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**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**  
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**SANDRA FURCHES**

**v.**

**Docket No. 89-27-212**

**MERCER COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Sandra Furches, is employed by the Mercer County Board of Education (Board) as a teacher assigned to Silver Springs Elementary School. She filed a grievance at Level I February 24, 1989 alleging the Board had violated W.Va. Code §18A-2-2 when it failed to grant her a continuing contract of employment. Grievant's supervisor found he had no authority to grant the relief requested and the grievance was denied following a Level II hearing held on or about March 13, 1989. A Level III hearing was held May 2, 1989 and the Board subsequently voted to uphold the findings of the Level II evaluator. Upon appeal to Level IV the parties indicated a decision could be made on the record developed at lower levels. The record was received June 6, 1989 and proposed findings of fact and conclusions of law were submitted by the parties by June 15, 1989.

The facts surrounding the grievance are not disputed. Grievant first began substituting for the Board on a day-to-day

basis on January 7, 1985. The record does not reveal the name of the school but in mid-February she was assigned to a "guidance"<sup>1</sup> position which she filled until the end of the 1984-85 school term. On August 22, 1985 she signed a substitute teaching contract with the Board and was subsequently assigned to Melrose Elementary School where she taught for the entire 1985-86 term.<sup>2</sup> At the beginning of the 1986-87 term grievant was assigned to Spanishburg Elementary School where she also taught an entire 200-day term. She was given a probationary contract of employment on December 15, 1986. Grievant was assigned to Silver Springs the entire 1987-88 term. At the beginning of the 1988-89 term grievant was reassigned there but was not awarded a continuing contract of employment.

Grievant contends she should have been awarded the continuing contract by virtue of her completion of three consecutive 200-day terms even though during approximately one and one-half (1 1/2) terms she was designated a substitute. Grievant relies on Harkins v. Ohio County Board of Education and Roy Truby, Superintendent of Schools, 369 S.E.2d 224 (W.Va. 1988).

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<sup>1</sup>It is assumed this was a guidance counselor position and that grievant's assignment thereto was due to the absence of the regular counselor.

<sup>2</sup>Grievant filled in for a teacher who was on leave of absence but the record does not reveal what necessitated the leave. The record also does not reveal whether grievant was informed at the beginning of the term that her assignment would be for the entire school year.

The Board's position is difficult to discern but it apparently relies solely on the language contained in W.Va. Code §18A-2-2 concerning continuing contracts of employment and disputes the applicability of the rule pronounced in Harkins, supra.<sup>3</sup>

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

#### FINDINGS OF FACT

1. Grievant worked as a substitute teacher for 200 days during the 1985-86 school term and also worked as such from the beginning of the 1986-87 school term until December 15, 1986 at which time she signed a probationary contract of employment.

2. On December 15, 1988 grievant completed her second full year under her probationary contract.

#### CONCLUSIONS OF LAW

1. Before entering upon their duties, all teachers shall execute a contract with their boards of education which shall not be for a term of not less than one nor more than three years; and

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<sup>3</sup>The Board's proposed conclusions of law do not make reference to Harkins but during the lower level hearings the representative for the Board mistakenly concluded the case was on appeal and therefore inapplicable. She also incorrectly maintained that the teacher therein had been working under a regular probationary contract for the periods in question.

if, after three years of such employment the teacher has met the qualifications for the same, and enters into a new contract of employment with the board of education, it shall be a continuing contract. W.Va. Code §18A-2-2.


2. Substitute teachers who work 133 or more days in one year are entitled to count the year for pay increment and tenure purposes toward a continuing contract, Harkins, supra, Talerico v. Harrison County Board of Education, Docket No. 17-88-021-3 (June 23, 1988).

3. The 200 days grievant worked as a substitute during the 1985-86 school term and the two years she worked as a regular employee under the probationary contract of employment from December 15, 1986 until December 15, 1988 entitled her to a continuing contract of employment.

Accordingly, the grievance is **GRANTED** and the Mercer County Board of Education is hereby **ORDERED** to award her a continuing contract of employment effective December 15, 1988 and to compensate her for any loss of wages she may have incurred less any appropriate set-off.

Either party may appeal this decision to the Circuit Court of Mercer 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 inform this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

  
JERRY A. WRIGHT  
Chief Hearing Examiner

Dated: June 28, 1989