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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
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RAYMOND DUNLEAVY

v.

Docket No. 20-⁸⁸~~89~~-008

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant Raymond Dunleavy is a psychologist employed by Respondent Kanawha County Board of Education. Complaining of the addition of two schools to his schedule after the commencement of the 1988-89 school term, he initiated this grievance, which was denied at Levels I and II and waived at Level III before its submission at Level IV on January 6, 1989. The matter was scheduled for hearing on February 9, 1989, but prior to that date the parties agreed that it could appropriately be resolved on the basis of the record below.¹

¹ The transcript of the Level II hearing, prepared by the Respondent but submitted by the Grievant, does not
(Footnote Continued)

Immediately after the beginning of school year 1988-89, two of the twelve psychologists then in Respondent's employ resigned. As an interim measure while attempting to make a reasoned determination whether it was necessary to replace these two, Respondent added duties to the remaining ten, including Grievant, to cover the vacated caseloads. On or around October 10, it was decided that the two positions would be eliminated and the related schools permanently reassigned to existing staff.² As a result, Grievant was given responsibility for Sissonville High and Junior High at "the other end of the county," T. 14, from his already-designated ten schools in the St. Albans area.³ This assignment was conveyed formally by memorandum of October

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include the exhibits then admitted into evidence; however, since the parties have agreed that the case may be decided on this incomplete record, the Grievance Board has not insisted that these exhibits or any further information be provided.

² This determination was based on a decision that the remaining employees could at least for several months, see T. 25, reasonably totally consume the workload of the two, and "the overstaffing in Kanawha County of professional people in relationship to the state aid formula." T. 23. During at least the interim period referenced above, certain personnel also were hired on a contract basis to assist in the delivery of psychological services to Kanawha County students. T. 8.

³ Grievant, as part of his employment with Respondent, also serves Sacred Heart Grade School, a parochial institution in downtown Charleston, West Virginia, perhaps midway between St. Albans and Sissonville.

11, 1988, from Harold McMillan, Director of Respondent's Office of Psychological Services.⁴

Grievant's statement of his case is as follows:

Two additional schools were added to my work assignment after the beginning of my 1988-89 employment term, without compliance with. . . [W.Va. Code §]18A-2-7. The relief I seek is a return to my original 1988-89 assignment or renumeration for the additional duties assigned me.⁵

Code §18A-2-7 provides as follows in pertinent part:

[A]n employee shall be notified in writing. . .on or before the first Monday in April if he is being considered for transfer. . . . Any. . .employee who desires to protest. . .[is entitled to] hearing on the proposed transfer. . .on or before the first Monday in May.

It is undisputed that Grievant was neither so notified nor given opportunity for such hearing, inasmuch as Respondent was unaware until August that it would have vacancies among the ranks of its psychologists. The issue, succinctly stated, is thus as follows: Does the alteration of Grievant's schedule, in and of itself, constitute a "trans-

⁴ The October 11 schedule was apparently revised, in writing, on October 28. Grievant did not claim that the revision affected him in any particular. T. 12-13.

⁵ It is presumed that the request for "renumeration" may actually be one for remuneration; however, it is noted that remuneration may have been the intended term and the request could be, in the alternative to his being returned to his original schedule, that the present number of schools to which Grievant is assigned be decreased. The perceived ambiguity is of no moment due to the outcome herein.

Although no evidence was offered on the point, it is further presumed that Grievant is reimbursed for his Sissonville-area mileage expenses.

fer" within the meaning of Code §18A-2-7? More specifically, is the addition of two schools to the portfolio of a psychologist, an itinerant employee by definition,⁶ who already has responsibility for eleven schools, in a situation of unanticipated vacancies due to resignations after the commencement of a school year, a §18A-2-7 transfer?

Grievant contends that the answer to both questions is "yes" and that the addition of the Sissonville schools has caused him to accumulate an ever-increasing backlog of students needing psychological services and that scheduling, Placement Advisory Committee (PAC) activities and other similar duties, and the distance between his assigned schools has increased his taskload.⁷ Although Grievant opined this increase to be thirty percent, T. 16, Respondent presented unrefuted evidence that the reassignments were handled in as equitable a fashion as possible⁸ and that all

⁶ "School psychologists are assigned to provide psychological services to specific schools on a geographical basis and report directly to. . .[certain] school[s] each day; they return to their central office each afternoon for preparation time and other duties." Dunleavy v. Kanawha Co. Bd. of Educ., Docket No. 20-87-262-1 (Jan. 5, 1988), Finding of Fact 1.

⁷ Grievant does not claim his situation to be different from any of his fellow psychologists in these or other regards; hence, there is no hint of a discrimination charge in his complaint and indeed the uncontradicted evidence is that the remaining psychologists have all been affected similarly by the reshuffling of assignments. See, e.g., T. 26.

⁸ In light of this, it is quite difficult to comprehend
(Footnote Continued)

psychologists were experiencing enhanced backlogs, and further, that no overtime had been or would be required as a result of the changes and that no one had been counseled for inadequate performance. T. 26-27.⁹ James E. Simmons, Respondent's Associate Superintendent for Pupil Support Services, also stated that Placement Advisory Committee involvement, while highly desirable, was no longer absolutely required of the psychologists, in an effort to accommodate them in the wake of the reconfiguration and other changes. T. 25. At no point does Grievant claim that he is required to perform duties outside his job description or even that are different in nature than those he had prior to his assignment to the Sissonville schools.¹⁰

(Footnote Continued)

Grievant's claim of a thirty percent increase in his workload.

⁹ Grievant testified that the new geographical arrangement "takes actually time out from your work schedule," T. 16, and that it is quite difficult to fit in lunch, travel, and work, T. 15, but did not assert that he was working longer hours. Indeed, at least with respect to direct student contact, as Respondent pointed out at T. 27, that is generally never a possibility after the end of the schoolday anyway.

¹⁰ Grievant, at Level II, stated that his 1987-88 assignment was wholly elementary, while his two "new" schools are secondary; however, he does not assert that secondary work is outside his training, certification or job description, and he has admittedly done supply work in secondary schools in the past. T. 15. It is further recognized that Grievant's ten St. Albans elementary schools have an average population of 150-175, while the Sissonville institutions each have 525-550 students. T. 15-16. It would appear that the relative advantages and disadvantages of serving the larger schools might counterbalance; at any

(Footnote Continued)

The remainder of this Decision will be presented as formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant has been employed as a school psychologist by Respondent Kanawha County Board of Education since the beginning of school year 1985-86.

2. After the commencement of school term 1988-89, two of Respondent's twelve school psychologists resigned. These resignations were not anticipated by Respondent.

3. After an interim period, Respondent decided not to fill the two positions for at least the remainder of the 1988-89 school year, and to distribute the vacated caseloads among the remaining ten psychologists. As a result, Grievant was assigned to Sissonville High and Jr. High Schools, in addition to his previous portfolio of ten

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rate, Grievant poses no specific argument in this vein.

Grievant also elicited testimony from Simmons to the effect that, some five or so years ago, a study resulted in raising the number of school psychologists in Kanawha County from eight to twelve. This growth in staff "relate[d] to being able to meet the needs of children in a classroom." T. 27. However, Grievant did not present any information as to the current validity of that study or to the negative impact upon students of only ten psychologists in the system save conclusory generalities. Simmons did admit that it had not yet been determined whether ten would be an adequate number in the long run, and that Respondent is carefully monitoring the situation. T. 25.

elementary schools in the St. Albans area and one private school in Charleston. He is not expected to work longer hours or have a higher production quota, and is not required to perform duties outside his job description or different from before the assignment of the Sissonville schools.

4. The division of the extra responsibilities among the ten psychologists was effected in as reasonable and equitable a manner as possible.

CONCLUSIONS OF LAW

1. "[S]chedule adjustments which do not include duties or responsibilities outside of an employee's presently utilized area of certification, discipline or department. . .[are generally not] assignments amounting to a transfer.." VanGilder v. Mineral Co. Bd. of Educ., Docket No. 28-87-320-2 (June 16, 1988), p. 4. Also see Lavender v. McDowell Co. Bd. of Educ., 327 S.E.2d 691 (W.Va. 1984); Dotson v. Greenbrier Co. Bd. of Educ., Docket No. 13-87-321-4 (Mar. 7, 1988); Gerstner v. Gilmer Co. Bd. of Educ., Docket No. 11-87-303-3 (Feb. 17, 1988); Schafstall v. Brooke Co. Bd. of Educ., Docket No. 05-86-347-3 (Mar. 30, 1987).¹¹

¹¹ In Schafstall, the grievant was involuntarily
(Footnote Continued)

2. An itinerant employee already assigned to eleven schools who, for just cause, is given responsibility for two more schools after the commencement of a school year and is not required to work longer hours or have a higher production rate has not been "transferred" within the meaning of Code §18A-2-7 and is not entitled to the procedural protections thereof. See Dunleavy, supra (psychologist whose entire school assignment list was changed for school year 1987-88 in July 1987 was belatedly transferred per Code §18A-2-7 and, since procedural protections were then unavailable because untimely, was entitled to reinstatement to his 1986-87 schedule).

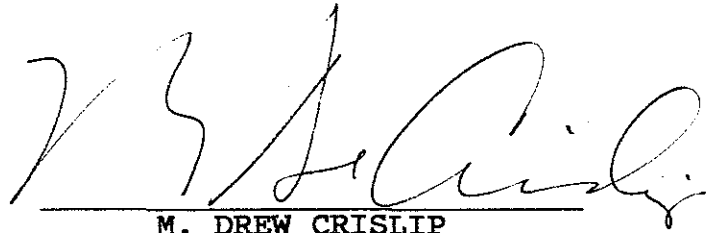
Accordingly, this grievance is **DENIED**.

Either party may appeal this decision to 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

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reassigned, within her duty-station school, to teach classes vacated by a fellow instructor after the commencement of the school year. This scenario was held not to constitute a transfer with the meaning of Code §18A-2-7 and is somewhat analogous to the case at bar.

the record can be prepared and transmitted to the appropriate court.

A handwritten signature in cursive script, appearing to read "M. Drew Crislip", written over a horizontal line.

M. DREW CRISLIP
HEARING EXAMINER

Dated: February 23, 1989