JUDITH McCARTHY

v. Docket No. 93-26-292

MASON COUNTY BOARD OF EDUCATION

and MARY CLINE

DECISION

The grievant, Judith McCarthy, was employed by the Mason County Board of Education (Board) as a classroom teacher until her termination in a reduction-in-force (RIF) conducted in Spring 1993. She filed a grievance June 16, 1993 protesting that action. The grievant's supervisor was without authority to address the matter at Level I and a hearing was held at Level II June 24, 1993. At or prior to the hearing, Mary Cline, another teacher involved in the RIF, was allowed to intervene per W.Va. Code §18-29-3(u). The grievance was denied at that level in a July 14, 1993 decision and the Board, at Level III, waived participation in the case. Appeal to Level IV was made July 28, 1993, and the parties subsequently agreed to submit the case for decision on the record developedbelow. Proposed findings of fact and conclusions of law were submitted by November 9, 1993. (See footnote 1)

FACTS

There is no dispute over the facts of the case. The record developed at Level II (See footnote 2) supports the following findings.

1) In Spring 1993, due to declining enrollment and a student-teacher ratio which exceeded state funding parameters, the Board was forced to eliminate approximately twenty of its professional positions. One of the positions targeted for elimination was an instructor of special populations at the Mason County Vo-Tech Center (Center) held by Intervenor Cline, a twenty year employee of the Board.

2) By letter dated March 10, 1993, Superintendent of Schools Michael Whalen advised Ms. Cline that he would recommend to the Board that her name be placed on a transfer list because "of the deletion of the instructor of special populations position at the Vocational Center due to lack of need." Mr. Whalen also advised Ms. Cline that she would "be reassigned to the lowest senior

teaching position in [her] certification area."

3) Per her rights under W.Va. Code §18A-2-7, Ms. Cline requested and was granted a hearing before the Board on Mr.Whalen's proposal. Prior to or during the April 26, 1993 hearing, Ms. Cline was advised that she would be displacing or "bumping" Mary Pyles, a home economics instructor at Hannan High School. She responded that in addition to her certifications in home economics and vocational education, she would soon be receiving certification in mathematics and should be allowed to displace a less senior teacher in that field.

4) The Board, after reviewing the holdings in Hollins v. Wyoming County Bd. of Educ., Docket No. 92-55-263 (Mar. 18, 1993), determined that Ms. Cline should be allowed to displace the least senior teacher in mathematics rather than home economics. Grievant McCarthy, a two year probationary teacher assigned to Wahama High School, was identified as the least senior teacher then teaching in that area of certification. She was also less senior than Ms. Pyles.

5) At the same meeting, Superintendent Whalen recommended that Grievant McCarthy's probationary contract not be renewed. The Board accepted the recommendation.

6) By letter dated April 27, 1993, Superintendent Whalen advised the grievant of his recommendation and the Board's acceptance. Mr. Whalen informed her that the reason for the action was "to provide a position for a more senior teacher certified in mathematics whose position has been eliminated."

7) The grievant requested and was afforded a June 1, 1993 hearing on her termination. On June 15, 1993, the Board reaffirmed its prior decision to discontinue her employment.

8) At the time the action was taken, the grievant was certified in mathematics, grades 7 through 12. Her certification permitted her to teach mathematics, algebra, plane geometry, solid geometry, trigonometry and calculus. During the 1992-93 school year she taught 7th and 8th grade math, business math and remedial math.

9) Effective May 3, 1993, Ms. Cline achieved a certification in mathematics which permitted her to teach mathematics and Algebra I in grades 5 through 12 but did not permit her to teach other "higher level" subjects in the mathematics field.

ARGUMENT

The grievant advances three arguments for reversal of the Board's decision to terminate her employment. First, she asserts that the Board erred in providing her an "after-the-fact" notice of the

termination under W.Va. Code §18A-8-2a and should have given her the earlier "pre-termination" notice provided for in W.Va. Code §18A-2-2. Second, she contends that Ms. Cline's math certification was not equal to hers and Ms. Cline's transfer to her position at Wahama was, therefore, not a "lateral" move within the meaning of the reduction-in-force provisions of W.Va. Code §18A-4-7a.

Finally, the grievant asserts that any "bumping" rights Ms. Cline had should have been determined on the basis of the certifications she possessed as of the date the Board voted to place her on the transfer list and not on the basis of what licenses she anticipated receiving subsequent to that date. The grievant acknowledges that Hollins, supra, holds otherwise butnotes that the case is on appeal to the Wyoming County Circuit Court.

The Board and Intervenor Cline maintain that the reduction-in-force provisions of Code §18A-4-7a do not require that a teacher whose position has been targeted for elimination possess a certification identical to that of a less senior teacher in order to displace that teacher. They also assert that the math certifications of the grievant and Ms. Cline are substantially the same. The Board further contends that Code §18A-2-8a is the controlling statute in the nonrenewal of contracts of probationary teachers regardless of whether the nonrenewal was part of a reduction-in-force. The Board notes that its decision to allow Ms. Cline to use her "impending" math certification was mandated by Hollins.

CONCLUSIONS

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

1) "Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority shall be properly notified and released from employment pursuant to the provisions of section two [§ 18A-2-2] article two of this chapter." W.Va. Code §18A-4-7a, ¶6.

2) The procedures contained in W.Va. Code §18A-2-2 for terminating a teacher's employment for lack of need relate solely to teachers with continuing contracts of employment.

3) "The superintendent at a meeting of the board on or before the first Monday in May of each year shall provide in writing to the board a list of all probationary teachers that he recommends to be rehired for the next ensuing school year. The board shall act upon the superintendent's recommendations at that meeting in accordance with section one [§ 18A-2-1] of this article. . . Any

such probationary teacher or other probationary employee who is not rehired by the board at that meeting shall be notified in writing, by certified mail. . . within ten days following said board meeting, of their not having been rehired or not having been recommended for rehiring." W.Va. Code §18A-2-8a.

4) The nonrenewal of a probationary teacher's contract of employment is governed by Code §18A-2-8a regardless of whether the nonrenewal is the result of a county board's need to reduce its professional staff. Alltop v. Gilmer County Bd. of Educ., Docket No. 11-87-167-3 (Dec. 11, 1987). In the present case, the Board fully complied with Code §18A-2-8a in the termination of the grievant's employment.

5) When a teacher's transfer during a reduction-in-force loses its stated justification prior to the end of the school year in which the transfer was effected, absent compelling circumstances, the teacher is entitled to instatement to the position he would have held but for the transfer. A transfer may "lose its stated justification" when the employee affected obtains certifications prior to the end of the school year which, had the teacher possessed them at the time the decision to transfer wasreached, would have mandated a transfer to a different position. Brown v. Logan County Bd. of Educ., Docket No. 90-23-177 (Oct. 31, 1990).

6) The Board fully complied with the holdings in Brown when, provided with knowledge of Ms. Cline's impending certification in mathematics, it determined that she should displace or "bump" into a mathematics rather than home economics position.

7) An employee subject to release in a reduction-in-force of professional staff "shall be employed. . .in any lateral area for which such employee is certified and/or licensed, if such employee's seniority is greater than the seniority of any other employee in that area of certification and/or licensure." W.Va. Code §18A-4-7a, ¶6. In order to be eligible to displace another teacher in a lateral area, it is not necessary that the two teachers involved possess identical certifications. It is sufficient that the certifications are in the same area and cover the same grade levels. See Weikle v. Monroe County Bd. of Ed., Docket No. 93-26-292 (Sept. 22, 1993).

8) Intervenor Cline was the subject of a reduction-in-force and the grievant's mathematics position at Wahama was a "lateral area" for which she was certified. The Board complied with Code §18A-4-7a, ¶6 by permitting her to transfer or "bump" into the position. Moreover, while the grievant was licensed to teach higher level mathematics and Ms. Cline was not, the position which the

grievant held was not a higher level mathematics position. Upon receipt of her mathematics certification, Ms. Cline was fullylicensed to teach all the classes that the grievant taught during school year 1992-93.

9) The grievant has otherwise failed to show that the Board violated any statute, policy or regulation in effecting her termination or Ms. Cline's transfer.

Accordingly, the grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Mason 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: May 31, 1994

Footnote: 1The Board is represented by Damon Morgan, Esq., the grievant is represented by Bob Brown of the American Federation of Teachers and Intervenor Cline is represented by Kathy Smith of the West Virginia Education Association.

Footnote: 2The record consists of a transcript of the Level II hearing and attached exhibits. Also made part of the record was a transcript of a June 1, 1993 "RIF" hearing held before the Board on the grievant's termination per W.Va. Code §18A-2-2.