ELIZABETH BEST

v. Docket No. 94-19-268

JEFFERSON COUNTY BOARD OF EDUCATION

DECISION

Grievant, Elizabeth Best, is professionally employed as an Administrative Assistant by the Jefferson County Board of Education (Board). Ms. Best initiated this grievance with a request for an informal conference on April 27, 1994, at which time she alleged that a violation of her contract occurred when the Board reduced her 261-day employment term to 240 days. The change resulted in fewer days of employment and loss of salary for Grievant. Grievant's immediate supervisor advised that he lacked the authority to resolve the matter at level one. The grievance was denied at levels two and three; appeal was made to level four on July 1, 1994. The parties agreed to submit the grievance for review based upon the lower-level record supplemented with proposed findings of fact and conclusions of law which were filed on or before October 14, 1994.

The facts of this matter are as follows. Grievant has been employed by the Board for approximately seventeen years. After serving many years as a teacher, Grievant was employed by the Board as an Administrative Assistant at Jefferson High School in 1988. (See footnote 1) At that time Grievant was awarded a 220-day employment term. On June 11, 1990, the Board increased Grievant's employment term to 261 days per year. In March 1994, Dr. Fred Colvard, Superintendent, advised Grievant by letter that he would recommend to the Board that her contract be terminated and replaced with a 220-day contract as Assistant Principal. The reason given for this action was lack of need and budgetary considerations. After Grievant requested and received a hearing on March 28, 1994, the Board voted to terminate Grievant's contract and reinstated her contract as Administrative Assistant for 240 days, effective the 1994-95 school year.

Grievant asserts that the Board has failed to demonstrate either a lack of need for her services or any budgetary consideration which necessitated the reduction of her employment term. Grievant cites testimony given by Dr. Colvard at the level two hearing in which he stated that the Board had received $74,000.00 more under the State aide formula in 1994-95 than in 1993-94, and that no

funding had been lost due to a decrease in student enrollment or due to the loss of a local excess levy. Grievant argues that the Board did not suffer a budgetary deficit but rather carried over a surplus into 1994-95. Because there was no reduction in funding for salaries and because the Board failed to obtain authorization from the State Board of Education to reduce her salary, Grievant argues that the action was a violation ofW.Va. Code §18A-4-5a. (See footnote 2) In support of her argument Grievant refers to a 1984 interpretation by the State Superintendent of Schools which specifically prohibits county boards of education from reducing the employment terms of principals without prior approval of the State Department of Education (See footnote 3) and a 1988 decision of the Grievance Board which held that the provisions of Code §18A-4-5a apply to individual as well as group salaries. (See footnote 4) For relief Grievant requests that the 261-day employment term be restored, backpay with interest, and all other fringe benefits to which she would be entitled.

The Board asserts that the action to reduce Grievant's employment term was proper and appropriate under the circumstances herein. The first factor cited by the Board as the basis of the decision is that an Assistant Principal has been employed at JHS since Grievant's employment term was extended to 261 days. The job descriptions for Assistant Principal and Administrative Assistant are nearly identical and the second administrator has assumed some of the duties which were never included on Grievant's job description but were used to justify the increase in her employment term. The Board argues that the increase in the administrative staff, together with Dr. Colvard's stated intent that the JHS principal resume some of the responsibilities which had been placed on Grievant, will lessen her workload and eliminate the need for her 261-day employment term.

A second factor considered by the Board was that Grievant's employment term was inconsistent with those of the two Assistant Principals employed in the county. The Assistant Principals, who perform nearly the same duties as Grievant, have employment terms of only 220 and 221 days in duration. Thus, the Board argues that the reduction of Grievant's employment term was an effort to adhere to the requirement that it uniformly compensate all employees performing like assignments and duties.

The Board denies that its decision to reduce Grievant's 261-day employment contract was in violation of Code §18A-4-5a because the criteria cited by Grievant does not apply in this situation. In support of this argument the Board cites Robbins v. McDowellCounty Bd. of Educ., 411 S.E. 2d 466, 471 (W.Va. 199l), in which the West Virginia Supreme Court of Appeals addresses the three criteria

relied upon by Grievant herein. After some discussion the Court concluded that the proviso in the second paragraph of Code §18A-4-5a
is designed to apply to the broad salary schedules in the first paragraph of W.Va.Code §18A-4-5a. It does not apply to those more limited categories of salary supplements outlined in the second paragraph of the statute. Consequently, a local board may withdraw or cancel these special supplements without showing the existence of any of the three conditions set out in the proviso. If, however, a local board determines to decrease or abolish this type of special salary supplement, it must do so uniformly for all those performing like assignments and duties within the county.

Because the position of Administrative Assistant falls into the limited category identified in the second paragraph of Code §18A-4-5a as "teachers assigned to or employed for duties other than regular instructional duties," the holding in Robbins allowed the Board to reduce Grievant's employment term without seeking the approval of the State Board of Education. Furthermore, as noted by the Board, the reduction places Grievant in a position where her employment term, and presumably her salary, are more comparable to other similarly-situated employees. In consideration of the foregoing, it cannot be determined that the Board violated Code §18A-4-5a or that it acted in an arbitrary and capricious manner by terminating Grievant's 261-day employment term and supplanting it with a 240-day contract.

In addition to the foregoing facts and narration it is appropriate to make the following formal conclusions of law.

CONCLUSIONS OF LAW

1. The provison in W.Va. Code §18A-4-5a limiting a board of education's ability to reduce the wages of professional personnel applies only to the broad salary schedules in the first paragraph of that statute and does not apply to the limited categories outlined in the second paragraph. Robbins v. McDowell County Bd. of Educ., 411 S.E. 2d 466, 471 (W.Va. 1991).

2. Grievant has failed to prove by a preponderance of the evidence that the termination of her 261-day employment term and the instatement of a 240-day employment term was in violation of

W.Va. Code §18A-4-5a, or was otherwise improper.

Accordingly, the grievance is DENIED.

December 30, 1994 Sue Keller, Senior Admn. Law Judge

Footnote: 1This position was originally an Assistant Principalship, however, neither Grievant nor any other applicant was qualified for that classification, thus, she was employed as an Administrative Assistant.

Footnote: 2W.Va. Code §18A-4-5a provides in pertinent part:

> *County boards of education in fixing the salaries of teachers shall use at least the state minimum salaries established under the provisions of this article. The board may establish salary schedules which shall be in excess of the state minimums fixed by this article, such county schedules to be uniform throughout the county as to the classification of training, experience, responsibility and other requirements.*
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> *Counties may fix higher salaries for teachers placed in special instructional assignments, for those assigned to or employed for duties other than regular instructional duties . . . Provided, that in establishing such local salary schedules, no county shall reduce local funds allocated for salaries in effect on the first day of January, one thousand nine hundred and eighty four, and used in supplementing the state minimum salaries as provided in this article, unless forced to do so by the defeat of a special levy or a loss in assessed values or events over which it has no control, and for which the county board has received approval from the state board prior to making such reduction.*

Footnote: 3This interpretation was not made a part of the record and was identified only by the date it was issued, July 10, 1984.

Footnote: 4Heater v. Gilmer County Bd. of Educ., Docket No. 11-88-078 (October 25, 1988).