PAULA TAYLOR-HURLEY,

Grievant,

v.

DOCKET NO. 95-29-211R

MINGO COUNTY BOARD OF EDUCATION,

Respondent,

and

PAMELA VARNEY, BETTY SAMMONS and
TUANIA HALE,

Intervenors.

D E C I S I O N

This case is being decided on remand from the West Virginia Supreme Court of Appeals. The underlying grievance, Hurley v. Mingo County Board of Education, Docket No. 95-29-211 (Sept. 28, 1995), concerned four secretarial positions with the Mingo County Board of Education ("Board"). At the end of the 1994-95 school year, the Board decided to eliminate two of the four secretarial positions, and Grievant Paula Taylor-Hurley, and Intervenor Tuania Hale, were reduced in force. Grievant asserted she had more seniority than two other secretaries, Intervenors Pamela Varney and Betty Sammons, who were retained, and thus, her reduction in force violated W. Va. Code § 18A-4-8b. Intervenor Hale also asserted that she had been improperly reduced in force, and further, that she had more seniority than Grievant or Intervenors Varney and Sammons. The AdministrativeLaw Judge

held that Ms. Hale, as an Intervenor, could not assert any new issue or pursue issues not raised directly by the complainant and thus could not assert a right to the subject position. Consequently, the Administrative Law Judge dismissed Intervenor Hale's claims and no evidence was taken with regard to her claims in the original hearing.

The Circuit Court of Kanawha County affirmed this decision in Hale v. Mingo County Board of Education, Civil Action No. 95-AA-252 (Feb. 6, 1996), but the West Virginia Supreme Court of Appeals reversed the Administrative Law Judge in Hale v. Mingo County Board of Education, No. 23748 (W. Va. 1997), and held that Intervenor Hale could assert affirmative claims for relief as well as defensive claims. The Supreme Court ordered the case remanded to the Grievance Board to take evidence and issue a decision regarding Intervenor Hale's claims.

A level four hearing was held in this regard on January 29, 1998, and this case became mature for decision upon receipt of the parties' submissions of findings of fact and conclusions of law, on or about February 24, 1998.

BACKGROUND

The following background facts are adopted from Taylor-Hurley v. Mingo County Bd. of Educ., Docket No. 95-29-211, rev'd on other grounds, Hale v. Mingo County Bd. of Educ., No. 23748 (W. Va. 1997).

1. At the time of the reduction in force in question, the end of the 1994-95 school year, Grievant was a regular employee of the Mingo County Board of Education.

2. Grievant had gained regular employment seniority based upon being assigned to various regular, full-time positions as a long-term substitute, during the 1991- 1992 and 1993-94 school years. Grievant was also employed as a probationary, regularemployee between the period from October 10, 1994 through the end of the 1994-1995 school year.

3. Intervenor Varney had earned regular employment seniority in the classification of Secretary for the time periods of November 16, 1986 to the end of the 1986-1987 school year, and for the period from September 1, 1994 to the present. See W. Va. Code § 18A-4-8.

4. Intervenor Sammons had earned regular employment seniority in the classification of Secretary for the period of September 1, 1994 to the present.

5. Grievant had greater regular employment seniority in the classification of Secretary than Ms.

Sammons.

6. Ms. Varney had greater regular employment seniority in the classification of Secretary than Ms. Sammons.

FINDINGS OF FACT

The following facts are derived from the level four remand hearing, testimony and exhibits.

1. Intervenor Hale had earned regular employment seniority in the classification of Secretary for the time periods of October 2, 1989 to the end of the 1990-91 school year, and for the period from October 6, 1994 to the end of the 1994-95 school year.

2. At the end of the 1994-95 school year, Ms. Hale had greater regular employment seniority in the classification of Secretary than Grievant Taylor-Hurley and Intervenors Varney and Sammons.

3. Ms. Hale had been reduced in force at the end of the 1994-95 school year from the Secretary classification.

ISSUE

The issue is which of these four individuals, with varying amounts of regular employment seniority and different beginning substitute seniority dates, should have been retained at the end of the 1994-95 school year in the Secretary classification and which should have been reduced in force and placed on preferred recall.

DISCUSSION

W. Va. Code § 18A-4-8b states, in pertinent part:

> All decisions by county boards of education concerning reduction in work force of service personnel shall be made on the basis of seniority, as hereinafter provided.
>
> The seniority of any such personnel shall be determined on the basis of the length in time the employee has been employed by the county board of education within a particular job classification.
>
> . . .
>
> Should a county board of education be required to reduce the number of

> employees within a particular job 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 vacancy . . . .

Further, with regard to determining the seniority of service personnel, W. Va. Code § 18A- 4-8g states as follows:

> Seniority accumulation for regular school service employees shall begin on the date such employees enter upon regular employment duties pursuant to a contract as provided in section five [§ 18A-2-5], article two of this chapter and shall continue until the employee's employment as a regular employee is severed with the county board of education. . . .Seniority accumulation for substitute employees shall begin upon the date the employee enters upon the duties of a substitute as provided in section fifteen [§ 18A-4-15], article four of this chapter, after executing with the board a contract of employment as provided in section five, article two of this chapter. The seniority of a substitute employee, once established, shall continue until such employee enters into the duties of a regular employment contract as provided in section five, article two of this chapter or employment as a substitute with the county board is severed. Seniority of a regular or substitute employee shall continue to accumulate except during the timewhen an employee is willfully absent from employment duties because of a concerted work stoppage or strike or is suspended without pay.
>
> For all purposes including the filling of vacancies and reduction in force, seniority shall be accumulated within particular classification categories of employment as those classification categories are referred to in section eight-a [§ 18A-4-8e] of this article: Provided, That when implementing a reduction in force, an employee with the least seniority within a particular classification category shall be properly released and placed on the preferred recall list. The particular classification title shall not be taken into consideration when implementing a reduction in force.

This Code Section recognizes that substitute employees may acquire regular employment seniority and status if they are placed into a regular employment position pursuant to W. Va. Code § 18A-4-15, subsections (2) and (5). (See footnote 1) Finally, 8g speaks to the seniority of those employees who are multi-classified, in the following manner:

> School service personnel who hold multi-classification titles shall accrue seniority in each classification category of employment which said employee holds and shall be considered an employee of each classification category contained within his multi-classification title. Multi-classified employees shall be subject to reduction in force in any category of employment contained within their multi-classification title based upon the seniority accumulated within said category of employment: . .

As determined in Turley-Hurley, supra, Grievant Turley-Hurley was a regular employee holding the classification of Secretary when she was laid off pursuant to the Board's reduction in force at the end of the 1994-95 school year. The record also established that Grievant worked for forty days as a

"long-term substitute" during the 1993- 94 school year, after having received that assignment through the posting and bidding provisions of W. Va. Code § 18A_4-8b. Also, during the 1991-92 school year, Grievanthad been credited with regular employment seniority for a period of time spent substituting in a position vacated by a regular employee who had been injured on the job. The Administrative Law Judge found that, overall, Grievant had at least sixteen and one-half months of regular employment seniority in the classification of Secretary.

Both Ms. Varney and Ms. Sammons were given the classification title of Secretary as a result of the Board's review of their job duties and its subsequent decision to reclassify them effective September 1, 1994. Ms. Sammons had one complete year of seniority in the Secretary classification at the end of the 1994-95 school year.

Ms. Varney had worked in a regular secretarial position between November 16, 1986, and the end of the 1987 school year, prior to being removed from that position as a result of a grievance decision. The Administrative Law Judge found that Ms. Varney had approximately fifteen and one-half months of regular employment seniority in the Secretary classification at the end of the 1994-95 school year.

Ms. Hale had worked in a long-term substitute secretarial position for eight months and six days during the 1989-90 school year. She worked as a long-term substitute secretary for nine months and four days during the 1990-91 school year. She also worked as a regular, full-time secretary at Thacker Grade School from October 10, 1994 through the end of the 1994-95 school year, for a total of approximately eight months. Thus, Ms. Hale's total secretarial seniority was approximately twenty-five months and ten days at the end of the 1994-95 school year. (See footnote 2) It is clear that Ms. Hale had more seniority than Grievant or either of the Intervenors at the end of the 1994-95 school year. Therefore, out of the four secretarial employees employed by the Board, Intervenor Sammons and Grievant should have been reduced in force, while Intervenors Hale and Varney should have been retained in the two remaining secretarial positions at the end of the 1994-95 school year.

CONCLUSIONS OF LAW

Intervenor Hale has proven by a preponderance of the evidence that the Board violated the reduction in force provisions of W. Va. Code § 18A-4-8b when it terminated her employment at the end of the 1994-95 school year, because she had more seniority as a Secretary than Grievant or

Intervenors at that time.

Accordingly, this grievance is **DENIED** insofar as Grievant asserts any entitlement to retention in a secretarial position for the 1994-95 school year. Intervenor Hale's claims to entitlement to retention in a secretarial position for the 1994-95 school year are **GRANTED**. The Board is hereby **ORDERED** to correct the seniority and experience records of Grievant and Intervenor Hale to reflect that Intervenor should have been retained in a secretarial position at the end of the 1994-95 school year, and Grievant was properly reduced in force and placed on preferred recall at the end of the 1994-95 school year. The evidence presented establishes that Ms. Hale was employed for the entire 1995- 96 school year at Cline Elementary School, and thus she is not entitled to any back pay for the Board's error in reducing her in force at the end of the 1994-95 school year. Anyfurther claims for back pay past that school year would be speculative and the Grievance Board does not entertain requests for speculative relief.

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: April 8, 1998

Footnote: 1

These subsections provide that "long term substitutes" may, under certain curcumstances, receive the "rights, privileges and benefits" of regular employment if the regular employee has been absent from the position for greater than thirty days.

Footnote: 2

The Board seniority records introduced in this case contain some discrepancies. Thus, the lengths of seniority given for the claimants are approximate and not meant to be the final word on their respective lengths of seniority in the

secretarial classification with the Board. Because it is not necessary to establish the exact length of seniority to reacha conclusion in this case, the undersigned has not attempted to recreate each claimants' work record in this grievance.