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CHARLES KIDD

v.

Docket No. 89-10-452

FAYETTE COUNTY BOARD OF EDUCATION

DECISION

Grievant, Charles Kidd, is employed by the Fayette County Board of Education (Board) as a classroom teacher assigned to Mount Hope High School (MHHS). He filed a grievance at Level I June 5, 1989 alleging the Board had failed to adhere to the requirements of W.Va. Code §18A-2-7 when it made substantial changes in his job assignment. Grievant's principal, Mr. Raymond Domingues, denied the grievance at that level and, upon appeal to Level II, it was again denied by Mr. K. P. Carson, Personnel Director, following hearing held July 12, 1989. The Board waived Level III proceedings and, upon appeal to Level IV, the parties requested that the decision be made on the record developed at the lower levels. Proposed findings of fact and conclusions of law were received by September 28, 1989.

There is no dispute over the facts of the case. Grievant holds certifications in English and Social Studies, grades 7 through 12. During the 1988-89 school term grievant was assigned

four English classes and one World Culture class. Grievant had taught one World Culture class for at least the past five years. Toward the end of that term, Mr. Domingues informed him that, due to the resignation of a Social Studies instructor, his 1989-90 schedule would most likely include six Social Studies classes. As the result of further discussions with Mr. Domingues, grievant was assigned four Social Studies classes and one English class. There was a subsequent offer to delete one of the Social Studies classes and add another English class but grievant declined it because of his belief that the arrangement would not be in the best interest of the students. It is unclear from the record just why grievant made this conclusion but it appears he felt the particular English class required special attention because of its high number of slow learners and a Ms. Jackson was adequately performing the job.

Grievant contends the changes in his schedule constituted a transfer and the Board failed to follow requirements contained in W.Va. Code §18A-2-7, which in pertinent part provides:

The superintendent, subject only to 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 of 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 statement 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 the 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 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.

Grievant relies on Bumgardner v. Ritchie County Board of Education, Docket No. 43-87-219-3 (December 11, 1987); Burge and Worrell v. Mercer County Board of Education, Docket No. 27-86-113 (February 6, 1987); and Pansmith, et al. v. Taylor County Board of Education, Docket No. 46-86-057 (August 4, 1986).

The Board maintains the changes were not so substantial as to trigger the application of W.Va. Code §18A-2-7. Gerstner v. Gilmer County Board of Education, Docket No. 11-87-303-3 (February 17, 1988); Cornell v. Berkeley County Board of Education, Docket No. 02-87-222-2 (December 10, 1987); and Schafstall v. Brooke County Board of Education, Docket No. 05-86-347-3 (March 30, 1987) are cited in support of this position.

A review of the decisions cited by the parties reveals that, while certain general principles are applied consistently therein, the outcomes essentially depended upon the particular factual circumstances of each case. The primary inquiry is necessarily whether or not changes in schedules are so substantial that a teacher has been essentially transferred from one position to another. In Pansmith, it was held that full-time special education teachers whose duties as such were reduced by one-half when they were assigned kindergarten and regular elementary classes

were transferred. In Callahan v. Raleigh County Board of Education, Docket No. 41-87-026-4 (June 2, 1987), it was concluded that a complete change in the subject matter that a gifted children teacher would be teaching required the application of W.Va. Code §18A-2-7. It was decided in Schafstall that the deletion of an English II class from a language arts teacher's schedule did not constitute a transfer when the remainder of her classes remained within her area(s) of certification. In Bumgardner a previously full-time librarian's assignment to a one-half time librarian and one-half time vocational home economics position was deemed such a substantial change as to require notice and an opportunity to be heard. Changes in grade assignments have also been held to be sufficiently substantial. Burge and Worrell; Gallaher v. Taylor County Board of Education, Docket No. 48-87-233-2 (May 19, 1988). Finally, in Gerstner and Dotson v. Greenbrier County Board of Education, Docket No. 13-87-321-4 (March 7, 1988), it was concluded that a requirement that full-time librarians teach one class of library science was not a transfer even though the employees had not previously done so.

In the present case, the ratio of grievant's English-Social Studies classes has been reversed and it would at first appear that the reassignment would require adherence to the protections of W.Va. Code §18A-2-7 as was held in Callahan and Pansmith. Grievant's case, however, is significantly different. As previously noted, an offer of an additional English course and deletion of a Social Studies class was refused. While such a

realignment of classes might seem so minor as to not require analysis, it nonetheless would have resulted in a situation where grievant had only one more Social Studies class than English classes. That schedule would have been within the authority of principals derived from W.Va. Code §18A-2-9, which 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.

Grievant's explanation for refusing the proposed change is not persuasive. His request for relief is a return to his previous schedule, with no provisions for maintaining the assignment of certain classes to particular teachers because of the students' best interests.

In addition to the foregoing factual recitation, 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 adjustment, 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. 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), and Schafstall v. Brooke County Board of Education, Docket No. 05-86-347-3 (March 30, 1987).

3. A change in the ratio of grievant's English-Social Studies classes from 4-1 to 2-3 would not have constituted such a substantial schedule adjustment as to require the application of W.Va. Code §18A-2-7. Grievant's refusal to accept such an arrangement was not justified.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Fayette 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 14, 1989