Lucion v. McDowell County Board of Education
No. 21897

McHugh, Justice, dissenting:

I dissent from the majority opinion because I believe that the non-relegation clause found in W. Va. Code, 18A-4-8 [1993] has been violated in the case before us. Although I am cognizant of the economic problems facing boards of education, I disagree with the majority's contention that a board of education, in an effort to reduce employment costs, may modify employment terms without the consent of the school service personnel employee, which results in the reduction of salary, rate of pay or benefits.

The legislature obviously sought to give service personnel protection from the whims of a board of education when it enacted what is commonly known as the non-relegation clause found in W. Va. Code, 18A-4-8 [1993], which states in relevant part:

> No service employee, without his written consent, may be reclassified by class title, nor may a service employee, without his written consent, be relegated 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.

Simply put, the non-relegation clause clearly prohibits boards of education from reducing a service employee's pay, compensation or benefits without the consent of the service employee.

This Court has previously stated that "[a] statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect." Syl. pt. 2, State v. Epperly, 135 W. Va. 877, 65 S.E.2d 488 (1951). The non-relegation clause in W. Va. Code, 18A-4-8 [1993] is clear and unambiguous. Moreover, this Court has held that "[s]chool personnel regulations and laws are to be strictly construed in favor of the employee." Syl. pt. 1, Morgan v. Pizzino, 163 W. Va. 454, 256 S.E.2d 592 (1979).

With these basic principles in mind, we turn to the facts before us. The majority previously noted that the board of education terminated the employment contracts of 57 school service personnel. Subsequently, the board of education rehired the 57 school service personnel for the 1989-90 school year with reduced employment terms and proportional decreases in salary. The 57 school service personnel did not consent to the reduced employment terms and decreases in salary. Clearly, the board of education relegated the 57 school service personnel to a condition of employment which resulted in a reduction in salary without the written consent of

the school personnel in violation of the non-relegation clause found in W. Va. Code, 18A-4-8 [1993]. The majority clearly ignored W. Va. Code, 18A-4-8 [1993] when it upheld the action of the board of education in the case before us.

Instead, the majority relied on Board of Education v. Hunley, 169 W. Va. 489, 288 S.E.2d 524 (1982) which states in the syllabus: "When a county school board seeks to reduce the working hours of a service employee by one half, the board must comply with the procedures set out in W. Va. Code, 18A-2-6 [1973]." However, a careful reading of Hunley reveals that the opinion fails to acknowledge pertinent statutory provisions such as the non-relegation clause. Therefore, the majority's reliance on Hunley is misplaced.

The majority attempts to carve out an economic solution for a board of education which is not authorized anywhere in Chapter 18A of the W. Va. Code (Chapter 18A concerns school personnel). Furthermore, there is no need for the majority to carve out a solution because the legislature gives a board of education several options when dealing with economic problems in Chapter 18A of the Code.

For instance, W. Va. Code, 18A-2-6 [1989] gives a board of education the power to terminate the continuing contract of a service personnel employee. However, this authority to terminate a contract does not enable a board of education to ignore the

non-relegation clause when rehiring that employee. Additionally, a board of education may transfer an employee pursuant to W. Va. Code, 18A-2-7 [1990]. Lastly, in W. Va. Code, 18A-4-8b [1990], another provision which the Hunley opinion failed to mention, the legislature set forth procedures by which a board of education may reduce the number of service employees. Even those procedures have been specifically tailored to protect the service personnel. For instance, W. Va. Code, 18A-4-8b [1990] provides that when reducing the work force the employee with the least amount of seniority should be released from employment first. Additionally, those employees whose contracts are terminated pursuant to a reduction in force are to be put on a preferred recall list. The legislature has obviously attempted to strike a balance between protecting the rights of the school service personnel to ensure job security and the rights of the board of education to make necessary decisions regarding employment.

I find no provision in Chapter 18A of the W. Va. Code which indicates that the non-relegation clause is to be ignored in situations where it is just not convenient. Therefore, it is clear that a board of education, in an effort to cut costs, may not terminate a service employee's contract without his consent in order to rehire him with reduced employment terms if the reduced employment terms result in a reduction of pay or benefits. Accordingly, the

majority's blatant disregard of the non-relegation clause in W. Va. Code, 18A-4-8 [1993] renders the legislature's attempt to protect the school service personnel employee's job security meaningless.

Based on the foregoing, I dissent from the majority's opinion. I am authorized to state that Justice Miller joins me in this dissent.