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KAREN GOODALL

v.

Docket No. 89-13-525

GREENBRIER COUNTY BOARD OF EDUCATION

DECISION

Grievant, Karen Goodall, is employed by the Greenbrier County Board of Education (Board) as a classroom teacher assigned to Greenbrier East High School (GEHS). She initiated a grievance at Level I May 24, 1989, alleging:

I was improperly placed upon the transfer list as a result of an in-house transfer that was done in violation of W.Va. Code 18A-2-7. To resolve this grievance I request that I be placed in my proper position as a P.E. instructor at Greenbrier East.

Grievant's supervisor, Principal Charles Carney, denied the grievance at that level and, upon appeal to Level II, it was also denied following hearing held July 25, 1989. The Board waived Level III proceedings and appeal to Level IV was made September 5, 1989, where the parties agreed to submit the matter for decision on the record developed at the lower levels and briefs. The record was received September 20, 1989, and, by letter of the same date, the Board declined to submit any brief and indicated the Level II decision contained its legal position. By letter

dated September 22, 1989, the grievant indicated her brief at Level II should constitute the same at Level IV.

The facts giving rise to the dispute are not contested. Grievant was initially employed at GEHS during the 1978-79 school term as a driver's education (D.E.) instructor. She served as such through the end of the 1979-80 term. Prior to the beginning of the 1980-81 term, grievant requested and was given a physical education (P.E.) instructor position at GEHS. During that school year and the next two years, grievant taught only P.E. classes.¹ During the 1985-86 term, she was assigned three P.E. classes, two D.E. classes and one study hall. During the 1986-87 term, she taught only P.E. classes. Her 1987-88 assignment was the same as that of the 1985-86 term.

In April 1988, Mr. Carney advised grievant she would be required to teach D.E. on a full-time basis during the 1988-89 term. Grievant questioned Mr. Carney as to the propriety of this change but complied. Toward the end of that term, she was advised that, due to declining student enrollment, there would be a reduction of D.E. instructors at GEHS and she was being considered for placement on a transfer list. Grievant was afforded a hearing on the proposal pursuant to W.Va. Code §18A-2-7 and the Board subsequently placed her on the list.² It is grievant's

¹There is some dispute over whether she taught one D.E. class during the 1980-81 term but it is of no consequence to the outcome herein.

²Grievant makes no assertions that she was denied any procedural rights afforded by §18A-2-7.

contention that her 1988-89 assignment to full-time D.E. classes was an illegal "in-house" transfer and, had it not been for that action, she would not have been subject to transfer as the least senior D.E. instructor at GEHS.

The Board contends grievant is barred by the timeline requirements of W.Va. Code §18-29-4(a)(1) from raising the issue of her assignment to full-time D.E. classes at the beginning of the 1988-89 school term. Grievant maintains the Board should be estopped from raising the timeliness issue because she relied in good faith on Mr. Carney's representation that his actions were legal. She cites Blevins v. Fayette County Board of Education, Docket No. 10-87-161 (October 22, 1987), and Steele v. Wayne County Board of Education, Docket No. 50-87-062-1 (September 29, 1987), in support of this proposition.³

Because the Board is correct in its assertion that the grievance was not filed timely, grievant's contentions regarding the illegality of Mr. Carney's actions need not be addressed. W.Va. Code §18-29-4(a)(1) provides:

Before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known

³Grievant also asserts that because she was not knowledgeable of grievance procedures until May 1989, when she became aware that "in-house" transfers were illegal, her filing was made within fifteen days of the date on which the event became known to her and, therefore, in compliance. The date upon which knowledge of the law was obtained cannot be equated with the date of the grievable event. Cloninger v. Wayne County Board of Education, Docket No. 50-89-028 (May 18, 1989). Accordingly, this assertion is not further addressed herein.

to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant or the designated representative shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought.

These provisions are not jurisdictional and equitable principles may be applied to extend the time for filing. Ongoing efforts to resolve a grievance and reliance in good faith on representations of school officials that the matter would be rectified have been held sufficient to dismiss a Board's claim of untimeliness. Steele; Blevins. This was, however, not the situation in the present case. There was no evidence whatsoever presented to show that the grievant took any action other than initially questioning Mr. Carney's reasons for the change in her schedule. Absent any evidence of a continuing effort on grievant's part to effect a return to her previous schedule or some action on the Board's part which would have dissuaded grievant from initiating grievance procedures prior to May 1989, it must be concluded that the filing was untimely.

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 Board for approximately ten years. Prior to the beginning of the 1988-89 school term, she served primarily as a physical education instructor at GEHS.

2. At the beginning of the 1988-89 school term, grievant's principal, Mr. Charles Carney, assigned her to full-time driver's education classes.

3. The Board advised grievant, pursuant to W.Va. Code §18A-2-7, the number of driver's education teachers at GEHS would be reduced at the end of the 1988-89 term and, as the least senior teacher in that field at the school, she was being recommended for placement on a transfer list.

4. Grievant requested and received a hearing on the recommendation and the Board subsequently voted to place her on the transfer list for reassignment during the 1989-90 school term. She initiated grievance procedures at Level I May 24, 1989.


CONCLUSIONS OF LAW

1. A grievance must be initiated within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant. W.Va. Code §18-29-4(a)(1).

2. Grievant's filing of May 24, 1989, protesting her assignment to full-time driver's education classes at the beginning of the 1988-89 school term was not timely.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Greenbrier 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: February 27, 1990