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**DOMINICK BRUNETTI and
WILLIAM CALOCCIA**

v.

**DOCKET NOS. 17-87-149-2
17-87-151-2**

HARRISON COUNTY BOARD OF EDUCATION .

DECISION

Grievants, Dominick Brunetti and William Caloccia, were employed by the Harrison County Board of Education as industrial arts teachers through the 1986-87 school year. In June, 1987 they filed level four grievances in which they alleged that their contracts had been terminated as a result of favoritism and discrimination, violations of due process and contractual rights regarding the reduction in force procedure. Both parties agreed that an evidentiary hearing was unnecessary and that a decision was to be rendered on briefs and exhibits.

As part of a reduction in force effective the 1987-88 school year the board of education eliminated four industrial arts positions. In March the grievants received notification from

Superintendent Robert Kittle that he would recommend their termination as part of the reduction in force. Following a hearing held on March 24 the board of education apparently accepted the recommended terminations.¹

The grievants characterize the proceedings of March 24 as a "group hearing" violating their due process rights by ignoring individual differences and the unique nature of each employee's situation.

The board denies that a "group hearing" was conducted. While the board's witnesses presented their testimony only one time, each of the affected employees was granted the opportunity to cross-examine and to present their own cases in support of their positions. As the positions were interrelated, the board asserts that this procedure was the most efficient as it avoided needless repetition of testimony by the administrative witnesses without depriving the employees of any due process rights.

The grievants allege that the board exhibited favoritism and failed to apply W.Va. Code, 18A-4-8b uniformly when it preserved employment for individuals in the field of art by

¹Neither the board minutes nor letters of notification were submitted to document this occurrence.

forcing a teacher into a second field of certification while no such action was taken in the field of industrial arts even though several teachers with greater seniority possess additional areas of certification. They also argue that the board has an obligation to attempt to retain individuals employed under continuing contract and that probationary employees should be released first, whenever possible.

The board denies that any special action was taken to preserve employment of individuals in the area of art and asserts that to transfer more senior employees while leaving the grievants in industrial arts would violate the reduction in force procedure mandated by W.Va. Code, 18A-4-8b and county policy GBM.² Both require that the least senior teacher be terminated unless they have another area of certification and can bump a less senior employee teaching in that field. Neither of the grievants have a second area of certification.

²According to the board the art teacher in question, Ms. Jackson, was placed on the reduction in force list when her position was reduced to half-time. The position of the board was that the reduction in force would be implemented through attrition when possible. As there were no vacancies in the area of art but there was a TMI vacancy for which she was certified, Ms. Jackson was laterally transferred.

The grievants allege favoritism and violation of equal protection of the law when preferential treatment was afforded employees of the United Career Center (a tri-county vocational school located in and serving Harrison County as well as Doddridge and Taylor counties). The grievants assert that they have more seniority than several employees of the Center who teach industrial arts and that the Center employees should have been included in the reduction of force as their names are included on the Harrison County Board of Education master seniority list, the Center is listed under Harrison County Schools in the West Virginia Department of Education Directory and the Center Director is in charge of all vocational programs in the Harrison County School System as indicated in the Administrative Manual.

The board argues that the only direct and legal relationship between itself and the Career Center is that it serves as fiscal agent by maintaining its financial accounts. Responsibility for the Center's administration, operation and maintenance lies with the State Board of Vocational Education. Instructors at the Center are employed by the State Board of Vocational Education and the Administrative Council for the United Career Center and may not be considered in a county reduction in force.

In addition to the foregoing the following shall serve as specific findings of fact and conclusions of law.

Findings of Fact

1. Grievants were employed by the Harrison County Board of Education as industrial arts teachers during the 1986-87 school term.

2. Superintendent Robert Kittle notified the grievants in March, 1987 of his intent to recommend their termination as part of a reduction in force which eliminated four industrial arts positions.

3. At a hearing conducted by the board on March 24, the administration presented the testimony of its witnesses after which each grievant was permitted to cross-examine and present their cases.

4. By forcing more seniored industrial arts teachers who possessed additional certification into other areas the grievants could have retained their positions.

5. Instructors assigned to the United Career Center, a tri-county vocational school located in Harrison County, were not considered for termination as part of the reduction in force.

6. Grievants were the least seniored industrial arts teachers and neither possessed a second area of certification.

Conclusions of Law

1. During a reduction in force a county is required to release the employee(s) with the least amount of seniority. W.Va. Code, 18A-4-8b.

2. A hearing conducted by the board consisting of testimony presented by the administration followed by each similarly situated grievant being given an opportunity to cross-examine and to present their own cases was in compliance with W.Va. Code, 18A-2-8 and met the essential requirements of pretermination due process as set forth in Cleveland Board of Education v. Loudermill, 105.5 S. Ct. 1487 (1985).

3. "Establishment Procedures and Operating Policies for Multi-County Vocational-Technical Centers" developed to implement area vocational programs established by W.Va. Code, 18-2B-2 provides that each center shall be administered by an administrative council which shall employ professional personnel upon the recommendation of the center director. As these individuals are employees of the center and not a county board of education they may not be included in a county reduction in force.

4. The termination of the grievants was proper and in compliance with W.Va. Code, 18A-4-8b and 18A-2-8.

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 November 23, 1987

Sue Keller

SUE KELLER
Hearing Examiner