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**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**  
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DOROTHY WINEBARGER

v.

Docket No. 33-88-169

MCDOWELL COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Dorothy Winebarger, is employed by the McDowell County Board of Education (Board) as a secretary assigned to the Career Education Center. She filed a grievance on June 15, 1988 alleging her 240 day contract had been improperly reduced to 200 days. A decision at Level II was adverse to the grievant. The Board voted to uphold the Level II findings on August 23, 1988. Upon appeal to Level IV, the parties indicated a decision could be made on the record developed at lower levels.<sup>1</sup>

The parties essentially do not dispute the facts of the case. Grievant has been employed for the past eleven (11) years

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<sup>1</sup>Proposed findings of fact and conclusions of law were requested but not submitted.

as a secretary at the Career Center and during the 1986-87 school year had a 240 day contract.<sup>2</sup> By letter dated March 1, 1988 she was informed by Superintendent of Schools, Kenneth Roberts, that, because it was necessary to make adjustments among personnel, he would recommend to the Board that she be placed on the transfer and subsequent assignment list for the 1988-89 school term (Board's Exhibit No. 3). Mr. Roberts further stated the reason for the transfer recommendation was the closing of the Career Center at the end of the 1987-88 school term and pursuant to W.Va. Code §18A-2-7, the grievant had a right to a hearing before the Board prior to any final action on his recommendation. Grievant did not request a hearing and by letter dated April 27, 1988 was informed that effective the beginning of the 1988-89 school term, she was transferred from "Secretary II (261-day employment term) at Career Education Center to Secretary at Unassigned".<sup>3</sup> Again grievant was informed the action was taken because of the closing of the Center (Board's Exhibit No. 3). By letter dated June 9, 1988 grievant was informed she had been transferred, pursuant to Board action on June 7, 1988, from "Secretary II at the Career Education Center to Secretary II at Bradshaw Junior High (200-day)". (Board's Exhibit No. 3) The Center was closed

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<sup>2</sup>It appears grievant may have had previous 261 day contracts but the record does not reveal when the reduction of twenty-one (21) days was made.

<sup>3</sup>The reference to a 261 day contract in the letter was obviously a clerical error as the parties agree grievant had only a 240 day contract at the time.

during the summer and grievant assumed her duties under the new contract at Bradshaw at the beginning of the 1988-89 school term.

The grievant asserts the Board could not reduce the length of her contract term by giving notice pursuant to W.Va. Code §18A-2-7 that she was only to be transferred upon the closing of the Center. The Board's position is difficult to discern but it appears to contend the closing caused a reduction in force (RIF) of service personnel and since the grievant was the least senior secretary with a 240 day contract, she was only entitled to replace or "bump" a less senior secretary with a 200 day contract.

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

#### FINDINGS OF FACT

1. Grievant, Dorothy Winebarger, has been employed by the McDowell County Board of Education as a Secretary II assigned to the Career Education Center for the past eleven (11) years and during the 1987-88 school term had a 240 day contract.

2. On March 1, 1988 grievant was informed by Superintendent of Schools Kenneth Roberts that he would recommend to the Board that she be placed on a transfer list due to the closing of the Career Center.

3. Grievant did not request a hearing and the Board accepted Mr. Roberts' recommendation and subsequently voted on June 7, 1988 to reassign her to Bradshaw Junior High with a 200 day contract.

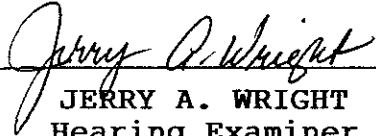
#### CONCLUSIONS OF LAW

1. The employment term of school service personnel can be modified without their consent but only through termination of their contracts after strict compliance with the provisions of W.Va. Code §18A-2-6. Roach, et al. v. Mason County Board of Education, Docket No. 26-87-070 (November 20, 1987); Brewster and Breedlove v. Lincoln County Board of Education, Docket No. 22-87-081-1 (December 1, 1987); Marcum v. Wayne County Board of Education, Docket No. 50-88-167 (November 28, 1988).

2. The McDowell County Board of Education violated the provisions of W.Va. Code §18A-2-6 when it reduced grievant's 240 day contract to 200 days after giving notice and an opportunity to a hearing pursuant to the provisions of W.Va. Code §18A-2-7.

Accordingly, the grievance is **GRANTED** and the McDowell County Board of Education is hereby **ORDERED** to reinstate the grievant, Dorothy Winebarger, to a 240 day contract and to compensate her for any loss of wages she may have incurred as a result of the improper reduction in her contract, less any appropriate set-off.

Either party may appeal this decision to the Circuit Court of McDowell 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) Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

  
JERRY A. WRIGHT  
Hearing Examiner

Dated: December 28, 1988