



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

Members
James Paul Geary
Chairman
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
GASTON CAPERTON
Governor

Offices
240 Capitol Street
Suite 515
Charleston, WV 25301
Telephone 348-3361

DAVID WILLIAMS

v.

Docket No. 43-88-246/247

RITCHIE COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant David Williams is a classified employee of respondent Ritchie County Board of Education. On December 13, 1988 he filed two level four grievances in which he alleged that respondent denied him vacation time and improperly reduced his salary in violation of W.Va. Code §18A-4-8. The filing forms indicated the grievance had been denied at the lower levels and all procedural requirements had been met; a hearing was requested. A scheduled January 19, 1989 hearing was continued by the parties and reset for February 22, 1989.¹ Respondent set forth its position by letter dated February 24, 1989, and grievant filed proposals of fact and law by March 2, 1989.

¹At hearing respondent's counsel tendered a document entitled "Level III Hearing" which he identified as the level two transcript; he later stated the document was not the level two transcript. Grievant's advocate tendered the records of the two grievances which contained filing forms, exhibits and an identical level two decision appended to each.

On June 16, 1980, grievant signed a continuing contract of employment as General Maintenance for a 261-day employment term. On July 1, 1983 he signed a similar contract as General Maintenance/Draftsman. Gr. Ex. 1 and 2, 2/21/89. Respondent's policy allows paid vacation for 261-day employees.

By letter of March 11, 1988 signed by Superintendent Dixon Law, grievant was noticed that a recommendation would be made that his employment be terminated as a reduction in force:

The reason for your receiving this notice is that positions in your classification or other classifications will be recommended for termination due to insufficient revenues being projected for the 1989 fiscal year from the foundation or school aid formula on personnel allocation or lack of need.

In accordance with W.Va. Code §§18A-2-8a or 18A-2-6, you will be accorded with the opportunity for a hearing before the board before a final recommendation is made and confirmed by the Board.

At a regular meeting on March 24, 1988, or at a special meeting to be announced, the Ritchie County Board of Education will accord you an opportunity for a hearing.

Gr. Ex. No. 2, 2/21/89

The October 27, 1988 level two decision (written in narrative) stated, in part;

At a regular meeting of the RCBE held March 24, 1988 and continued to March 28, 1988 personnel hearings were conducted on the position held by Mr. Williams and was terminated by board action, (Admin. Exhibit #2).

The exhibit (#2) referenced respondent's March 28, 1988 board minutes. However, the March 28 minutes made absolutely no mention of Mr. Williams or personnel action about him or his position. Gr. Ex. No. 6, 2/21/89. Of record is copy of board minutes of March 24, 1988, in which many personnel matters were

aired; grievant and/or his position are not mentioned therein.
Gr. Ex. No. 5, 2/21/89. Grievant also tendered an April 8, 1988 letter from Superintendent Law which stated in part:

At the regular meeting of the Ritchie County Board of Education held March 24, 1988, recessed and reconvened March 28, 1988, hearings for reduction-in-force were held for those requesting this action.

Upon the recommendation of the Superintendent, the Ritchie County Board of Education with all members present by a majority vote, approved a Service personnel reduction-in-force by terminating positions.

The reason for this reduction is that insufficient funds for personnel will be received in FY'89 through the state school aid formula. A loss of students reduced the number of positions funded through the formula.

Your seniority in your job classification as General Maintenance/Graphic Artist causes you to be placed on a transfer list for 1988-89.

Gr. Ex. No. 4, 2/21/89

The October 27, 1988 level two decision continued,

Due to Mr. Williams seniority within the general maintenance classification, a person of lesser seniority was placed on reduction-in-force. Mr. Williams was also notified by the superintendent of his consideration of transfer and subsequent assignment under W.Va. Code §18A-2-7 (Admin. Exhibit #3).

Admin. Exhibit #3 was a March 25, 1988 letter from Superintendent Law to grievant about the proposed transfer for the 1988-89 school year, which reads, in part:

The reasons for this action is that the position you now hold is being terminated or the position of a person with more seniority than you in this classification, is being terminated.

In accordance with W.Va. Code §18A-2-7, you will be accorded with the opportunity for a hearing before the board before a final recommendation is made and confirmed by the Board.

A meeting of the Ritchie County Board of Education will be held for this purpose at its regular meeting date, April 11, 1988, or by a special meeting to be announced.

Gr. Ex. No. 3, 2/21/89.

According to the April 11, 1988 board minutes, the board went into closed session for transfer hearing for grievant and another employee from 8:45 until 9:06 p.m. April 19, 1988 board minutes state grievant was transferred and subsequently assigned for the 1988-89 school year from General Maintenance/Draftsman to General Maintenance/Custodian III/Groundsman to be subsequently assigned in accordance with W.Va. Code §18A-2-7. Of record is an April 26, 1988 letter from Superintendent Law to grievant which informed grievant of the April 19, 1988 board action and, The reason for this recommendation is that in 1988-89, your present assignment was terminated, but your seniority in your classification allowed you to be employed, and because of program changes your classification was amended.

Admin. Exhibit 5 and 6, 10/27/88.

The October 27, 1988 level two decision continued:

Following this action Mr. Williams filed a grievance contending the previous action by the board violated state law, (Admin. Exhibit #8). This grievance is now at Level IV....²

Of record are board minutes for July 5, 1988 memorializing the employment of grievant for "220 days (200 days during the instruction term, with 20 days to be assigned by the Maintenance Supervisor)" and classified as Custodian III/General Maintenance/Groundsman for the 1988-89 school year. A July 6, 1988 letter from Mr. Law noticed grievant of the action and that his contract would be issued at a later date. Admin. Exhibit 9 and 10, 10/27/88.

At the level four hearing grievant tendered his 1988-89 contract of employment. The document, dated August 10, 1988, set forth the new classification and employment term. Grievant noted, above his signature, that he did not agree with the contract terms, but he desired continued employment. He

testified that the contract was not signed by him until September 12, 1988, and under protest. Gr. Ex. 7, 2/21/89.

Grievant argued that respondent did not properly alter the terms of his service employee contract per W.Va. Code §18A-2-6:

The continuing contract of any such employee shall remain in full force and effect except as modified by mutual consent of the school board and the employee, unless and until terminated with written notice, stating cause or causes, to the employee, by a majority vote of the full membership of the board before the first day of April of the then current year, or by written resignation of the employee before that date. The affected employee shall have the right of a hearing before the board, if requested, before final action is taken by the board upon the termination of such employment.

He argued Respondent's transfer action per W.Va. Code §18A-2-7 was thus improper and violative of W.Va. Code §18A-4-8 which prohibits the relegation of a service employee,

to any condition of employment which would result in a reduction of his salary, rate of pay, compensation or benefits earned during the current fiscal year or which would result in a reduction of his salary, rate of pay, compensation or benefits for which he would qualify by continuing in the same job position and classification held during said fiscal year and subsequent years.

Grievant seeks reinstatement to his 1987-88 continuing contract and 261-day term of employment with all benefits and vacation time thereto.

In its level two decision, respondent maintained that it followed correct procedures in the matter of grievant's transfer from one classification, a "terminated" position, to another classified position and W.Va. Code §18A-4-8 was not applicable to the circumstances.

At level four summation, respondent's counsel stated the matter had been mooted by grievant's withdrawal of his former grievance. Grievant argued the instant grievance was not moot as the former was based on an entirely different issue and did not address the issues of contract reduction and relegation.³

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

³ Respondent had ample opportunity to protest the instant grievances from the time they were filed at level four on December 13, 1988 (at least one month after the original grievance was dismissed in November 1988), and throughout the level four hearing but it chose not to utter one word on the matter until closing arguments. While respondent is correct in its February 24, 1989 position statement that the first grievance was based on the same factual circumstances as the instant matter, its contention that the issues of the latter had been fully litigated in the former is not convincing. Grievant's argument is more rational and he properly withdrew the original grievance when he realized it was based on an erroneous perception of what the legal issues were at the time he filed it.

FINDINGS OF FACT

1. According to his contract of July 1, 1983, grievant was regularly employed by respondent board and was classified as a General Maintenance/Draftsman on a continuing contract of employment for a 261-day employment term.

2. Grievant received a letter dated March 11, 1988 from respondent's Superintendent, Dixon Law, which indicated his employment would be terminated.

3. On March 24 and 28, 1988, respondent conducted hearings and voted to terminate a number of employees due to a reduction-in-force within in the Ritchie County School system. Grievant's name and then currently classified position was not mentioned in respondent's proceedings.

4. By notice letter dated March 25, 1988, Superintendent Law notified grievant he was being recommended for transfer. The stated reason for the transfer was that the position grievant held "is being terminated". Grievant was advised he could appear at respondent's board meeting, April 11, 1988, in accordance with W.Va. Code §18A-4-7 to be heard on the matter.

5. Respondent's minutes of its April 11, 1988 board meeting states that it went into executive session for 21 minutes to conduct transfer hearings on grievant and another

employee. Respondent then voted to transfer grievant "From General Maintenance/Draftsman to General Maintenance/Custodian III, Groundsman to be subsequently assigned."

6. On July 5, 1988 respondent met for board action and modified grievant's continuing contractual term of employment of 261 days and employed grievant for 220 days as "Custodian III/General Maintenance/Groundsman" classification for the 1988-89 school year.

7. Respondent did not provide grievant an opportunity to be heard on the issue of contract modification, reduced employment term or wage and benefit reduction before it made its determinations in July 1988.

8. Grievant filed and withdrew a grievance challenging respondent's proposed termination/transfer of him on seniority and other grounds. Respondent untimely raised a mootness question on the instant grievance at the conclusion of the level four hearing.

9. The instant grievance protests improper contract modification and relegation (loss of wages and benefits) and is therefore not moot on those issues.

CONCLUSIONS OF LAW

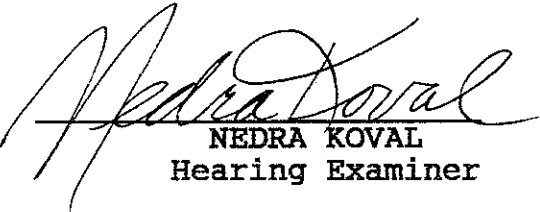
1. While W.Va. Code §18A-2-7 permits a board of education to reclassify and reassign its service personnel, timely procedural requirements of notice and hearing must also be met for contract termination or modification pursuant to W.Va. Code §18A-2-6. See Bd. of Educ. of Co. of Fayette v. Huntley, 288 S.E.2d 524 (W.Va. 1982).

2. Respondent's July 1988 action to reduce the employment term and allowable paid vacation of grievant herein without his express agreement relegated him to lesser wages and benefits and was violative of W.Va. Code §18A-4-8 and W.Va. Code §18A-2-6 as a matter of law.

Accordingly, the grievance is **GRANTED** and respondent is Ordered to restore grievant to his 261-day contract term with vacation benefits, effective the 1988-89 school year.

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: March 31, 1989


NEDRA KOVAL
Hearing Examiner