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**RICHARD F. CRUCIOTTI**

**v.**

**Docket No. 35-86-110**

**OHIO COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Richard Cruciotti, a teacher retained by the Ohio County Board of Education on a continuing contract of employment, initiated this grievance at level one on October 29, 1985, and upon successive adverse findings and decisions has pursued his administrative remedy through an appeal to level four.

The parties have agreed to waive a level four evidentiary hearing and to submit the issues for a decision based upon the record with supplementary statements and documents.

Grievant has been employed by the Ohio County Board of Education for fifteen years. He holds a permanent Professional Certificate to teach Biological Science and Health & Physical Education, 7 through 12, and

a Middle Childhood Authorization (5 through 8), Biological Science. Advanced educational training includes a Master's degree plus thirty hours in Physical Education. He also took coursework in 1982 to qualify for his middle childhood teaching endorsement.

At the level two hearing conducted December 20, 1985 grievant testified that from approximately 1977 to the 1984-85 academic year his teaching assignment at Triadelphia Junior High School included courses for which he was not certified. In addition to life science classes, he was also directed to teach courses such as physical, general and earth science for which he had no educational preparation, and thus, was teaching out-of-field without proper certification.<sup>1</sup>

According to his testimony, he complained about the out-of-field assignments over the years, and thus, he, school officials and other staff were aware of the situation and his dissatisfaction with the on-going problem which, he claims, was never properly resolved. He also stated that he felt uncomfortable teaching courses for which he had not been trained to teach.

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For teaching purposes grievant's biological science certificate qualifies him to teach life science classes. Generally, science is a multi-faceted discipline which may require separate teacher training for its various diverse categories.

The situation came to a head in the fall of 1984 following an on-site review of Ohio County Schools by the West Virginia Department of Education. It cited the county upon its determination that grievant was teaching science courses for which he was not certified and directed the county to remedy the situation within twelve months. Subsequently, the then Personnel Director, Gerald Padfield, requested that the grievant sign a prepared application for First Class Permit and Substitute Teaching, General Substitute, Option 2.

The record reflects both parties believed the permit would be for only one teaching year, 1984-85. Uncontroverted testimony shows that grievant was told the one-year substitute permit was necessary to cure the county's problem for the funding of his position for the 1984-85 school year and make him legal. He was assured that signing the permit did not commit him to return to school for additional science certification. Accordingly, in reliance upon what he was told regarding the purpose and duration of such substitute permit, grievant signed the application in early January of 1985.

Mr. Clifford Bowers, teacher and Ohio County Education Association representative, corroborated grievant's statements. He testified that in his capacity as OCEA president he attended numerous meetings with various

school administrators between the months of December, 1984 and March, 1985. The purpose of the meetings was to discuss resolution of grievant's out-of-field teaching. On one occasion the grievant was also present and made known his position that he did not want to teach courses for which he was not educationally prepared nor take additional coursework to attain science teaching certification beyond his present biological science area, but that he preferred instead to be placed in a physical education teaching position.

Mr. Bowers testified that during one of their meetings when grievant was not present, Mr. Padfield indicated to him that attempts would be made to place grievant in-field and due to grievant's seniority, other staff could be bumped in order to accomplish a reassignment. Grievant also testified that he was promised in-field placement for the 1985-86 school year.

By letter dated March 1, 1985 grievant was notified that he was being considered for placement on the transfer list. He construed this action to be the first time corrective measures had been taken to resolve his out-of-field teaching, thus he made no protest. On March 27, 1985 he was informed that his placement on the Transfer and Subsequent Assignment list had been approved by

the board. Both letters stated "This action is necessary to assure that you will be teaching within your certified field. You will be notified as soon as possible regarding your assignment for the coming year".<sup>2</sup>

On July 24, 1985 grievant was notified that the board had approved his recall from the transfer list and reassigned him to Triadelphia Junior High School for the 1985-86 school year. His schedule included the objectionable out-of-field science classes for which he had no educational training. Sometime in August, grievant testified, the science coordinator called him and said that he could be laid off as a result of his failure to obtain additional science certification. The subject of his Triadelphia teaching schedule and the substitute permit is again found in letter dated September 6, 1985 to grievant from Patricia Hannah, the personnel director who replaced Mr. Padfield. Her letter contained reference to not a one-year but instead a three-year substitute permit that grievant held.

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At the hearing grievant said he did not know he had to apply for a job while on the transfer list; rather he thought he would be assigned in-field placement to wherever the board wanted to send him. Accordingly, he had not responded to a vacancy announcement for a biology teaching position at Wheeling Park High School sent to him by the board in late June as he was on vacation at that time and was not aware of the job.

She notified grievant that although state education officials were of the opinion that the substitute certificate should not have been issued to him, it was valid until June, 1987 enabling him to teach on it until then. She also noted that he still needed to begin taking hours toward his General Science certification.

Grievant alleges the school board's actions violate W.Va. Code, 18A-3-1 and 18A-2-1. Code, 18A-3-1 mandates that all educators must hold a valid certificate licensing them to teach in the specialization and grade levels shown on their certificate. 18A-2-1 provides that the employment and subsequent assignment of professional personnel shall meet certification requirements of state law and state board regulation. Grievant further contends the board's use of him as a general substitute teacher contravenes State Board of Education Policy 5114 and jeopardizes his employment status. For relief he asks that the board honor its promise and assurances to him that he be placed in field and assigned and scheduled to teach only those subjects for which he is certified by virtue of appropriate educational and training requirements.

The school board did not refute grievant's allegation of long standing out-of-field assignments, but pointed out that grievant himself took no affirmative remedial action such as a formal written request for transfer or reassignment. Testimony revealed, however, that

grievant had asked to be notified of physical education openings and in 1983 he had applied for an available position teaching physical education. He was told that he lacked the additional athletic trainer certification required for that position and therefore was not selected. Such decision seems inconsistent in light of the fact that he was not certified to teach certain of his science courses when he applied for the physical education position.

The board also contested grievant's allegations that school officials did nothing to remedy his out-of-field teaching situation. It introduced correspondence initiated by Mr. Padfield after its citation by the state "in addition to grievant, two other science teachers were teaching out-of-field". The several letters, commencing in December, 1984 and continuing into the summer months, were in regard to possible science programs and courses at a local college and establish that school officials did attempt to assist its teachers to obtain additional science certification. These efforts could not pertain to grievant, however, since unrefuted testimony establishes that Padfield assured him that his application for the substitute teaching permit for the 1984-85 school year did not commit him to a scholastic program to pursue additional science certification.

The board further argues that it made grievant no promises regarding in-field placement for the school year, 1985-86. At the level two hearing the board presented a letter dated December 11, 1985 from Mr. Padfield to Frank Dumas, Assistant Superintendent. The former personnel director referred to a recent telephone conversation between himself and Mr. Dumas and denied that he promised grievant placement in his field of certification for the current year, rather, "...I continually told him we would attempt to place him in his field of certification."<sup>3</sup>

Finally, the board argues that it is in full compliance with regulations regarding the use of substitute teachers. The board cites State Board of Education Policy 5114, "Option 2: Any available individual who holds a valid Professional Teaching Certificate... but not within the endorsement area needed may be issued a Substitute Permit...".

<sup>3</sup> Neither Mr. Dumas nor Mr. Padfield were available for testimony and the letter was admitted over grievant's objection. As to the weight given to the content of the letter, this examiner sees little distinction between assurances, promises or continuous pronouncements of attempts that grievant would be placed in-field. All of these things could lead grievant to believe he would be placed in-field for the 1985-86 school term even though he had nothing in writing until the transfer letters in March, 1985 to support his belief.



The board also relies on a July 24, 1984 amendment to the policy wherein the permit, "will be issued until the expiration of this policy (June 20, 1987)". Thus, the board contends, its reassignment and placement of grievant for the 1985-86 teaching year was valid and proper.

These arguments are not well taken in light of the board's failure to heed other salient aspects of the policy and other authority which clearly and repeatedly mandate the showing of staff and instructional need for the employment of a substitute teacher in the county.<sup>4</sup> Pertinent portions of policy 5114 ignored by the board include: "The purpose of the substitute teacher policy

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<sup>4</sup> W.Va. Code, 18A-2-3 provides that a county board shall have authority to employ and assign substitute teachers for an absent teacher, and, "The authority granted the Superintendent, subject to the approval of the state board of education, to issue other teacher permits is intended for the licensing of teachers having less than the requirements for the professional certificate, a power which was designed to meet the exigencies of a teacher shortage". (emphasis added) 51 Op. Attn'y Gen. 676 (1966).

is to provide for emergency instructional situations...caused by...staffing shortages;" "Individuals are not entitled to such permits except as the county superintendent establishes the need for the individual to be employed"; and, "In all cases, it is understood that a qualified individual who holds a valid Professional Certificate endorsed for the areas of need cannot be found". At no time has the county made a showing of need for its use of grievant in the 1985-86 school year. Policy 5114 provides for the short term use of substitutes for emergency staffing situations but also "provides for the systematic professional development of the substitute teacher". Grievant did not agree to sign an application for a substitute teaching permit in order to pursue additional certification in science and school administrators knew it.

There is no doubt but that past actions of the board regarding grievant's longstanding out-of-field placements were violative of state law. When the board placed grievant on the transfer list in March, 1985, it provided a means to correct that violation. The board has offered three different reasons for placing grievant on the transfer list: As shown above, twice grievant was informed "...to assure you will be teaching within your certified field". In the level two appeal decision rendered January 17, 1986 the hearing examiner found, "This was done because Mr. Cruciotti needed six hours (6) of approved credits

to upgrade his teaching certificate". Still another reason for the action can be found in the board's brief filed April 9, 1986, "...because the State Department of Education had not yet approved the general permit". The West Virginia Supreme Court has concluded that a school board could not adopt inconsistent positions regarding its actions in a law suit or succeeding law suits when the factual circumstances had not changed. Dillon v. Mingo County Board of Education, 301 S.E.2d 588 (W.Va. 1983).

That durable principle is applicable to this controversy.<sup>5</sup> But for an amended state policy of which the parties had no prior knowledge, the board would have placed grievant in-field for the 1985-86 school year as school administrators had assured, promised and indicated, verbally and in writing, during negotiations and when he was placed on the transfer list in March, 1985. The reassignment of grievant to Triadelphia perpetuated the unlawful long standing out-of-field violations, and was clearly an act of bad faith on the part of the board.

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<sup>5</sup> In the course of this controversy no facts changed except grievant was issued a three-year instead of a one-year general substitute teaching permit. The board could not foresee that grievant would be issued a three-year permit, thus its action placing grievant on the transfer list could have had no other purpose than to subsequently employ and assign him an in-field position.

The unnecessary use of a substitute teacher in a county school who objects to and feels uncomfortable teaching out-of-field classes cannot benefit either the teacher or the students of that county and ignores the spirit and intent of Policy 5114 and other law. "School authorities have a duty to screen the fitness of its teachers to maintain the integrity of its schools."

James v. W.VA. Board of Regents, 322 F.Supp 217 (S.D. W.Va.), aff'd, 448 F.2d 785 (4th Cir. 1971).

Upon the request of this examiner, Mr. Frank Dumas, assistant superintendent, provided a report received by the Ohio County Schools following the April, 1986 revisitation by the State Department of Education. The school system was found to be in full compliance in that all teachers were in-field or otherwise held valid (substitute) permits. Noted in the report was that two science teachers had completed coursework leading to certification.<sup>6</sup>

Notwithstanding the full compliance report, this examiner finds and concludes the grievant has proven that the school board's action regarding his 1985-86 placement to be in bad faith, counterproductive to educational goals and therefore wrongful.

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<sup>6</sup> While the examiner has taken the report into consideration, the weight of that evidence must be balanced against the possible negative impact upon the students who are ultimately affected by the use of a substitute teacher who does not feel qualified to teach them.

### FINDINGS OF FACT

1. Grievant has been employed by the Ohio County Board of Education for fifteen years and is permanently certified to teach biological science and health and physical education, 7-12.

2. For approximately 8 years while at Triadelphia Junior High School grievant was directed to teach a number of science classes, some for which he was duly certified and some for which he was not. Over the years grievant complained informally about the out-of-field assignments but school officials did not remedy the situation.

3. Grievant did not make written request for transfer or reassignment but asked to be notified of physical education openings and applied unsuccessfully for one such position in 1983; he was told he lacked requisite additional athletic trainer certification.

4. In the fall of 1984 Ohio County Schools was cited by the State Board of Education for placing grievant out-of-field and was given one year to remedy the situation.

5. The out-of-field placement was cured in the middle of the 1984-85 teaching year and supposedly for that year only, when grievant was asked and agreed to sign an application for a one-year substitute teaching permit.

6. The board's former personnel director and others led grievant to believe that he would be placed in-field by way of transfer for the 1985-86 school year due to his seniority in the county and his stated wishes not to pursue coursework for additional science certification.

7. In March, 1985 grievant was duly and properly placed on a transfer list with reason given "to assure that you will be teaching within your certified field".

8. Due to state policy change unknown to the parties, grievant was issued a three-year substitute teaching permit instead of the one-year permit the parties thought would be forthcoming.

9. At some time after it received notice of the three-year permit, the board did not honor its assurances to grievant to place him in-field but on July 26, 1985 removed him from the transfer list and reassigned him to teach the courses for which he was not educationally prepared.

10. Though county schools are in compliance according to state board conclusions, the county board's use of grievant as a substitute teacher was done in bad faith and does not serve the needs of either teacher or students.

## CONCLUSIONS OF LAW

1. West Virginia School laws and regulations require a county board of education to assign its teachers to instruct only those courses for which the teacher is fully and appropriately certified unless certain instructional and professional considerations justify otherwise.

2. The use of short term out-of-field substitute teachers is proper for demonstrated emergency situations but prolonged out-of-field substitute teaching assignments are only justified upon showing of need and when the substitute teacher agrees to pursue a program of professional growth leading to permanent certification in the out-of-field discipline.

3. A board of education cannot force a teacher holding permanent certification in one discipline to obtain additional certification for another discipline of which he or she has no interest or inclination.

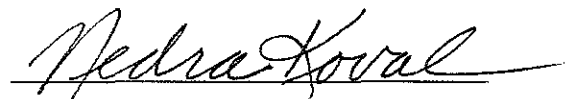
4. In the course of a controversy, a county board of education cannot give conflicting reasons to justify its prior administrative actions.

5. School authorities have a duty to maintain the integrity of its school.

6. School personnel laws and regulations are to be strictly construed in favor of the employee.

For all of the foregoing reasons it is ordered and directed that the Ohio County Board of Education assign grievant to teach only those courses for which he is fully certified by virtue of educational preparation. It appears that this assignment should be accomplished by transfer into another position such as physical education for which grievant desires and is abundantly qualified, or via scheduling modifications in his present science teaching position in which all out-of-field classes are eliminated.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Ohio County and such appeal must be filed within thirty (30) days of receipt of this decision. (Code, 18-29-7) Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

A handwritten signature in cursive script, reading "Nedra Koval", written over a horizontal line.

NEDRA KOVAL  
Hearing Examiner

Dated: Sept. 4, 1986