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BARBARA G. ARNOLD

v.

Docket No. 89-40-216

SA
10/13/89

PUTNAM COUNTY
BOARD OF EDUCATION

DECISION

Grievant Barbara Arnold alleges she was illegally transferred from her position as Personnel Director for Respondent Putnam County Board of Education to "unassigned status," effective July 1 through October 4, 1989, with no guarantee of employment thereafter, and that she was harassed.¹

The essential facts of this matter are not in dispute. Grievant was employed as Personnel Director with a one-year contract dated October 5, 1987. No further employment contract was executed, but the terms of that contract have

¹The grievance, filed with Respondent May 12, 1989, requested waiver of Levels I, II, and III consideration, and with no such consideration was advanced to Level IV on May 24, 1989. On June 9 it was ordered remanded to Level II, where it was heard June 26 and denied July 3. Respondent waived Level III consideration and Grievant again appealed to Level IV on July 19, where a hearing was held August 11. Proposed findings of fact and conclusions of law were received from both parties on and before September 21.

been accepted as applying even after Grievant's first year of employment. The only job description for Grievant's position was that of the vacancy bulletin, which reflected that it entailed legal duties, in addition to strictly personnel matters. Grievant is an attorney.

On March 14, 1989, James McGehee, Interim Superintendent of the Putnam County Schools, met with Grievant to notify her that he planned to recommend to Respondent at its meeting of March 20 a central office reorganization plan that would include abolishment of Grievant's position, to be replaced by a position of Assistant Superintendent of Personnel/Pupil Services. On the effective date of the plan, July 1, 1989, Grievant would officially be put on unassigned status, but her duties would be to handle legal matters as assigned by the superintendent. Mr. McGehee would recommend that Grievant's contract would end October 4, 1989, but a new contract was subject to being negotiated. What transpired at the meeting was memorialized in a letter of March 27, 1989, from Mr. McGehee to Grievant (Gr. Ex. 1).²

At the March 20 meeting Respondent voted to allow the superintendent to consider the plan he offered. Its minutes, Gr. Ex. 25, reflect that specific proposed changes

²That letter indicates, as does the record as a whole, that Grievant was not to be considered for the position of Assistant Superintendent of Personnel/Pupil Services created by the plan.

were addressed, including that the position of Director of Personnel be abolished and a position of Assistant Superintendent of Personnel/Pupil Services be created. By letter of April 7 Mr. McGehee notified Grievant of her right to a hearing before Respondent to protest her being considered for transfer, unassigned status. Grievant, in response, requested a hearing and, in addition, "a list of specific reasons for the proposed transfer[.]" Mr. McGehee wrote back on April 14 that the reason for the transfer "is the possibility of changes in job responsibilities and staff positions within the overall central office staff reorganization plan that would provide additional services for our students and employees." Gr. Ex. 4. The transfer hearing was held April 25, 1989. At its meeting of May 1 Respondent voted to place Grievant, along with four other central office professional employees, on unassigned status, effective July 1. On May 2 Samuel Sentelle became Superintendent of the Putnam County schools.

Grievant concedes that Respondent has the authority to put an employee on unassigned status and also that all actions on the transfer complied with the timeframes mandated by W.Va. Code §18A-2-7 (1989). She makes a number of contentions, however.³

³Throughout these proceedings it has been difficult to discern what exactly are Grievant's contentions and on what legal grounds she bases those contentions. The issues, as
(Footnote Continued)

Firstly, Grievant contends that the transfer was illegally motivated, arguing that Respondent wished to terminate her for a perceived incompetence without providing her an opportunity to improve. However, there simply is no probative evidence supporting this contention. While Grievant testified that several people told her in Fall 1988 that a member of the Board of Education she named told people she was going to be fired, she provided no corroboration for what can only be considered on this record an unsubstantiated rumor. Mr. McGehee's testimony that there was no such motivation directly contradicted Grievant's hearsay evidence and is therefore given greater weight.

Because it is found that the transfer was not so motivated, a further contention made by Grievant, that she was denied due process at the transfer hearing by being disallowed from presenting evidence on her competence, i.e., by submitting into evidence her evaluations and cross-examining Mr. McGehee regarding them, must also be rejected. Respondent's President, Ms. Irene Ghiz, quite properly ruled at the hearing that the evaluations were irrelevant to the

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framed here, are drawn from her original statement of grievance, her testimony, and her proposed findings of fact and conclusions of law. Deleted is a further contention that Respondent illegally hired Mr. McGehee as a consultant, serving from July 1 through August 11 in the vacant position of Assistant Superintendent for Personnel/Pupil Services. Grievant was apprised at hearing that any such illegality is not involved in this grievance. That ruling is reaffirmed here.

issue of whether Grievant should be administratively transferred that was before Respondent. Grievant misconstrues the law in arguing, "Both transfers and reassignments must be made on the basis of evaluation of the [employee's] work, according to W.Va. Board of Education Policy No. 5300. Trimboli vs. Board of Education, 167 W.Va. 792, 280 S.E.2d 686 (1981)[,]" for that ruling is limited to transfers "for reasons having to do with prior misconduct or incompetency," 280 S.E.2d at 688, and does not apply to administrative transfers, as involved in this case.⁴ The correct standard of review for an administrative transfer was provided in State ex rel. Hawkins v. Tyler Co. Bd. of Educ., 275 S.E.2d 908, 911 (W.Va. 1981), as follows:

This provision [Code §18A-2-7 (1969)] vests great discretion in the county superintendent and the county board of education to transfer and assign teachers to designated schools and this Court will not interfere with the exercise of that discretion where such action is taken in good faith for the benefit of the school system and is not arbitrary [cites omitted].

In her testimony Grievant argued that due process requires that a letter providing the reasons for a proposed transfer must be specific so that those reasons can be defended at hearing.⁵ However, Code §18A-2-7 simply

⁴Another contention raised by Grievant, that an evaluation of April 28, 1989, was an improper effort to correct procedural deficiencies must be rejected accordingly because no such deficiencies have been shown.

⁵The contention is not clear in Grievant's proposals, where it is merely stated, "Barbara Arnold requested a
(Footnote Continued)

requires that a "statement of reasons" be provided the employee and denial of Grievant's due process rights cannot be found on this record. While Mr. McGehee's letter of April 14 was unspecific, it did provide a general statement of why Grievant's position would be abolished under the plan. At the transfer hearing Mr. McGehee gave detailed rationale for the transfer, explaining that he believed the legal work and personnel work of Respondent should not be carried out by the same individual. He stated that legal work requires leaving the office while a personnel director should always be available. He further explained that, while a lawyer for a board of education would often be in confrontation with its employees, the personnel director should be someone the staff can go to with their work-related concerns. Moreover, he stated that, prior to Grievant's filling the position, the personnel director had had much experience in the school setting and had a broad understanding of the problems and concerns of school employees. He also stated that there was too much work for one individual, and that by "dividing these positions, I believe that we can provide better services for our students and our employees." Transfer Tr. 9. He further explained that after Grievant was transferred he would recommend she continue to do legal

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Transfer Hearing, which was held on April 25, 1989, but the reasons given to her by letter of April 14, 1989, (Staff reorganization plan) were not the same as those enumerated by McGehee at the Transfer Hearing." Finding of Fact 8.

work thereafter. He stated that the date of October 4, 1989, was significant because that was the anniversary of Grievant's first day of service with Respondent and he considered her to be on a contract through that date.⁶ There is no conflict between Mr. McGehee's letter of April 14 and his more detailed explanation. Moreover, Grievant does not contend that she was surprised by any of the reasons for the transfer given at the hearing and the record does not indicate any prejudice in presenting a case against the transfer. Accordingly, no due process denial can be found on the record of the transfer hearing.⁷

Grievant proposes the following finding of fact:

The entire reorganization plan, together with the proposed transfer, unassigned status, was all predetermined and was a violation of Barbara Arnold's rights. {Grievant's Exhibit No. 1} The Board never voted a "re-organization plan" but merely discussed it on March 20, 1989.

Grievant's Finding of Fact 6. The argument on Grievant's proposal is contained as follows in her proposed conclusions of law:

2. A board of education must complete protest hearings regarding contemplated employee transfers before it acts on any recommendation for transfer in compliance

⁶He also stated that he would recommend that thereafter consideration be given to Grievant's being placed in a position such as Respondent's Attorney.

⁷While Grievant's arguments on due process at the transfer hearing are here addressed, it may be that, even if due process is denied at a transfer hearing, such denial may be curable by a grievance proceeding. Any such issue need not be addressed here, however, because Grievant's due process arguments are not found to have merit.

with W.Va. Code, 18A-2-7. Lavender vs. McDowell County Board of Education, 327 S.E.2d 691 (W.Va. 1984); Burge[] and Worrell vs. Mercer County Board of Education, Docket No. 27-86-113 [Feb. 6, 1987]; and Fox vs. Summers County Board of Education, Docket No. 45-87-175 [Dec. 22, 1987];

3. Transfer hearings are to be detached and independent evaluations of the employee's case and if a decision has already been made, and the employees have been prejudged, the process is meaningless; See Lavender; Burge[] and Worrell; and Fox, supra.

4. The Interim Superintendent's letter of March, 1989, prejudged grievant pursuant to a reorganization and rendered any transfer hearing meaningless.

Grievant's Conclusions of Law.

No finding of predetermination can be based merely on a superintendent's proposing administrative transfers to a board of education, for the board of education is the body that must decide whether such transfers should be made. Moreover, Grievant's apparent complaint that Respondent did not vote a reorganization plan on March 20 is inconsistent with her allegation of predetermination and the decisions Grievant cites do not support her proposition. In Lavender and Fox the boards of education improperly voted elimination of the employees' positions before the transfer hearings. In this case Respondent quite rightly did not vote on Grievant's transfer, included in the plan, until May 1, after the transfer hearing of April 25.⁸

⁸Grievant contended at hearing that Respondent never voted on the reorganization plan. While Respondent did not vote on an action labelled a reorganization plan, it did vote on transfers that were part of the plan, including
(Footnote Continued)

Grievant also contends that she has been demoted since July and that she is entitled to a contract for the full fiscal year 1989-1990, for otherwise her employment may be terminated. However, Grievant has not shown that she has any legal right to continued employment with Respondent. Grievant has no continuing contract with Respondent and there is no requirement under the law that a contract of a school employee must be for the full school year. Rather, Respondent was within its legal rights in providing Grievant a contract only through October 4, 1989, since she has not shown that it denied her due process or statutory procedural rights nor has she shown that the transfer was arbitrary or capricious or not taken in good faith for the benefit of the school system. Hawkins. Moreover, Grievant's further argument, that she has been effectively demoted by being given less responsibility and authority from July to October, need not be addressed. No monetary relief would be available since her salary remained unchanged and no other relief could be granted at this time since the employment contract on which she relies is no longer in effect. Accordingly, any issue of impropriety as alleged is moot. See Wilburn v. Kanawha Co. Bd. of Educ., Docket No. 20-88-089 (Aug. 29, 1988).

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Grievant's. Accordingly, the transfer at issue in this matter was properly voted on by Respondent.

Grievant makes a final argument, that she was harassed by being evaluated by Mr. McGehee three days after the transfer hearing. That evaluation, while finding Grievant overall to meet performance standards, did find certain "weaknesses" in her performance needing improvement. Mr. McGehee explained that when he became interim superintendent in February 1989 he found that, of the administrators directly supervised by the Superintendent, his predecessor had evaluated only Grievant. He therefore did evaluate several of his supervisees at that time and did not evaluate Grievant. However, he thought it was his responsibility to evaluate all his supervisees before he left office but did not think it advisable to evaluate Grievant before the transfer hearing. He therefore evaluated her immediately thereafter.

While from Mr. McGehee's testimony it is clear that the timing of the evaluation was influenced by the transfer proceedings, that alone does not support a finding of harassment, which is defined as "repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession." W.Va. Code §18-29-3(n). Moreover, this record provides an inference that Grievant's insistence at the transfer hearing that an evaluation is necessary for a transfer to be proper may have contributed to Mr. McGehee's thinking he should evaluate Grievant. See n. 4. Mr. McGehee's being motivated by an effort to comply with

requirements defined by Grievant would not support a finding of harassment.

In addition to the findings of fact and conclusions of law contained in the foregoing discussion and analysis, the following conclusions of law are also made:

1. It is incumbent upon a grievant to prove the allegations of his or her complaint by a preponderance of the evidence. Hanshaw v. McDowell Co. Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988); Andrews v. Putnam Co. Bd. of Educ., Docket No. 40-87-330-1 (June 7, 1988).

2. Grievant did not establish by a preponderance of the evidence that her transfer to unassigned status from July 1, 1989, to October 4, 1989, with no guaranteed employment thereafter was illegally motivated.

3. Under W.Va. Code §18A-2-7 county boards of education have great discretion in matters relating to the transfer of school personnel and their decisions will be upheld unless they are arbitrary or not taken in good faith for the benefit of the school system. State ex rel. Hawkins v. Tyler Co. Bd. of Educ., 275 S.E.2d 908 (W.Va. 1981).

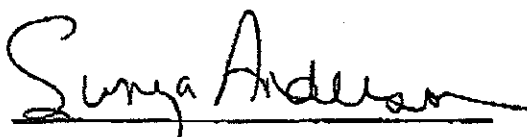
4. Grievant did not establish that she was denied any due process or statutory procedural right at the transfer hearing of April 25, 1989, or by Respondent's approving her transfer and not renewing her contract at its meeting of May 1, 1989, nor did she establish that Respondent's actions

were arbitrary or not taken in good faith for the benefit of the school system.

5. Grievant did not establish that Mr. McGehee's evaluating her on April 28, 1989, was harassment, as defined at W.Va. Code §18-29-3(n).

Accordingly, the grievance is DENIED.

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



SUNYA ANDERSON
HEARING EXAMINER

Dated: October 13, 1989