

No. 26600 - The Board of Education of the County of Mercer v. Kitty Townsend

FILED

July 20, 2000

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

July 21, 2000

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Starcher, J., dissenting:

This *per curiam* opinion is most decidedly *not* authority for anyone to conclude that the previous practice (pre-1990) of awarding up to a year's seniority for "substitutes" who worked 133 days or more in a year's teaching employment is in conflict with the then-applicable law.

A settled line of cases before the State Employee Grievance Board, a state superintendent's interpretation, and this Court's decision in *Harkins v. Ohio County Board of Education*, 179 W.Va. 373, 369 S.E.2d 224 (1988) (*per curiam*) dictates this conclusion, as does a review of the applicable statutory language.

On remand, the Administrative Law Judge should *follow the law*, not *dicta* in a *per curiam* footnote. Then the Administrative Law Judge's analysis may be tested in an appeal of the issue, if a party challenges it. Meanwhile, no one should presume to interfere with the hard-earned seniority of our state's full-time teachers -- whether they are called "substitutes" or otherwise.