JULIA LEWIS

v. Docket No. 94-27-1053

MERCER COUNTY BOARD OF EDUCATION

DECISION

The grievant, Julia Lewis, was employed by the Mercer County Board of Education (Board) as a science teacher at Spanishburg High School (SHS) until the end of the 1993-94 school year when her employment was terminated in a reduction-in-force (RIF). She filed this grievance September 23, 1994, alleging that her termination was violative of W.Va. Code §18A-4-7a. The grievance was denied at the lower levels and reached Level IV November 4, 1994. The parties subsequently agreed to submit the case for decision on the record developed at Level II. Proposed findings of fact and conclusions of law were received by May 2, 1995.

Initially, it must be noted that the record in the case is poorly developed and is, at best, only marginally sufficient for an inquiry into the grievant's claims. The grievant's brief testimony at Level II is essentially the only evidence submitted in supportof those claims. (See footnote 1) The only findings supported by the record are these:

1) During the 1993-94 school year and preceding years, SHS served students in grades 7 through 12. The grievant, an eight year teacher who holds certification in General Science, grades 7 through 12, and Biology grades 7 through 12, was assigned to teach General Science grades 7 and 9 and English grades 7 and 9 during the 1993-94 year. (See footnote 2)

2) Sometime during the 1993-94 school year or perhaps earlier, the Board voted to convert SHS to a middle school serving students in grades 6, 7, and 8 effective the beginning of the 1994-95 year, and to transfer the school's 9 through 12 students to newly-constructed Pikeview School. The school was renamed "Spanishburg School."

3) In January or February 1994, Shelia McMullin was transferred to SHS. Ms. McMullin, who holds "multi-subject" certification, presumably in grades Kindergarten through 8, has more seniority

with the Board than the grievant.

4) The grievant was provided notice under W.Va. Code §18A-2-2, in Spring of 1994, that Superintendent of Schools Deborah Akers would recommend to the Board that her employment be terminated for lack of need. Subsequent to providing the grievant a hearing on the recommendation, the Board voted to terminate her employment. The grievant's name was placed on a recall list per W.Va. Code §18A-4-7a. (See footnote 3)

5) The grievant filed this complaint in September 1994, shortly after learning that Ms. McMullin was assigned to teach science and English classes at Spanishburg School during the 1994-95 school year.

In her proposed conclusions of law, the grievant asserts, "The Board removed Ms. Lewis from her position at Spanishburg School teaching science and replaced her with teachers holding inferior certifications." It appears from this statement and remarks made by the grievant during her Level II testimony, that she is contending that it was a violation of some statute, presumably W.Va. Code §18A-4-7a, for the Board to terminate her employment and retain Ms. McMullin. She asserts that her "specific" science certification was superior to Ms. McMullin's Kindergarten through 8 licensure. The Board asserts that the grievance was not timely filed and that the grievant has not shown that her termination inthe RIF, or Ms. McMullin's appointment and/or retention were violative of any statute, policy or regulation.

In a case such as this, the grievant bears the burden of establishing the truth of her allegations by a preponderance of the evidence. Black v. Cabell County Bd. of Educ., Docket No. 89-06-707 (March 23, 1990). The above findings will not support a conclusion that any violation of the reduction-in-force provisions of Code §18A-4-7a occurred.

The grievant's assertion that her certification was superior to Ms. McMullin's certification for the purposes of a RIF, the argument is without merit. Both certifications are valid licenses to teach science courses in the grades designated and the undersigned is unaware of any policy of the West Virginia Department of Education, the licensing agency, which dictates that one take precedence over the other in any personnel action implemented by a county board of education. See, Donofe v. Hancock County Bd. of Ed., Docket No. 93-15-188 (Nov. 30, 1993).

At the time the RIF was initiated, the grievant had a limited right under Code §18A-4-7a to displace or "bump" less senior teachers then employed in her certification field. Donofe. She has

failed to establish that any less senior teachers then employed in General Science, grades 7 through 12 or Biology 7 through 12 were retained during the RIF implemented by the Board in the spring of 1994. Because the grievant has failed on the merits, it is not necessary to address the Board's timeliness assertions.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Mercer 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: June 23, 1995

Footnote: 1The parties' proposed findings of fact submitted at Level IV are replete with information which was not adduced at the Level II hearing. The grievant even submitted proposals which characterize the allegations contained in her original filing as facts in evidence. Obviously, findings in the case must be based on the evidence presented and not upon counsel's unsupported representations.

Footnote: 2The record does not reflect how the grievant was allowed to teach English courses without certification in that field. It is surmised that she may have obtained a permit to do so. In any event, the matter is of no consequence to the outcome herein.

Footnote: 3The statute, in relevant part, provides,

> *"All professional personnel whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a preferred recall list."*