ARBUTUS BELL,

Grievant,

v. Docket No. 95-20-169

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

___Grievant, Arbutus Bell, was employed by the Kanawha County Board of Education ("KCBOE") as a half-time custodian prior to being RIF'd and placed on the preferred recall list. Grievant alleges KCBOE violated W. Va. Code §18A-4-8b when it terminated her contract. This grievance was denied at Levels I and II and waived at Level III. A Level IV Hearing was held on June 2, 1995, and this case became mature for decision on July 18, 1995, after the submission of the lower level record.

The material facts of this grievance are not in dispute, and are set forth below in the following Findings of Fact.

Findings of Fact

1. Grievant was employed by the KCBOE as a part-time Custodian I at Ruthlawn Elementary School on December 7, 1994.

2. In March, 1995 KCBOE decided to change the "custodial staffing formula . . . to provide for an increase in the square footage to be cleaned per custodian." Level IV, G's Ex. 3 ("Noticeof Proposed Termination of Contract"); Trans., Mar. 20, 1995, KCBOE Hrg. at 11-24.

3. Because of the change in the custodial staffing formula it was necessary to transfer a number of employees within the custodian classification. Id. Ten full-time custodians, all with seniority greater than Grievant, were placed on the transfer list. (See footnote 1) Level IV Test., Mr. Stanley Cobb, Director of Operations for Service Personnel.

4. KCBOE was required to find ten full-time custodial positions for the ten custodians on the transfer list.

5. To find ten full-time positions, KCBOE RIF'd the 26 least senior custodians, most of whom

held part-time positions. (See footnote 2)

6. Grievant had a part-time position and she ranked 25th, or next to last, on the list of the 26 custodians RIF'd.

7. Grievant's Ruthlawn position is not scheduled to be eliminated and will be posted if not filled by a transferred employee. Of course, Grievant may apply. This position will be filled on the basis of seniority from the preferred recall list.

Issues

Grievant claims KCBOE violated W. Va. Code §18A-4-8b. She argues she should not have been RIF'd or terminated because her school, Ruthlawn, was not one of the schools listed for a reduction in custodial staff, and more positions were RIF'd than there were employees on the transfer list. Respondent argues W. Va. Code §18A-4-8b was properly followed, and Grievant was terminated due to her relative lack of seniority. KCBOE's past practice is to RIF all employees below the most senior RIF'd employee. This practice may result, as here, in RIF'ing employees whose positions are not specifically needed for the transferred employees. KCBOE believes this practice is mandated by W. Va. Code §18A-4-8b, and that to retain an employee with less seniority when one with greater seniority is RIF'd is inherently unfair. This process also creates multiple vacancies which KCBOE is required to fill from the preferred recall list based on seniority. Thus, the more senior RIF'd employees will receive preference.

Discussion

Grievant clearly misinterprets W. Va. Code §18A-4-8b. That Code Section states in pertinent part:

> Should a county board of education be required to reduce the number of employees within a particular classification, the employee with the least amount of seniority within that classification or grades of classification shall be properly released and employed in a different grade of that classification if there is a job vacancy . . . .

Grievant argues that after the ten full-time employees on the transfer list are placed in full-time positions there will bevacancies, and since Ruthlawn did not lose Grievant's position, KCBOE violated W. Va. Code §18A-4-8b when it terminated her employment. This argument must fail. The

above-stated Code Section requires county boards of education to reduce the least senior employees within a job classification. This included Grievant. These employees may be placed in a different grade in that classification if there is a vacancy. At the time of the RIF, the number and place of the eventual vacancies was unknown, and Grievant's seniority did not entitle her to any other placement. It may very well be that Grievant will receive a position "when all the dust settles," transferred employees are placed, and all custodians with seniority greater than Grievant's are in a position, but KCBOE acted properly in RIF'ing Grievant, at the time, and placing her on the preferred recall list.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. Grievant has the burden of proving her case by a preponderance of the evidence.
2. Grievant has failed to demonstrate KCBOE violated W. Va. Code §18A-4-8b when Grievant was RIF'd to make room for more senior transferred employees.
3. The Legislature's intention is to emphasize seniority as the determinative factor in decisions affecting the filling of school service personnel positions. Harrison County Bd. of Educ. v. Coffman, 189 W. Va. 273 430 S.E.2d 331 (1993).
4. KCBOE's policy to RIF all employees below the most senior RIF'd employee is not a violation of any statute and is not an abuse of discretion or an arbitrary or capricious act. Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W. Va. 1986).

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha 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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JANIS I. REYNOLDS

Administrative Law Judge

Dated: August 31, 1995

Footnote: 1The testimony is unclear whether the number was nine or ten.

Footnote: 2For example, the ten full-time custodians who were RIF'd may have ranked 1, 3, 4, 7, 8, 9, 10, 15, 16, and 17 on the seniority list. The rest of the 26 employees would have been part-time. Since 25 of these employees would have been less senior than employee number 1, they were all RIF'd, regardless of whether they had a full-time or part-time position. These vacancies, if they continue to exist after the transferred custodians are placed, are then posted and filled by seniority from the preferred recall list.