SUSAN HINZMAN, ET AL.,

Grievants,

v. DOCKET NO. 96-42-358

RANDOLPH COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievants (See footnote 1) are employed by the Randolph County Board of Education (Respondent). They allege:

> The Grievants are all employed as principals by the Respondent Board of Education.
>
> On Sunday, March 31, 1996, the Respondent reduced the county salary supplement paid to its principal employees by 12 1/2% in violation of West Virginia Code §18A-4-5a, as said Respondent board was not "forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the (Respondent Board) has received approval from the state board prior to making such reduction."

Level IV grievance form.

This case began at Level II because Grievants are principals, and their immediate supervisor is Superintendent Larry Pritchard. On June 11, 1996, a Level II hearing was held, and a decision was issued denying the grievance on July 30, 1996. Pursuant to W. Va. Code §18-29-4(c), Respondent waived its right to conduct a Level III hearing in this matter, and Grievants were notified of this decision by a letter, dated August 12, 1996, from Superintendent Pritchard. Grievants appealed to Level IV on August 19, 1996. After a continuance for good cause, a Level IV evidentiary hearing was

held on January 24, 1997. This case became mature for decision on February 25, 1997, with the receipt of Grievants' post-hearing submissions.

The following Findings of Fact were derived from the record.

FINDINGS OF FACT

1. Grievants are all employed by Respondent as school principals, or assistant principals, assigned to various schools throughout Randolph County.

2. Each Grievant receives a supplement funded from county tax revenues as an addition to the State minimum wage scale for principals. These supplements are separate from the school aid formula.

3. On a broad, county-wide basis, Respondent reduced by 12.5% the county supplements received by all professional employees.

4. For the 1996 fiscal year, Respondent was facing a budgetdeficit of $526,905. A three percent (3%) “casual deficit” for Respondent's 1996-97 budget would be approximately $620,000.

5. On March 7, 1996, the West Virginia State Board of Education approved Respondent's request “to reduce and/or eliminate local salary supplements of all employees who currently receive such supplements . . . pursuant to WV Code [sic] §18A-4-19 'events over which it has no control.'”

6. Grievants were notified, by individual letters from Superintendent Pritchard, dated March 7, 1996, that he was recommending a reduction in their county supplements. The letter stated, in pertinent part:

> You are receiving this notice because I am recommending that your contract be considered for termination pursuant to §18A-2-2 and §18A-4-19 of the State Code. I am recommending a 12.5 percent reduction of the county supplemental salary scale/per pupil currently used to determine your supplemental pay. If this recommendation is approved by the Board for the 1996-97 school year, a new contract will be issued to you as provided for in State Code [sic] §18A-4-19. This code [sic] section provides for you to keep your current position without the necessity of posting your position for bid.
>
> This action is necessary because of a series of events over which the County Board has had no control, including, but not limited to, unfunded mandates, adverse decision in the textbook case, defeat of the excess levy, loss of $200,000 for allotted salaries due to legislative non-appropriation, and overall deficit.

7. Other actions may have been available to Respondent in lieu of cutting salaries, but “that would

take a lot of study, a lot of definitive work." Ex. 8, p. 23.

8. No extracurricular or athletic programs were reduced. 9. No program reductions were made or considered prior to thereductions in professional county supplements. Ex. 8, p. 57-58.

10. Respondent has not received revenue from an excess levy since at least 1991. Ex. 8, p. 44.

11. No new "unfunded mandates" were imposed upon Respondent for the 1996-97 school year. Ex. 8, p. 44-45.

12. The total budgetary savings to be realized by reducing professional county supplements by 12.5% was estimated to be $30,000 to $35,000. Ex. 1, p. 49.

DISCUSSION

Grievants do not allege a violation of the notice or hearing provisions of any Code Section, and do not allege any due process violations. Grievants assert that Respondent violated W. Va. Code §18A-4-5a, by cutting their county supplement without meeting the criteria mandated in this Code Section. W. 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.
>
> 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, and for teachers of one-teacher schools, and they may provide additional compensation for any teacher assigned duties in addition to the teacher's regular instructional duties wherein such noninstructional duties are not a part of the scheduled hours of the regular school day. Uniformity also shall apply to suchadditional salary increments or compensation for all persons performing like assignments and duties within the county: **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 ninety, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by 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.

Respondent did not cite "loss in assessed values" as part of its basis for reducing the county supplement of professional personnel. Therefore, Grievants assert that Respondent was not "forced" to reduce their county supplement because of: (1) "defeat of a special levy," or (2) "events over which it ha[d] no control." Newcome v. Bd. of Educ. of Tucker County, 164 W.Va. 1, 260 S.E.2d 462

(1979), sheds light on how the clause “events over which [a county board] has no control” should be interpreted. The Court stated “it seems that this clause was included to allow for any unforeseeable event which may destroy a rational budget.” Id. at 464. The Court also stated that these events should be “significant events”. Id.

In his March 7, 1996, letter to Grievants, Superintendent Pritchard identified the following events over which he claimed Respondent “had no control”: unfunded mandates, adverse decision in the textbook case, defeat of the excess levy, loss of $200,000 for allotted salaries due to legislative non-appropriation, and overalldeficit. (See footnote 2) Events will be discussed one at a time in the order Superintendent Pritchard listed them.

The first event is “unfunded mandates”. Although Grievants established that no new unfunded mandates were created by the legislature, W. Va. Code §18A-4-5a does not set a time table on “events over which [a county board of education] has no control.” However, if no new unfunded mandates were created, the undersigned is at a loss to understand how existing unfunded mandates could be construed as an “unforeseeable event” which could “destroy” a rational budget.

The second event identified by Superintendent Pritchard was “adverse decision in the textbook case”. (See footnote 3) Grievants assert in theirpost-hearing submission that “Respondent's reliance upon the loss of its textbook fee to justify salary reductions is without merit. The fee imposed by the Respondent was determined by every court to which it was presented to be unconstitutional, and was void from its inception.” A court declaring the book-user fee unconstitutional is not an “unforeseeable event.”

The third event identified by Superintendent Pritchard in his letters, dated March 7, 1996, to Grievants was “defeat of the excess levy.” Respondent has not received revenue from an excess levy since at least 1991. (See footnote 4) Regardless, to allow Respondent to base its action of cutting professional supplements on defeat of a levy which occurred four to six years prior would eliminate the purpose or need for W. Va. Code §18A-4-5a. Additionally, under Newsome lack of an excess levy for four to six years prior cannot be characterized as an “unforeseeable event.”

The fourth event identified was a “loss of $200,000 for allotted salaries due to legislative non-appropriation.” Grievants' counsel asked Superintendent Pritchard about this event, but he could not explain what he meant. No additional information was provided. The last event which Superintendent Pritchard identified was the “overall deficit.” Respondent has had a deficit for several

years. In 1994, Respondent's deficit was $499,933.01, and $526,686.35 in 1995 (an increase of $26,753.34). A deficit is not a “significant event.” A deficit is the accumulation of impacts from events, including significant unforeseen events or intentional decisions by Respondent to create a deficit. (See footnote 5)

However, it appears in Newcome that the Tucker County Board of Education (TCBOE) did not have a deficit during the school year in question (1976-77) in that case. The annual financial reports for TCBOE for school years 1971-72 through 1974-75 revealed a decline from a surplus balance of $263,791.79 in 1971-72 to a deficit of $77,280.00 in the school years 1974-75. The fiscal year 1975-76 showed a surplus of only $2,132.47. The budget for the 1976-77 budget was within $2,000 of the previous year's. If the Court in Newsome thought that TCBOE “was confronted by the type of choice between fair pay for teachers and fair education for children,” surely the same is true of Respondent when carrying a $526,686 deficit.

Grievants also assert that the amount of money saved by cutting their supplements is small in comparison to the totalbudget expenditure, and that other items or programs in the budget could be cut to save more money than the reduction of their supplements. Specifically, Grievants asserted and established that extracurricular programs were not reduced. Although extracurricular activities are not mandated by the State, Superintendent Pritchard testified that he did not recommend reducing extracurricular activities because he believes these types of programs are an “integral part of the curriculum.” Ex. 1, p. 25. However, Respondent has eliminated its participation in the WVEIS (See footnote 6) program, and the maintenance department budget was cut “to a bare minimum.” Ex. 8, p. 24.

Finally, Respondent should not be penalized for accumulating a deficit, and then having to cut salaries in an effort to reduce the deficit. Respondent has tried other ways of reducing the deficit which have been unsuccessful, e.g., the textbook user fee. Cutting supplements was not Respondent's first choice.

Merely because there are other areas Grievants feel are less important, or would have the same or perhaps greater impact on Respondent's budget, or because there are additional areas that could be eliminated or reduced is not a sufficient or legal reason to grant this grievance. Respondent cannot be expected to eliminate this large of a deficit in one move or budget year. In addition to the foregoing findings of fact and narration, it is appropriate to make the following conclusions of law.

CONCLUSIONS OF LAW

1. In a nondisciplinary action, Grievants have a the burden of proving their case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995).

2. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel; nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, in a manner which is not arbitrary and capricious. Webster County Bd. of Educ. v. Johns, 191 W.Va. 664, 447 S.E.2d 599 (1994); Dillon v. Bd. of Educ. of County of Wyoming, 177 W.Va. 145, 351 S.E.2d 58 (1986).

3. "The continuing contract of any teacher shall remain in full force and effect except as modified by mutual consent of the school board and the teacher, unless and until terminated (1) by a majority vote of the full membership of the board before the first day of April of the then current year, after written notice, served upon the teacher, return receipt requested, stating cause or causes, and an opportunity to be heard at a meeting of the board prior to the board's action thereon, or (2) by written resignation of the teacher before that date, to initiate termination of a continuing contract." W. Va. Code §18A-2-2. This Code Section also pertains to principals and assistant principals.

4. The preeminent restraint upon a local body is that it should not spend money "[i]n excess of the funds available forcurrent expenses." W. Va. Code §11-8-26.

5. Grievants failed to prove, by a preponderance of the evidence, that Respondent violated W. Va. Code §18A-4-5a, or that they were entitled to the relief they sought.

Accordingly, the grievance is **DENIED**.

Any party may appeal this DECISION to the Circuit of Kanawha County or to the Circuit Court of Randolph 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 Administrative Law Judges are a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

DATED: 4/23/97 _____ JEFFREY N. WEATHERHOLT

ADMINISTRATIVE LAW JUDGE

Footnote: 1

This case has eighteen grievants: Susan Hinzman, Diana Arbogast, Ferdinand Baldt, Barry Band, Frank Collier, Leslie Edinger, Jeannie Gainer, Marshall Terry Gainer, C. Paul Gowers, Jr., Pamela Hewitt, Glen Karlen, Wayne Kennedy, Bruce A. Kolsun, Willard L. Mauller, Jr., Thomas Pritt, David Roth, Wilbert Smith, and Rebecca Whiteman.

Footnote: 2

The undersigned is only considering the events Grievants were notified of in writing, and not additional events asserted by Respondent's counsel. W. Va. Code §18A-2-2 provides, in pertinent part:

> *The continuing contract of any teacher shall remain in full force and effect except as modified by mutual consent of the school board and the teacher, unless and until terminated (1) by a majority vote of the full membership of the board before the first day of April of the then current year, after written notice, served upon the teacher, return receipt requested, stating cause or causes, and an opportunity to be heard at a meeting of the board prior to the board's action thereon, or (2) by written resignation of the teacher before that date, to initiate termination of a continuing contract.*

Emphasis added.

Footnote: 3

According to Randolph County Bd. of Educ. v. Adams, 196 W. Va. 9, 467 S.E.2d 150 (1995), Respondent established a book user fee for non-needy students on February 26, 1993. On June 7, 1994, Respondent filed a petition for declaratory judgement directing over one hundred parties (single parents and married couples who were parents of school children) to pay the book user fee. The parents filed a motion to dismiss asserting the fee was unconstitutional. The Circuit Court of Randolph County agreed, anddismissed the petition because the book user fee was unconstitutional. The Supreme Court of Appeals of West Virginia affirmed the Circuit Court's decision.

Footnote: 4

The record is not clear whether the last excess levy passed or expired in 1989. Ex. 8, p. 44. Respondent asserts in its post- hearing submission that the excess levy expired on June 30, 1989, while Grievants' post-hearing submission states "that Randolph County has not passed as excess levy since 1989, and the previous levy expired on June 30, 1991. The record fails to contain the date of the most recent "defeat of a special levy."

Footnote: 5

Although W. Va. Code §11-8-26 provides, in pertinent part, that "a local fiscal body shall not expend money or incur obligations ... [i]n excess of the funds available for current expenses ... ," the Code does not provide a penalty for "a casual deficit which does not exceed [a county board of education's] approved levy estimate by more than three percent ... ." For the 1996 fiscal year, Respondent was facing a budget deficit of $526,905. A three percent (3%) "casual deficit" for Respondent's 1996-97 budget would be approximately $620,000.

Footnote: 6

The record does not define WVEIS.