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SAMUEL BELLOTTE

v.

DOCKET NO. 17-88-007-2

HARRISON COUNTY BOARD OF EDUCATION

DECISION

Grievant, Samuel Bellotte, is employed by the Harrison County Board of Education and is presently assigned as an aide II at Shinnston Elementary School. Mr. Bellotte filed a level four grievance appeal on January 14, 1988 in which he alleged that he had been transferred in violation of W.Va. Code, 18A-2-7. The grievance was denied at level two and consideration was waived by the board of education at level three. The matter was submitted for decision at level four based upon the record developed at level two supplemented with proposed findings of fact and conclusions of law.

The level two record indicates that the grievant was first regularly employed by the board in December 1986 as a half-time

custodian at Hartman Elementary School. In July, 1987 the board approved his additional employment on a half-time basis as an aide II at Van Horn Elementary School. On November 4, 1987 the board approved Superintendent Kittle's recommendation that the grievant be transferred from the position at Van Horn Elementary School to the same position at Shinnston Elementary School.¹

The grievant argues that the transfer was in violation of W.Va. Code, 18A-2-7 as it was not effectuated within the appropriate time frame. The board asserts that the half-time position of aide at Van Horn Elementary School was posted and filled based upon anticipated enrollment but that by October it was apparent that the position was not required as the enrollment was less than projected. Therefore, the position of half-time aide at Van Horn Elementary School was eliminated and the grievant transferred to a similar position at Shinnston Elementary School.

The board argues that to have kept the grievant in Van Horn Elementary School where his services were not needed would

¹After the grievant was notified of this impending transfer by letter of October 21 he subsequently applied for a second half-time aide position at Shinnston. The board also approved this second transfer (from custodian at Hartman School to aide at Shinnston) at the meeting of November 4, 1987, thereby resulting in the grievant being assigned two half-time positions at Shinnston School.

have been fiscally irresponsible and is not required by its broad interpretation of W.Va. Code, 18A-2-7 that the time limits are waived in certain emergency situations. Additionally, the board cites three opinions of the West Virginia Supreme Court of Appeals which it interprets as conferring common law authority upon county superintendents to implement regulatory or emergency transfers so long as the transfers are in the best interest of the school system and are implemented in a reasonable manner. It argues that this authority was not completely extinguished by W.Va. Code, 18A-2-7 which is to be applied only when the board is aware of circumstances necessitating a transfer prior to the statutory deadline.

While the transfer was based on logical and practical reasoning and was in the best fiscal interest of the school system, such "emergency" transfers are not permitted by W.Va. Code, 18A-2-7. This statute expressly provides that employees are to be notified on or before the first Monday in April if they are being considered for transfer and that the board shall act upon recommended transfers on or before the first Monday in May. There is no statutory provision for the transfer of employees at any other time. The argument that common law authority

permits emergency transfers or transfers determined by need established after April 1 is not persuasive. The last paragraph of Section 18A-2-7 permits a waiver of the time limits in an emergency situation where the building has been damaged or destroyed through an unforeseeable act. This indicates that the legislature did consider emergency situations but decided to limit this exception to cases where the building condition was the controlling factor. When a statute so narrowly defines a matter it would be improper to interpret it broadly to include other types of emergencies.

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 by the Harrison County Board of Education and is presently assigned as an aide at Shinnston Elementary School.

2. The grievant was first employed on a regular basis in December, 1986 as a half-time custodian at Hartman Elementary School.

3. The board later posted a position of half-time aide at Van Horn Elementary School based upon projected enrollment.

The grievant was additionally awarded that position in July, 1987.

4. In October, 1987 the board eliminated the half-time aide position held by the grievant at Van Horn Elementary School because the enrollment was lower than that projected and the position was not required.

5. On November 4, 1987 the board of education approved the grievant's transfer as a half-time aide from Van Horn Elementary to Shinnston Elementary School.

Conclusions of Law

1. 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. W.Va. Code, 18A-2-7.

2. The notice and hearing requirements prior to transfer as set forth in W.Va. Code, 18A-2-7 demand strict compliance. Morgan v. Pizzino, 256 S.E. 2d 592 (W.Va. 1970); Lavender v. McDowell County Board of Education, 327 S.E. 2d 691 (W.Va. 1984).

3. The statutory guidelines specifically provide only one exception to the time limits set forth in the transfer procedure and does not permit a broader interpretation to allow exemptions in other "emergency" situations.

4. The board of education has failed to comply with the statutory requirements of W.Va. Code, 18A-2-7 thereby rendering the transfer improper.

Accordingly, the grievance is **GRANTED** and the board is Ordered to reinstate the grievant to the position of half-time aide at Van Horn Elementary School.

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

June 30, 1988

Sue Keller

SUE KELLER
HEARING EXAMINER