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TONY AUDIA

v.

DOCKET NO. 17-87-127-2

HARRISON COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Tony Audia, is employed by the Harrison County Board of Education as a bus operator. On March 24, 1987 Mr. Audia filed a grievance in which he alleged that, as the most senior applicant, he was entitled to the position which had been posted for bus number 127. The Director of Transportation notified the grievant that the board of education abolished the position "...in an effort to preserve positions for employees affected by a reduction in force". The grievance was denied following an evidentiary hearing held at level two and the board of education waived consideration to level four where both parties agreed to submit the matter for consideration based upon the record. The board of education also submitted a final written memorandum on June 22, 1987; the grievant indicated any further submission would be unnecessary but has requested that a letter of April 27, 1987 to Mr. Frank S. Perri, President of the Harrison County Board of Education, be considered.

Both parties have stipulated to the following facts: that a position identified in the level one grievance statement as SP-87-128 was posted on March 24, 1987 as SP-87-129 and that it had previously been posted on February 20 and March 4; that the grievant, a bus operator with eight years seniority, bid on the position; that the grievant was the most senior employee holding the classification of "bus operator" to bid on the position; that the board of education rescinded the posting on March 20, 1987; that another service employee who was at that time classified in a maintenance position was transferred to the position as part of a reduction in force on March 20; and that the transferred employee had earned fourteen years seniority as a bus operator.

The grievant argues that the board's action was in violation of W. Va. Code, 18A-4-8b which requires that a posted vacancy be filled within 20 days and requires that regularly employed service personnel be given first consideration for vacant service personnel positions. The grievant asserts that the transferred employee remained assigned to the maintenance department and that the reduction in force will not be effective until July 1, 1987. He further interprets "regularly employed school service personnel" to mean that service employees within the advertised job classification are to be given first consideration. As

the transferred employee remained employed by the maintenance division the grievant argues that he was entitled to the advertised position and that his present assignment would be available for transferred employees.

The board argues that in cases of a reduction in force the latter part of W. Va. Code, 18A-4-8b applies. That section requires that the employee with the least amount of seniority in a classification be released and employed in a different grade of that classification. If no vacancy exists in another grade of the same classification the individual shall be employed in any other job classification which he has previously held and retains any seniority accrued in such classification. As the transferred employee was to be terminated from the maintenance department the board was required to transfer him into a vacancy existing in a classification in which he had previously been assigned.

In addition to the foregoing it is appropriate to make the following specific findings of fact and conclusions of law.

Findings of Fact

1. On February 20, 1987 the respondent board of education posted a vacancy for the position of bus operator, which included

the Posting Number SP-87-128 for bus number 127, that it was a six hour run and the itinerary. Due to an error in the posting number the position was reposted on March 4 as SP-87-129 for bus number 126, that it was a six hour run and the itinerary. Due to an error in the bus number the position was posted for the third time on March 9 as SP-87-129 for bus number 127, that it was a six hour run and the itinerary.

2. The grievant submitted a bid sheet for the position on February 24, 1987. He was the most senior employee classified as a bus operator to submit a bid.

3. On March 20, 1987 the board of education rescinded the posting and transferred an employee assigned at that time to the maintenance division and who was scheduled for termination due to a reduction in work force to the advertised position.

4. The transferred employee had served as a bus operator for 14 years prior to accepting his present position in the maintenance division.

5. The record is unclear as to whether the transfer was to be effective July 1 or March 20, 1987.

Conclusions of Law

1. The superintendent, subject only to the approval of the board shall have the authority to transfer school personnel

within the guidelines of W. Va. Code, 18A-2-7.

2. Service employees released from employment due to a reduction in work force shall be employed in a different grade of that classification, or, if there is no vacancy, he shall be employed in any other previously held job classification if there is a vacancy. W. Va. Code, 18A-4-8b.

3. A board of education may rescind a position posting when statutorily required to fill the position through the transfer of another employee necessitated by a reduction in work force.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Harrison County and such appeal must be filed within thirty (30) days of receipt of this decision. (W. Va. 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.

DATED

July 8, 1987

Sue Keller

SUE KELLER
Hearing Examiner