SUSAN A. RUNYON,

Grievant,

v. DOCKET NO. 94-29-1088

MINGO COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Susan A. Runyon, filed this grievance on October 18, 1994, alleging:

> I applied for several teaching positions with Mingo County Board of Education. The positions were awarded to applicants that, including myself, have the same date of seniority, but I was not given a chance to determine preference of employment. I ask that a tie break in seniority be held to determine choice preference for the positions. This is violation of WV Code 18A-4-7a.

A hearing was held at level two on November 2, 1994, and a decision rendered on November 15, 1994. Grievant appealed that decision to level four on November 30, 1994. The parties agreed to submit the case on the record, and following receipt of Grievant's Proposed Findings of Fact and Conclusions of Law on April 25, 1995, this case became mature for decision. Respondent elected not to submit proposed submissions.

Based upon a thorough review of the record, it is appropriate to make the following findings of fact.

Findings of Fact

1. Grievant is currently employed by Respondent as a teacher at Kermit Junior High School.

2. Grievant, along with others, including Craig Michael Clay, Bonnie Coleman and Larry Varney, were reduced in force and placed on the preferred recall list for the 1994-95 school year.

3. Grievant applied for various posted teaching positions in July, August and September, 1994.

4. Grievant, Clay, Coleman and Varney have identical seniority and certification.

5. Grievant, Clay, Coleman and Varney were all hired on October 6, 1994, to fill various teaching positions. Grievant received the position at Kermit Junior High School.

6. The Superintendent and Personnel Director awarded assignments to those with the same seniority based upon a review of all of the applications and geographic factors.

7. Grievant informed the Board on the night she was hired that she did not prefer the Kermit Junior High School position.

Discussion

W. Va. Code § 18A-4-7a states in pertinent part:

> . . . A random selection system established by the employees and approved by the board shall be used to determine the priority if two or more employees accumulate identical seniority: . . .
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> . . .
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> 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. As to any professional position opening within the area where theyhad previously been employed or to any lateral area for which they have certification and/or licensure, such employee shall be recalled on the basis of seniority if no regular, full-time professional personnel, or those returning from leaves of absence with greater seniority, are qualified, apply for and accept such position.

Grievant alleges the Board violated the above Code section by not conducting a random drawing to determine priority of the four teachers with the same seniority date in order to determine preference of employment. Inherent in Grievant's argument is the premise that she, somehow, would have been given priority over the other three teachers, thus allowing her to select the position she wanted. Of course, Grievant also could have ended up last on the priority list.

There is no dispute that Grievant applied for all the vacant positions. She was awarded the Kermit Junior High School position. The random selection process is most commonly seen in a reduction in force (RIF) situation, where there are not enough positions available, thus necessitating a drawing

to determine which employees with the same seniority will retain their positions. The proper time for a random drawing in this instance was when the four teachers were RIF'd, in order to determine the order of their subsequent recall. Grievant did not grieve the failure of Respondent to conduct a random drawing at that time. The random selection process for employees with the same seniority date does not apply to give employees a preference in choosing available positions. See Fleming v. Monongalia County Bd. of Educ., Docket No. 92-30-076 (May 6, 1992).

Conclusion of Law

Grievant has not proven that the Board violated W. Va. Code § 18A-4-7a in placing her in the teaching position at Kermit Junior High School.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mingo 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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MARY JO SWARTZ

Administrative Law Judge

Dated: June 13, 1995