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ELSIE RUPE

v.

Docket No. 41-89-026

RALEIGH COUNTY BOARD OF EDUCATION

DECISION

Grievant, Elsie Rupe, is employed by the Raleigh County Board of Education (Board) as a secretary at Sophia Elementary School. She filed a grievance at Level I on or about November 20, 1988 alleging the position of secretary at Soak Creek Elementary School had been improperly posted. Ms. Rupe's objections to the posting were specifically stated as follows:

The Raleigh County Board of Education showed favoritism when they MISINTERPRETED as to how this job should have been posted.

The job was posted improperly by the Personnel Director. This affected my job, because posted as such any secretary in the county with more seniority than I could have my position, if they so desired. The job should have been posted for the remainder of the 1988-89 school term.

The grievance was denied at that level and at Level II following a hearing held December 9, 1988. The Board waived proceedings at Level III on January 6, 1989. A Level IV hearing was held March

20, 1989.¹ Proposed findings of fact and conclusions of law were received by April 21, 1989.

The facts giving rise to the grievance are basically uncontroverted. Grievant has been employed as a secretary at Sophia since 1978. That school is in close proximity to Soak Creek. In September 1986 the two essentially began operating as one school with two campuses.² One principal was assigned to supervise both sites and teachers and certain school service employees shuttled between the two. Grievant and Ms. Aretha Green, secretary at Soak Creek, however, remained at their previously assigned buildings.³

The changes at the schools apparently touched off a great deal of speculation among employees and members of the community concerning the possibility of a formal consolidation. The speculation increased when a substantial part of a ceiling in the Sophia facility collapsed on October 13, 1988. Just prior to this accident, Ms. Green had been granted a transfer to Central Elementary School. The vacant position at Soak Creek was posted

¹A hearing scheduled for February 17, 1989 was continued upon the joint motion of the parties. At the Level IV hearing the record made at Level II was admitted and the parties agreed to present evidence to supplement that record. The Level II and Level IV transcripts are hereinafter referred to as T2 and T4, respectively.

²The reason for this change was not made clear but allusions were made to financial concerns.

³There was some testimony regarding the ability of the principal to direct the secretaries to perform duties at either site but there was no evidence that this had ever occurred.

October 25, 1988, and seventeen (17) persons, including grievant, made application. Ms. Doyne Cole, the most senior applicant, was awarded the position. At the time of the Level IV hearing no action had been taken on consolidation and counsel for the Board represented that a new physical plant was being developed for the "Sophia-Soak Creek Elementary School" but no decision had been made about the number of secretaries that would be assigned there.

Grievant first contends the vacancy created by Ms. Green's transfer should never have been posted since the Board had, in fact, consolidated the two schools albeit without compliance with applicable law.⁴ This assertion is predicated upon grievant's conclusion that all staff will eventually be housed in the Soak Creek facility and there will be only one secretary for the entire school. According to grievant she should be that secretary because of her eleven (11) years of service at Sophia. The Board maintains grievant's conclusion regarding the number of secretaries to be assigned is merely speculative and that, in any event, the question of consolidation or the present status of the two facilities is irrelevant as the position in question was a permanent one which, when vacated in October 1988, had to be posted in accordance with W.Va. Code §18A-4-8b(b).

⁴W.Va. Code §18-5-13a sets forth certain requirements pertaining to notice and hearing before schools may be consolidated.

The Board's assertions on this point are more persuasive. Grievant is understandably apprehensive about the effect a consolidation may have on her position at Sophia⁵ but she cites no legal authority in support of her contention that the changes in the administration of the schools imposes a duty on the Board to reduce secretarial staff. Significantly, the changes had no effect on the number of students attending each school or the amount of work required of teachers and school service employees, including secretaries. Because of the continued workload, the Board was justified in keeping both secretary positions assigned to the respective schools.

Secondly, grievant finds fault with the manner in which Ms. Cole became eligible to bid on the Soak Creek position. It is undisputed that, prior to her acceptance of the Soak Creek position, Ms. Cole had been assigned to Midway Elementary School and was the most senior applicant for a position at Sophia Junior High School. She worked at the latter for approximately one-half (1/2) day before being allowed to retract her acceptance of the job. The position was subsequently refused by the second most senior applicant and accepted by the third most senior applicant. According to the testimony of Mr. Wayne Pettry, former Personnel Director, he allowed Ms. Cole to report to Sophia Junior High

⁵It is noted that grievant's tenure would most likely accord her some preference in retention in the event that further changes actually resulted in a reduction-in-force and it is essentially an anticipated transfer which she fears.

before the Board approved her transfer there⁶ and after she called expressing dissatisfaction with the position, he conferred with the Superintendent of Schools and concluded that she could return to Midway since her position there had not yet been posted.

Grievant contends the right to retract acceptance of a job accorded Ms. Cole indicates the process by which she was ultimately awarded the Soak Creek position was seriously flawed. The Board correctly maintains there was no impropriety in the manner in which either position was filled.⁷ Mr. Pettry's decision to allow Ms. Cole to report for work at Sophia Junior High before Board approval of her transfer certainly had the potential for creating problems but inasmuch as her position at Midway had not been posted, her retraction did not harm grievant in any way. Moreover, Ms. Cole would have been eligible to bid upon the Soak Creek position even if her assignment to Sophia Junior High had been Board-approved.

⁶Mr. Pettry stated that he believed a principal had the right to confer with potential employees at his or her school and could refuse such employees if he felt they would not "work out". Counsel for the Board conceded Mr. Pettry was mistaken in this belief but contended the conclusion was irrelevant.

⁷During the Level IV hearing counsel for the Board also made an objection to consideration of the issue because it was not raised at lower levels. Due to the outcome herein, this objection need not be addressed.

Finally, grievant makes the assertion that an exception to the job posting requirements of W.Va. Code §18A-4-8b(b) can be found in §18A-4-15 which, in pertinent part, provides:

The county board shall employ and the county superintendent, subject to the approval of the county board of education, shall assign substitute service personnel on the basis of seniority to perform any of the following duties:

. . . .

(4) To temporarily fill a vacancy in a permanent position caused by severance of employment by the resignation, transfer, retirement, permanent disability or death of the regular service employee who had been assigned to fill such position.

. . . .

(6)

Substitutes shall be assigned in the following manner: A substitute with the greatest length of service time, that is, from the date he began his assigned duties as a substitute in that particular category of employment, shall be given priority in accepting the assignment throughout the period of the regular employee's absence or until the vacancy is filled on a regular basis under the procedures set out in section eight-b [§18A-4-8b] of this article. All substitutes shall be employed on a rotating basis according to the length of their service time until each substitute has had an opportunity to perform similar assignments: Provided, That if there are regular service employees employed in the same building or working station as the absent employee and who are employed in the same classification category of employment, such regular employees shall be first offered the opportunity to fill the position of the absent employee on a rotating and seniority basis with the substitute then filling the regular employee's position. A regular employee assigned to fill the position of an absent employee shall be given the opportunity to hold that position throughout such absence.

According to grievant, the Board, pursuant to these provisions, should have given her the opportunity to fill the vacancy created

by Ms. Green's transfer and the assignment would have become permanent once she accepted. The Board contends these provisions apply only to positions which have been temporarily vacated and thus do not pertain to the position in question which was "permanently" vacated by Ms. Green's transfer.

The Board's position on the applicability of the provisions is obviously the correct interpretation. When W.Va. Code §18A-4-15 is read in its entirety, it is clear there are no exceptions therein to the posting of school service personnel positions. The numerous references to W.Va. Code §18A-4-8b, which contains rather explicit requirements to be followed when such positions are filled on a permanent basis, and the consistent use of the terms temporary and absence preclude any such interpretation.

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

FINDINGS OF FACT

1. Grievant has been employed by the Raleigh County Board of Education as a secretary at Sophia Elementary School for approximately eleven (11) years.

2. In September 1986 one principal was given the responsibility for the administration of both Sophia and Soak Creek Elementary Schools. With the exception of secretaries, employees previously assigned to one or the other were assigned duties at both schools.

3. Ms. Aretha Green, the secretary assigned to Soak Creek, was granted a transfer to Central Elementary School in October 1988, which created a vacancy in a permanent position at Soak Creek.

4. The vacancy was posted in accordance with the provisions of W.Va. Code §18A-4-8b(b) and Ms. Doyne Cole, the most senior of seventeen (17) applicants, was awarded the position.

CONCLUSIONS OF LAW

1. The changes made in the administration and/or operation of Soak Creek and Sophia Elementary Schools imposed no duty on the Board to eliminate the position of secretary at Soak Creek once vacated by Ms. Green's transfer.

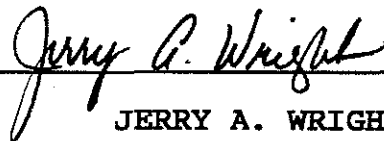
2. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. Olsen v. Hampshire County Board of Education, Docket No. 89-14-81 (May 31, 1989); Butler v. McDowell County Board of Education, Docket No. 33-88-208 (March 31, 1989); Lucas v. Mercer County Board of Education, Docket No. 27-88-180 (December 15, 1988).

3. At the time of the posting of the position at Soak Creek, Ms. Doyne Cole was eligible to bid upon it and grievant has failed to prove that the Board's selection process was arbitrary or capricious.

4. W.Va. Code §18A-4-15 provides no exception to the requirement in §18A-4-8b(b) that school service personnel positions which are permanently vacated be posted and the Board properly adhered to that requirement prior to filling the position at Soak Creek Elementary School.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Raleigh 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 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:

July 12, 1989