



REPLY TO:
111 - 19th Street
Wheeling, WV 26003
Telephone: 238-1040

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

WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD

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NELLAJEAN BUMGARDNER

v.

Docket No. 43-88-119

RITCHIE COUNTY BOARD OF EDUCATION

DECISION

Grievant, Nellajean Bumgardner, has been professionally employed by the Ritchie County Board of Education for approximately 17 years. On October 12, 1988, she refiled¹ a level four grievance appeal in which she alleged a violation of W. Va. Code §§18A-2-7 and 18-29-3(h) by the respondent board. A scheduled October 19, 1988 level four hearing was continued by agreement of the parties to December 15, 1988.

¹By order dated July 20, 1988, the grievance, as originally filed (June 16, 1988), was remanded to the respondent for procedural deficiency. Ongoing negotiations to resolve the matter failed in September. A level two hearing was conducted by respondent's counsel on October 12, 1988. Grievant declined to present her case at that hearing and claimed the matter had been set for hearing on October 10, 1988 before school board members who refused to hear it at the appointed time. See Joint Exhibit 1 (Level two transcript) and Grievant Exhibit 1, 12/15/88. The record remains devoid of any written decision at levels two or three as per the requirements of W.Va. Code §18-29-1, et seq.

Following the December 15 hearing, the record was kept open pending the submission of additional materials from grievant's principal at Ritchie County High School (RCHS), Russell Crawford.² Respondent filed a letter on its position January 17, 1989 and grievant filed proposed findings of fact and conclusions of law on January 25, 1989.

Grievant holds certification in library science and home economics. She had been assigned only librarian duties from at least the inception of the consolidated RCHS in 1985. Prior to the beginning of the 1987-88 school year, Principal Crawford assigned grievant two home economics classes to teach. She obeyed the directive but filed a grievance on the matter, alleging violation of the notice and hearing requirements pursuant to transfer, W.Va. Code §18A-2-7, and pursued it to level four where she prevailed on the issue. Bumgardner v. Ritchie County Board of Education, Docket No. 43-87-219-3 (December 11, 1987).

Respondent did not comply with the Grievance Board's order to reinstate grievant to her 1986-87 schedule and relieve her of the home economics classes and instead, on January 19, 1988, it

²The principal was to submit a 1988-89 schedule of classes at RCHS as he claimed the schedule proffered by grievant (Gr. Ex. 3, 12/15/88) was not a final schedule. On January 4, 1989 he filed the final schedule and a 2-page letter to the undersigned which began "I would like to submit this explanation of our schedule." Other materials included three documents, general data with respect to academic requirements and course scheduling and registration, and a 23-page, BCHS Student Registration Bulletin (Bulletin), dated 1988-89.

caused to be served upon grievant a subpoena which notified her that it had appealed the grievance decision to the local circuit court.³ However, at a school board meeting on March 24, 1988, grievant was relieved of the home economics classes and reinstated to her 1986-87 schedule at RCHS, effective at the close of the prevailing six-week grading period, April 6, 1988.

Grievant received a notice of transfer for the 1988-89 school year dated the very day after the board meeting, i.e., March 25, 1988.⁴ During all of this time RCHS had two full-time home economics teachers on staff, Jean Cronin and Donna Pratt. Grievant exercised her W.Va. Code §18A-2-7 rights to a hearing on the proposed transfer.

According to respondent's April 19, 1988 school board minutes, it went into closed session at 7:45 p.m. until 9:10 p.m. to conduct transfer hearings for grievant and two other personnel. Later, after another one-hour executive session for "discussion of personnel" ending 11:00 p.m., it determined that grievant be transferred and subsequently assigned for the 1988-89 school year as "additionally assigned to areas of certification at RCHS." At least two personnel were additionally assigned to areas of certification at "CMS" (Cairo Middle

³The Grievance Board was not notified of respondent's appeal and the record was not requested by respondent's counsel or by the court for review. According to counsel, the Ritchie County Circuit Court conducted at least one hearing on the matter.

⁴It is noted that respondent's maneuvers afforded grievant very little relief with respect to her 1987 grievance.

School) and Donna Pratt appeared on the list as "employed to be subsequently assigned" but no school assignment was noted.

Grievant testified at the level four hearing that no specific reasons were given for her transfer at the April 19 transfer hearing other than she was needed to teach home economics at RCHS. She stated that the 1988-89 class schedule had not been prepared or shown, that student enrollment figures were not presented on the matter and that her principal did not even appear at the hearing to substantiate his recommendation. She said that her attempts to secure a transcript of the transfer hearing have been for naught. Grievant acknowledged that a charge of reprisal pursuant to W.Va. Code §18-29-3(h) would be difficult to prove and she would instead focus on what she alleged was respondent's failure to meet its W.Va. Code §18A-2-7 burden that "the reasons for the proposed transfer must be shown."

In her proposed findings of fact, grievant maintains there was no need for her transfer. She contends that home economics classes are elective courses, the numbers of which respondent has not shown necessity; that RCHS has two full-time home economics staffers whose time and talents have not been scheduled effectively in the home economics curriculum, according to a State evaluation report; and that respondent failed to show the need for her to teach home economics at RCHS.

Grievant argues that an "...arbitrary and capricious use of the (transfer) power will not be permitted." She cites Scott v.

Jackson Co. Bd. of Educ., Docket No. 18-86-009 (March 21, 1986).

Proposed Conclusion of Law No. 2.⁵

Respondent contends that during the current year grievant was properly placed on transfer. It argues that a principal "must be able to utilize all of the capabilities of the teachers...to provide the best service to the students." Grievant's transfer, it maintains, was necessary to provide RCHS students "the maximum number of classes." Position Statement/Letter, 1/11/89.

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

FINDINGS OF FACT

1. From at least the inception of RCHS in 1985 and until the 1987-88 school year, grievant's full-time professional duty was to serve as a high school librarian at that facility. When the school year began in 1987, she was directed by her principal, Russell Crawford, to teach two classes in her other area of

⁵Grievant also made argument on the reprisal issue. The findings in Scott clearly established that grievant therein was the victim of reprisal. Here, grievant did not pursue the charge of reprisal at hearing and the record is not compelling that reprisal motivated respondent's action. For that reason and due to the disposition of this grievance, that issue will not be addressed, per se. However, Scott is applicable herein with respect to the standard it set forth that "[t]he power of a county superintendent to transfer teachers must be exercised in a reasonable manner and arbitrary and capricious use of the power will not be permitted."

certification, home economics. She complied with the directive to teach the nutrition and foods classes but filed a grievance and prevailed before the West Virginia Education and State Employees Grievance Board on the issue that she had been improperly transferred contra to W.Va. Code §18A-2-7. For background see Bumgardner v. Ritchie County Board of Education, Docket No. 43-87-219-3 (December 11, 1987).

2. In late January 1988, respondent appealed the December 1987 grievance decision to its local circuit court; more than three months after the decision, March 24, 1988, it withdrew the appeal and reinstated grievant to her 1986-87 schedule, effective April 6, 1988, approximately two weeks after the formal board action. The next day, March 25, 1988, grievant was timely noticed of transfer action for the 1988-89 school year.

3. The W.Va. Bureau of Vocational, Technical and Adult Education assessed respondent's secondary Consumer and Homemaking Program. Of record is its "Final Evaluation Report" dated March 14, 1988. One recommendation states:

Since 2 full-time home economics teachers are employed at Ritchie County High School, their time and expertise is best utilized in teaching home economics courses rather than supervising study halls, etc. Full utilization of these teachers would then free the librarian to devote full-time to that position rather than teaching nutrition and foods classes.

The home economics teachers, Jean Cronin and Donna Pratt, have extended employment (presumably extra teaching days and wages), according to the report.

4. At her April 16, 1988 transfer hearing, a recommendation was made that grievant was needed to teach home economics classes at RCHS for the 1988-89 school year and the board approved the transfer to "areas of certification at RCHS" although no showing had been made at that time of student enrollment, scheduled classes, or the like, which could even remotely substantiate the expressed need. Grievant timely filed the present grievance.

5. On a preliminary RCHS schedule prior to the 1988-89 school year, grievant found she was assigned to teach two foods and nutrition classes in addition to five library periods. The parties remained engaged in settlement negotiations on the grievance. Grievant was willing to teach one foods class and would drop the matter if that adjustment could be made (T._). Principal Crawford claimed that he offered to relieve grievant of the fifth period foods class if Ms. Cronin would agree to take it, but Ms. Cronin refused. Respondent's submission, 1/4/89. This evidence does not demonstrate respondent's good faith in this matter as Principal Crawford has the authority to assign teachers to teach classes within their presently utilized area of certification without transfer, or the teachers' permission. Schaftstall v. Brooke County Board of Education, Docket No. 05-86-347-3 (March 30, 1987).

6. Ms. Cronin had been preliminarily assigned a one-period lunch duty and a one-period study hall (T._). The study hall was eliminated and she instead teaches a course titled

"International Foods" a class that does not even appear on the 1988-89 course listings of RCHS and was therefore never available to students for pre-registration, or anytime, and not a part of the original master schedule of class offerings. According to Principal Crawford, Ms. Cronin offered to teach this class but how it became scheduled when no students had had an opportunity to sign up for it is unknown. The lunch duty remained on Cronin's schedule. Respondent's Submission, 1/4/89.

7. Ms. Cronin is also scheduled a class titled "Career Explorations," not found in the Home Economics course program listings in the RCHS Bulletin, but rather found under Applied Arts/Pre-Vocational, as an elective course for students in 9th-11th grade. This course is also found on the roster of at least four other non-home economics teachers at RCHS. Ms. Cronin has two classes of "Occupational Survey," found in the "PRT Curriculum" as part of a 540-hour, one-year program to afford students "the opportunity to experience several different areas of training...to meet their individual needs." However, Mr. Crawford testified that he thought those classes were for special education students taking "home ec" classes and he did not appear to know the content of several other classes on Cronin's schedule (T._). Ms. Cronin, in fact, is only assigned to two home economics classes, as listed in the Bulletin, throughout her entire schedule (all teachers have one duty-free planning period on the eight-period schedule).

8. Donna Pratt is scheduled for five home economics classes at RCHS. Although respondent's school board minutes of April, 1988 reveal transfer of personnel to Cairo Middle School, Ms. Pratt's transfer included no such school assignment. Nonetheless, Ms. Pratt loses one period per day at RCHS to travel to Cairo where she is listed for her final class assignment of the day. The need for Pratt's transfer to Cairo and loss of utilization at RCHS for two class periods per day was not made clear by Superintendent Dixon Law's testimony or any other evidence of record.

9. School officials' testimony that the reduction in force of school personnel for 1988-89 resulted in a need that grievant be transferred was not supported by the record. In fact, the final schedule for RCHS shows the placement of two additional staff members not listed on the preliminary schedule, although one of the new staffers, "Haught," was scheduled for assignment at Cairo for four periods at the start of the day.

10. Respondent made no showing at level four about actual school population, class sizes and 1988-89 registration demand for home economics classes to support its position that grievant was needed to teach food classes at RCHS instead of the two full-time home economics teachers on staff. Those teachers were not scheduled or utilized in a manner to provide RCHS students maximum course offerings, respondent's stated goal for its transfer of grievant.

CONCLUSIONS OF LAW

1. The notice and hearing requirements prior to transfer as set forth in W.Va. Code §18A-2-7 demand strict compliance. Lavender v. McDowell County Board of Education, 327 S.E.2d 691 (W.Va. 1984); Renzelli v. Harrison County Board of Education, Docket No. 17-87-259-2 (March 28, 1988).

2. W.Va. Code §18A-2-7 requires that the reasons for a proposed transfer of school personnel be shown, and school personnel laws are to be strictly construed in favor of the employee. Morgan v. Pizzino, 256 S.E.2d 592 (W.Va. 1979).

3. County boards of education have substantial discretion in matters relating to assignment and transfer of school personnel but this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Haines v. Mineral County Board of Education, Docket No. 27-87-275-2 (May 26, 1988); Dorsey v. Jackson County Board of Education, Docket No. 18-86-009 (March 2, 1986).

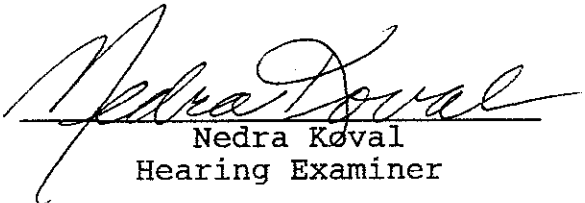
4. According to the record herein, respondent's transfer of grievant to teach home economics classes was unnecessary, wasteful and not in compliance with the recommendations of State Education personnel whose duty it is to evaluate such matters

and, as such, was unreasonable, arbitrary and capricious and an abuse of its transfer power.

Accordingly, the grievance is **GRANTED** and the respondent school board is Ordered to restore grievant to her full-time librarian duties.

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

DATED: February 28, 1989


Nedra Koval
Hearing Examiner