**KAREN LESTER**

**v. Docket No. 93-33-256**

**McDOWELL COUNTY BOARD OF EDUCATION**

**DECISION**

The grievant, Karen Lester, is employed by the McDowell County Board of Education (Board) as a classroom teacher assigned to Fall River Elementary School. She filed a grievance at Level I April 7, 1993, alleging her transfer to that position was improper. Her supervisor was without authority to grant relief and the grievance was denied at Level II following a hearing held June 1, 1993. The Board, at Level III, affirmed the Level II findings and an appeal to Level IV was made July 15, 1993. The parties subsequently agreed to submit the case for decision on the record developed at the lower levels. The grievant submitted proposed findings of fact and conclusions of law by September 1, 1993 and the Board elected to rely on its Level II findings and conclusions.

**FACTS**

There is no dispute over the facts of the case. The record developed at Level II supports the following findings.

1) The grievant has been employed for over twenty years. For the last nineteen years she has been assigned to Gary Elementary School (GES).

2) GES serves students in grades 1 through 8. During the 1992-93 school term and preceding years, students in grades 1 through 4 were provided instruction in all subjects by one teacher in a "self-contained" classroom. Students in grades 5 through 8 were "departmentalized" and received instruction from a number of teachers in different classrooms.

3) Sometime in March 1993 the Board decided that students in grades five and six at GES would be converted to self-contained instruction effective the beginning of the 1993-94 school year. This decision was predicated on a report by GES Principal Wallace Lavender indicating a drop in grade point average for a significant portion of students moving from a self-contained fourth grade setting to a departmentalized fifth grade. Also, projected student enrollment at GES indicated that when the change was made there would not be a need for a departmentalized teacher for every

subject in grades seven and eight.

4) The Board then determined that the changes in grade configuration at GES would affect the teaching assignments of six teachers, including the grievant.

5) During the 1992-93 school term the grievant taught mathematics grades 5 through 8 at GES. Two of her six daily classes were fifth grade, two were sixth grade, one was seventh andone was eighth. The grievant holds certifications in Elementary Education, grades 1 through 8, and Math, grades 1 through 9.

6) By letters dated March 4, 1993, Superintendent of Schools Kenneth Roberts advised the grievant and five other GES teachers that he would recommend to the Board that their names be placed on a transfer list for subsequent reassignment due to "the reduction-in-force created by the financial need to reduce staff." He also advised them that they could request hearings on the recommendations.

7) The grievant was granted a hearing on the Superintendent's recommendation and the Board subsequently voted to place her on the transfer list.

5) On or about April 2, 1993, the Board posted the following five positions at GES. Self-contained fourth and fifth grades, self-contained fifth grade, self-contained sixth grade, departmentalized Math/Social Studies grades seventh and eighth, departmentalized Science/Art seventh and eighth grades, and departmentalized Developmental Reading/Language Arts seventh and eighth grades. The Board also posted positions at Fall River Elementary (FRE).

6) For reasons which are not clear, the grievant declined to apply for any of the GES positions. She applied for and was awarded a position at FRE.

7) Two of the other GES teachers placed on the transfer list applied for and received positions at GES for the 1993-94 school year.

8) As a result of the reconfiguration at GES there was one additional self-contained teacher and three less departmentalized teachers effective the beginning of the 1993-94 term. Overall, the school lost two positions.

9) Several of the teachers who were either retained at GES or received positions via the postings were less senior than the grievant.

**ARGUMENT**

The grievant maintains that pursuant to W.Va. Code §18A-4-7a, ¶12, the Board, in the process of

reducing staff at GES, was mandated to offer her the position of the least senior teacher in the area reduced. She asserts the Board was not statutorily required to post the positions at the school and thus her failure to apply for one was of no consequence. The Board's position, as gleaned from the Level II decision, is that the portion of Code §18A-4-7a cited by the grievant is inapplicable to her situation since she was a departmentalized teacher and not a "grade level" instructor. The Board asserts that the grievant was the subject of a transfer and not a reduction-in-force and that the propriety of her reassignment should be reviewed under the broad "arbitrary and capricious" standard.

**CONCLUSIONS**

After a thorough review of the parties' positions, the applicable law and the foregoing findings of fact, the undersigned makes the following conclusions of law.

1) "When the total number of classroom teaching positions in an elementary school needs to be reduced, such reductions shall be made on the basis of seniority with the least senior teacher being recommended for transfer: Provided that a specified grade level needs to be reduced and the least senior employee in the school is not in that grade level, the least senior classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the least senior classroom teacher in the school without that position being posted: Provided however, that the employee is certified and/or licensed and agrees to the reassignment." W.Va. Code §18A-4-7a, ¶12.

2) For the purposes of the special reduction-in-force provisions for elementary schools found in Code §18A-4-7a, elementary school shall be defined as kindergarten through six. Code §18A-4-7a, ¶11; Sanders v. Brooke County Bd. of Ed., Docket No. 93-05-174 (Aug. 27, 1993).

3) Departmentalized teachers do not teach in a "grade level" for the purposes of the special reduction-in-force provisions of Code §18A-4-7a, ¶12 See Lloyd v. Kanawha County Bd. of Ed., Docket No. 91-20-327 (Oct. 29, 1991). (See footnote 1) Thus, the Board was not obligated to provide such teachers at GES, including the grievant, theopportunity to "bump" or displace less senior teachers assigned to self-contained grade levels when it sought to reduce staff at GES.

4) "W.Va. Code §18A-4-7a, ¶6, like Code §18A-4-7a, ¶¶10 and 11, creates an exception to the mandatory posting requirements of Code §18A-4-7a, ¶9. Unless a vacancy need not be posted due to the applicability of Code §18A-4-7a, ¶¶6, 10, or 11, it must be posted." Lloyd.

5) The five vacancies posted in the present case were not created by the application of Code 18A-4-7a, ¶¶6, 10 or 11 but rather were created by the realignment of the assignments of self-contained and departmentalized teachers. Thus, the Board was obligated to post those vacancies.

6) Essentially, the grievant was placed on a transfer list because her 1992-93 teaching assignment at GES was being realigned and not because she was the subject of a reduction-in-force. Thus, any movement she made within the school system was subject to review under the "arbitrary and capricious" standard pronounced in Dillon v. Bd. of Ed. of County of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

7) The grievant has not demonstrated that her transfer from GES to FRE was arbitrary, capricious or an abuse of the Board's discretion. In that it was the grievant's choice to apply for a position at FRE and not to apply for one of the posted positions at GES, the Board, in essence complied with her wishes by awarding her the FRE position.

Accordingly, the grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of McDowell 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 is 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.

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JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: January 31, 1994

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*Footnote: 1Lloyd relied on a ruling of the Kanawha County Circuit Court in W.Va. Fed. of Teachers v. Kanawha County Bd. of Educ., C.A. No. 91-C-823 (Kan. Cir. Ct., Mar. 31, 1991) to the effect that "Chapter I" reading teachers and special education teachers who taught students from all grades in an elementary school were not considered to have a "grade level" for the purposes of Code §18A-4-7a. The same reasoning applies in the present case where the grievant and other departmentalized teachers instructed students from a number of grade levels.*