuing contract of employment entered into on May 4, 1976 included the ten (10) additional days.

By letter dated March 13, 1987 Ms. Williams was notified by Superintendent Robert H. Hardman that she had been placed on a proposed transfer list for the 1987-88 school term pursuant to W.Va. Code, 18A-2-7. Grievant requested reasons for her placement on this list and was informed by a letter dated March 19, 1987 that this action was taken as notice that her work beyond the regular 200 day school term might be altered for the 1987-88 school term due to declining student enrollment and funding problems. The letter further informed her that school law required she be notified of the proposal before April 1 and of a right to a hearing before the Board. (Superintendent's Exhibits B and C)

Grievant was granted a transfer hearing which was held on April 21, 1987 where she argued several issues, namely:

1. The Board was actually attempting to terminate her 210 day contract and replace it with a 200 day contract and the Board had not sent her such notice of that proposed action in accordance with W.Va. Code, 18A-2-2. (T.7, 10)
2. Since the Board had proceeded under the transfer provisions of W.Va. Code, 18A-2-7 and not afforded her the procedural safeguards of W.Va. Code, 18A-2-2, the Board could not terminate or modify her contract since the April 1 deadline for such actions contained in that section of the W.Va. Code had passed. (T.10)
3. Although she did sign the "Contract of Employment for Extracurricular Duty Assignment" dated July 28, 1986 which by its terms expired at the end of the 1987-88 school year, her action in no way indicated she had then agreed to modify her contract of employment as it was her understanding the document was only a "continuation of the ten (10) days." (T.10)

4. Since she had worked the ten (10) additional days for nearly fourteen (14) years, it was part of her continuing contract despite the terms of this July 1986 agreement.³

The Board responded:

1. Grievant's original continuing contract of employment dated May 4, 1976 contained a provision that it was subject to any and all laws then existing or thereafter lawfully enacted and the extracurricular contract provisions of W.Va. Code, 18A-4-16 were enacted in 1981 and the extracurricular contract signed between the grievant and the Board in 1986 was simply a compliance with the provisions of that section of the W.Va. Code.⁴
2. Grievant must be held to understand the provisions of this new contract she signed and by doing so, she voluntarily modified the terms of her employment with the Gilmer County Board of Education.

³Grievant claims in her brief that the parties actually stipulated to this contention during the course of her hearing before the Board. The language contained in the transcript of the hearing reveals such a stipulation, (T.7), and while it was considered an important factor in reaching a decision in this case, it was not regarded as conclusive proof of grievant's arguments.

⁴The Board offered no explanation why such a contract was not entered into at the time of the enactment of that section of the W.Va. Code.

3. When the Board chose not to renew grievant's extra-curricular contract, such an action would be considered a transfer and the procedural provisions of W.Va. Code, 18A-2-7 would apply, citing Smith v. Board of Education, 341 S.E.2d 685 (W.Va. 1986).⁵

Had the contract signed by grievant on July 28, 1986 been an extracurricular duty agreement as defined in W.Va. Code, 18A-4-16, the Board's actions in proceeding to reduce grievant's contract in accordance with W.Va. Code, 18A-2-7 could arguably have been correct in light of the decision in Smith v. Board of Education, supra.⁶ The record in the present case clearly reveals grievant was not performing extracurricular activities during the

⁵The Smith case involved a teacher who received no prior notice or hearing when a school board voted not to renew his coaching contract and the West Virginia Supreme Court of Appeals ruled the board's decision amounted to a transfer and he was entitled to the safeguards of W.Va. Code, 18A-2-7.

While the Court's conclusion that the vote not to renew the contract was a transfer action and not one of termination is somewhat confusing, the Board in this case apparently relied on the Court's language and accordingly, proceeded under W.Va. Code, 18A-2-7 with respect to its desire to reduce grievant's contract.

⁶Although the Court specifically held in that case that the procedural protections of W.Va. Code, 18A-2-7 and 18A-2-8 applied to extracurricular contracts, there is also broad language contained in the opinion to the effect that there was nothing in the wording of W.Va. Code, 18A-4-16 which operated to exclude such contracts from other procedural safeguards generally attached to other school personnel positions.

contested ten (10) "additional" days. The agreement indicates she was merely performing guidance counseling during this time and those are not the activities contemplated by W.Va. Code, 18A-4-16. This section by its language includes the performance of duties at times other than regularly scheduled working hours. See generally, McComas v. Lincoln County Board of Education, Docket No. 22-87-197. By definition the word "extracurricular" refers to activities which are not a part of a student's regular course of study. Conceivably all the duties of a guidance counselor could be characterized as outside the pupils regular academic curriculum but consultation with such counselors inside a high school must be considered an integral part of a complete education and in no way extracurricular. As grievant's duties during the contested ten (10) day period were of a regular nature and performed during normal school working hours, the additional agreement signed July 28, 1986 is void and of no effect. The Board's reliance thereon as a modification in grievant's continuing contract of employment was misplaced and its subsequent action in reducing the days of said contract was a violation of the provisions of W.Va. Code, 18A-2-2.

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

FINDINGS OF FACT

1. Grievant has been employed by the Gilmer County Board of Education since 1973 and first signed a continuing contract of employment with said Board of Education in 1976 and that contract called for an employment term of 210 working days.

2. On July 28, 1986 grievant and the Board entered into an agreement labeled "Contract of Employment for Extracurricular Duty Assignment" wherein grievant would perform the duties of school guidance counselor for ten (10) days at a rate of \$123.00 per day.

3. By letter dated March 13, 1987 grievant was notified she had been placed on a proposed transfer list for the 1987-88 school term pursuant to W.Va. Code, 18A-2-7.

4. Grievant, in writing, requested reasons for her placement on said list and by letter dated March 19, 1987 that declining student enrollment and funding problems with the Gilmer County School System necessitated notice to her that her work beyond a 200 day term may be altered.

5. Grievant requested and was given a transfer hearing before the Board which was held April 21, 1987.

6. At said hearing representatives for the grievant and the Board stipulated grievant's continuing contract of employment included ten (10) days of work beyond a 200 day school term and a corresponding supplement in pay and said stipulation was part of a duly certified transcript of that proceeding.

7. On April 21, 1987 the Gilmer County Board of Education voted not to continue grievant's contract of employment beyond a 200 day term with the effect of reducing said contract by ten (10) days and a corresponding \$1,230.00 in supplemental pay.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-2-2 provides the continuing contract of any teacher shall remain in full force and effect unless mutually modified or terminated by a board of education before April first of the then current year after notice and an opportunity to be heard.

2. In the present case, grievant had a continuing contract with Gilmer County Board of Education with a term of 210 working days.

3. W.Va. Code, 18A-4-16 allows school boards to enter into separate contracts with employees to perform extracurricular duties but those duties must occur at times other than regularly scheduled working hours. McComas v. Lincoln County Board of Education, supra.

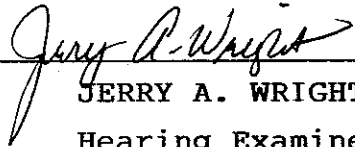
4. Grievant's duties under her 210 day contract were those of a guidance counselor at Gilmer County High School and all of said duties were conducted during regularly scheduled working hours and in no way extracurricular within the meaning of W.Va. Code, 18A-4-16.

5. The contract for extracurricular duty assignment entered into by grievant and the Board is in contravention of the clear and unambiguous language and intent of W.Va. Code, 18A-4-16 and is therefore void insofar as its terms modified any part of grievant's 210 day continuing contract.

6. The action of the Board in reducing the 210 day term of grievant's contract to 200 days was in violation of the express provisions of W.Va. Code, 18A-2-2 requiring notice, hearing and final action before April 1 of the then current year.

Accordingly, the grievance is **GRANTED** and the Gilmer County Board of Education is hereby **ORDERED** to reinstate grievant, Rosemary Williams, to her former 210 day contract of employment and to compensate her for any loss of work incurred as a result of the improper cuts, less any appropriate set-off.

Either party may appeal this decision to the Circuit Court of Gilmer County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this 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: February 3, 1984