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JUANITA HOOKS

v.

Docket No. 89-29-599

MINGO COUNTY BOARD OF EDUCATION

DECISION

Grievant, Juanita Hooks, is employed by the Mingo County Board of Education (Board) as a teacher at Tug Valley High School (TVHS). She filed a grievance at Level I September 5, 1989, alleging changes in her schedule for the 1989-90 school term constituted a transfer and the Board failed to follow the requirements of W.Va. Code §18A-2-7. Grievant's principal, Mr. W.C. Totten, denied the grievance, as did the Level II hearing evaluator following hearing held September 21, 1989. The Board waived Level III proceedings and appeal to Level IV was made October 10, 1989, where hearing was held November 15, 1989. Proposed findings of fact and conclusions of law were submitted by the parties by December 13, 1989.

There is no dispute over the relevant facts of the case. Grievant has been employed at TVHS since the beginning of the

1987-88 school term.¹ During that term and the 1988-89 term, she taught four physical education classes, one intramural class² and one American Studies class. Grievant holds certification in both social studies and physical education. On August 31, 1989, she became aware that her 1989-90 schedule would entail teaching three social studies classes, two physical education classes and one aerobics class.

Grievant contends the changes in her schedule were of such a substantial nature that she should have been afforded the protection of W.Va. Code §18A-2-7, which in pertinent part provides:

The superintendent, subject only to the approval of the board, shall have authority to assign, transfer, promote, demote or suspend school personnel and to recommend their dismissal pursuant to provisions of this chapter. However, 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, except that for the school year one thousand nine hundred eighty-eight-eighty-nine only, the superintendent shall have until the fourth Monday in April to provide an employee with such written notice. Any teacher or employee who desires to protest such proposed transfer may request in writing a statement of the reasons for the proposed transfer. Such statements of reasons shall be delivered to the teacher or the employee within ten days of the receipt of the request. Within ten days of the receipt of the statement of reasons, the teacher or employee may make written demand upon the superintendent for a hearing on the proposed transfer before the county board of education. The hearing on the proposed transfer

¹Lenore High School and Kermit High School were consolidated into TVHS during 1987.

²The record does not reveal the nature of this class and it is assumed, for the purposes herein, that it was physical education-oriented and involved some sports competition among the various classes at TVHS.

shall be held on or before the first Monday in May, except that for the school year one thousand nine hundred eighty-eight-eighty-nine only, the hearing shall be held on or before the fourth Monday in May, one thousand nine hundred eighty-nine. At the hearing, the reasons for the proposed transfer must be shown.

The Board maintains the changes were initiated as a result of the needs of the students and do not constitute a transfer. The Board asserts the readjustment was within Mr. Totten's authority to do so under W.Va. Code §18A-2-9, which in pertinent part provides:

Upon the recommendation of the county superintendent of schools, the county board of education shall employ and assign, through written contract, public school principals who shall supervise the management and the operation of the school or schools to which they are assigned.

In addition to the foregoing recitation of facts, the following conclusions of law are made.

CONCLUSIONS OF LAW

1. In order to transfer school employees a county board of education must afford said employees adequate notice and the opportunity to be heard. W.Va. Code §18A-2-7.

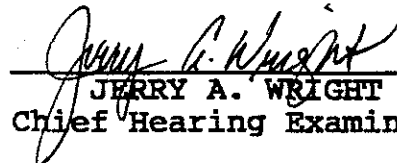
2. A teaching schedule assignment, not including the assignment of duties or responsibilities outside of a teacher's presently-utilized area of certification, discipline, department or grade level, is not a transfer requiring application of W.Va. Code §18A-2-7. Kidd v. Fayette County Board of Education, Docket No. 89-10-452 (December 14, 1989); Dotson v. Greenbrier County Board of Education, Docket No. 13-87-321-4 (March 7, 1988);

Gerstner v. Gilmer County Board of Education, Docket No.
11-87-303-3 (February 17, 1988).

3. The addition of two social studies classes to grievant's 1989-90 schedule did not constitute such a substantial adjustment as to require the application of W.Va. Code §18A-2-7.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Mingo 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 advise 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: December 29, 1989