CATHERINE VANSKIVER

v. DOCKET NO. 92-51-193

WEBSTER COUNTY BOARD OF EDUCATION

DECISION

Grievant, Catherine VanSkiver, advanced this grievance to level four on June 10, 1992, at which time she alleged that the Webster County Board of Education (Board) violated W.Va. Code §18A-4-7a by placing her on the transfer list when another teacher had less seniority. At the level four hearing Grievant argued that Emily Moore, whose position at Webster Springs Elementary School (WSES) had been eliminated, should have bumped into the position held by Marjorie Stewart instead of the fourth grade slot held by Grievant. The Board argued that Ms. Stewart had accrued more seniority than Grievant and that the position held by Ms. Stewart, which consisted of sixth grade plus two classes of seventh grade Language Arts, was not lateral to the self-contained elementary classroom positions held by Grievant and Ms. Moore. It was additionally revealed that Ms. Moore is not certified to teach Language Arts; however, Grievant countered that the two classes could be covered by other teachers through rescheduling. Grievant did not clearly indicate that she wished to be assigned Ms. Stewart's position.

In the level four decision issued on September 30, 1992, itwas held that Grievant did have greater seniority than Ms. Stewart; however, because Ms. Moore was not certified to teach the Language Arts classes she could not bump into Ms. Stewart's position and had been properly transferred into the fourth grade position held by Grievant. The decision was subsequently appealed to the Circuit Court of Kanawha County. Upon review, Judge Herman G. Canady, Jr. upheld the aforementioned holdings but remanded the matter for further consideration as to whether Grievant was entitled to bump into the position held by Ms. Stewart.

A hearing was convened at level four on July 17, 1993, for the purpose of addressing the sole issue of whether Grievant is entitled to bump into the position held by Ms. Stewart. At this time Grievant again asserted her greater seniority and her certification to teach the sixth

grade and seventh grade Language Arts, required the Board to place her in the position held by Ms. Stewart. The Board continued to argue that Ms. Stewart has greater seniority and that the position which she holds is not lateral to the fourth grade position to which Grievant was assigned. Grievant submitted proposed findings of fact and conclusions of law on October 12, 1993, and the Board submitted additional documentation on November 22, 1993, at which time the record was complete.

The Board's argument that Ms. Stewart had accrued more seniority than Grievant cannot be accepted. It was held in the prior decision that the Board improperly included substitute work in Ms. Stewart's seniority. The Board has since submitted a "Certificate of Experience" which lists Ms. Stewart as a substitute teacher from 1984 through the 1986-87 school year. A contract ofemployment verified that Ms. Stewart was regularly employed during the 1987-88 school year. Because Grievant was employed in October 1986, she has accrued more seniority than Ms. Stewart and would be entitled to the sixth/seventh grade position if it is considered a lateral position.

It was previously held that Ms. Moore could not be transferred to the position held by Ms. Stewart because she lacked certification to teach the Language Arts classes. Grievant, however, is certified to teach both sixth grade and seventh grade Language Arts. The Board's position that the self-contained fourth grade classroom is not lateral to a sixth grade/Language Arts position cannot be accepted in light of the provision set forth in W.Va. Code §18A-4-7a (1993) that "all positions which meet the definition of classroom teacher as defined in section one, article one of this chapter, shall be lateral positions." W.Va. Code §18A-1-1(c)(1) defines classroom teacher as a "professional educator who has direct instructional or counseling relationship with pupils, spending the majority of his time in this capacity." Clearly, both positions fall under the definition of classroom teacher and are therefore lateral.

In addition to the foregoing narration it is appropriate to make the following specific findings of fact and conclusions of law.

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FINDINGS OF FACT

1. Grievant was employed by the Webster County Board ofEducation in October 1986 and was assigned to a fourth grade position at Webster Springs Elementary School in 1992 when she was transferred as a result of a reduction in the number of positions at that school.

2. Another teacher at Webster Springs Elementary School, Ms. Stewart, was not employed as a regular teacher until August 1987.

3. Ms. Stewart's assignment consists of sixth grade plus two classes of seventh grade Language Arts.

4. Grievant is certified to teach both elements of the split assignment currently held by Ms. Stewart.

CONCLUSIONS OF LAW

1. Seniority of classroom teachers shall be determined on the basis of the length of time the employee has been employed as a regular full-time certified and/or licensed professional educator by the county board of education. Upon completion of employment of one hundred thirty-three days of employment in one school year, substitute teachers shall accrue seniority exclusively for the purpose of applying for employment as a permanent, full-time professional employee. W.Va. Code §18A-4-7a.

2. The Board erroneously included substitute work in the calculation of Ms. Stewart's seniority. Hoffman v. Kanawha Co. Bd. of Educ., Docket No. 91-20-278 (Jan. 31, 1992).

3. All positions which meet the definition of classroom teacher shall be lateral positions. W.Va. Code §18A-4-7a.

4. The positions held by Ms. Stewart and Grievant are bothclassroom teachers as defined by W.Va. Code §18A-1-1.

Accordingly, the grievance is Granted and the Board Ordered to instate Grievant into the split sixth grade, Language Arts position.

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

DATED January 31, 1994

SUE KELLER

SENIOR ADMINISTRATIVE

LAW JUDGE