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**LAWRENCE MARTIN**

**v.**

**Docket No. 26-87-156-3**

**MASON COUNTY BOARD OF EDUCATION**

**DECISION**

Lawrence Martin, grievant, is employed by the Mason County Board of Education as an assistant principal. Pursuant to W.Va. Code, 18A-2-7 he and several other principals were placed on a transfer list in contemplation of a staff reorganization and reduction of principals. In anticipation of possible transfer Martin filed a grievance challenging the propriety of the board to place him on the transfer/subsequent assignment list. The grievance was waived to level four and a transcript of the proposed transfer hearing was made a part of the record. A de novo evidentiary hearing at level four was conducted July 7, 1987.<sup>1</sup>

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<sup>1</sup> Proposed findings of fact and conclusions of law were filed by the respondent July 9, 1987 and grievant Martin's counsel tendered proposals which were received July 27, 1987. A companion case, John Oshel v. Mason County Board of Education, Docket No. 26-87-136-3, has been adjudicated simultaneously and decisions therein have some bearing on the instant grievance.

In this grievance there are no facts in dispute and the legal issues involve a determination of a principal's seniority for purposes of job retention in that capacity.

For budgetary considerations, school officials in Mason County conducted an administrative reorganization and, as a result, a secondary principal's position was to be eliminated. That principal, Richard Haycraft, has superior seniority over some other principals in Mason County, therefore, one principal or assistant principal may ultimately be "bumped" from his or her position. Grievant herein, along with some other principals and assistant principals, was placed on a transfer/subsequent assignment list. This action was taken notwithstanding the respondent's belief that a principal's seniority for that position occurs when he is first hired by a board of education regardless of what capacity for which the initial employment was made, teacher or principal, or whether or not the principal was duly certified as a principal at the time of the initial hiring. The respondent states that the assistant principal's position held by grievant is not in jeopardy since another principal, John Oshel, had the least seniority of all principals, assistant principals included. The instant grievance proceeded to level four in the event a determination of John Oshel's grievance would threaten the position of grievant Martin herein.

In John Oshel v. Mason County Board of Education, Docket No. 26-87-136-3, this Board determined that Principal Oshel was not the least senior principal in Mason County and should not be displaced in a principals "bumping" situation.

The controlling statute determinative of Oshel and this grievance is W.Va. Code, 18A-4-8b(a) and in pertinent part, provides:

The seniority of professional personnel shall be determined on the basis of the length of time the employee has been professionally employed by the county board of education. For purposes of establishing seniority as hereinafter provided, when an employee holds valid certification or licensure in one or more areas, the seniority shall accrue in each area. (Emphasis added).

...  
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.

Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority shall be properly notified and released from employment.... Provided, that such employee shall be employed in any other professional position where he had previously been employed or to any lateral area for which he is certified and/or licensed.

A principal's seniority for that position begins on the date he or she is hired in a county as either a teacher or principal, if holding a principal's certificate, or when he or she attains the principal's certificate, whichever is more recent in time. This is the holding of the State Superintendent of Schools and is repeated in numerous interpretations and advisories but with a caveat that a teacher cannot accrue seniority as a principal until he or she has actually been hired in that administrative position. Only then can the seniority accrue as set forth in the rule above.

Whether the grievant's position is threatened is dependent upon an analyzation of the particular circumstances of his employment with the board of education both as a teacher and as a principal of some sort. Grievant was hired for the 1970-71 school year as an elementary teacher, a teaching area for which he was not certified. He continued in the employment until the 1974-75 school year. From 1974-75 through the end of the 1981-82 school year, grievant was professionally employed variously as a vice-principal, administrative head, assistant principal (three years), teacher-assigned as vice-principal, again as vice-principal and teacher-assigned as administrative assistant. During school years 1982-83 and 1983-84 grievant spent one half day at Point Pleasant Junior High School as a physical education teacher and served as an administrative assistant at Point Pleasant Senior High School in the afternoon, where he was assigned duties by the principal at the high school. Much of grievant's employment maneuvers over the latter years represented his efforts to comply with State Department of Education requirements for permanent certification in secondary education and administrative certification as a secondary principal.<sup>2</sup> His principal's certificate is dated July 1, 1983 and is identical to that of another assistant principal.

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<sup>2</sup>The record contained numerous documents relating to grievant's employment history and the State's refusal to issue certain certifications until he completed certification requirements. At that time he had not yet accomplished the required classroom teaching in the appropriate secondary grade level.

Grievant's counsel advances a theory of how a principal's seniority is determined which differs from that of the respondent board of education or from the determination made by this Board in the Oshel grievance. His argument is that the seniority of professional administrative personnel accrues the later date of county employment as an administrator or date of certification and gave the dates of several State Superintendent's opinions to support his position.<sup>3</sup>

Grievant's counsel points out that prior to 1975 principals were not required by law to hold any certification other than a teaching certificate and prior to 1981 assistant principals were not required to hold any certification other than a teaching certificate. He argues that W.Va. Code, 18A-2-9 cannot be applied retroactively to deny accrued seniority to professional administrative personnel, thus, grievant's principal's seniority should date from when he was first employed as an administrator. Citing no authority other than his own opinion counsel overlooks a significant portion of the statute, "[n]othing contained in this section shall be construed to reduce or limit the rights and privileges of principals as teachers...." (Emphasis added). Thus, the requirements of the statute are clear and only the rights of principals as teachers are preserved.

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<sup>3</sup> Only two of those opinions cited were found as a part of the record of the case. Counsel misread one opinion, that of February 25, 1985, and the January 13, 1987 opinion was not relevant as the pronouncement alluded to promotions for school administrators and did not clearly indicate what type of administrative positions were being considered.

Interestingly the former opinion noted that when a professional employee has been employed in certain administrative positions for which there are no certification requirements, he does not gain any seniority for the position.

In addition to the foregoing recitation the following specific findings of fact and conclusions of law are incorporated herein.

#### FINDINGS OF FACT

1. The grievant, Lawrence Martin, was employed by the Mason County Board of Education as Assistant Principal at Point Pleasant High School prior to being placed upon the transfer/subsequent assignment list.

2. School administrators of the board of education determined that a reorganization of the central office/administrative staff was necessary to cut cost and stay within the 1987-88 budget, created as the result of an alleged short-fall of revenues. As part of the reorganizational plan, Richard Haycraft's position as Principal at the Mason County Vocational Center was targeted for elimination.

3. The board of education determined that Principal John Oshel was the least senior of the secondary school principals and he was therefore placed upon the transfer/subsequent assignment list and earmarked to lose his position at Hannan High School to Richard Haycraft.

4. School law provides that when a professional employee employed by a board of education holds valid licensure or certification in one or more areas, seniority shall accrue in each area. The State Superintendent of Schools has determined that a principal's seniority as a principal accrues on the date of his initial employment with a board of education in any capacity, if a principal's certificate was held at that time, or when she or he attained a principal's certification, whichever is most recent in time; however, he or she may attain no principal's seniority on that basis until an initial employment as a principal.

5. Principal Richard Haycraft is senior to Principal John Oshel but Oshel is senior to Principal Jim Reymond. Therefore, Oshel is not the least senior principal in Mason County and he should not be displaced or transferred from his principalship at Hannan High School. It is possible then that another principal or assistant principal in Mason County may be bumped in a RIF action, including grievant Martin.

6. The grievant, Lawrence Martin, was first employed in Mason County on May 19, 1970 as an elementary classroom teacher, an area for which he was not certified; he continued teaching out of field for several years.

7. Grievant was employed as vice-principal at Point Pleasant High School on July 25, 1974 but did not hold an administrator's certificate for the position; the date of his principal's certificate is July 1, 1983. In subsequent years grievant's employment was categorized as assistant principal, vice-principal, administrative head or administrative assistant. For the school years 1982-83 and 1983-84 grievant was a half-time secondary teacher and half-time administrative assistant and State Department of Education officials prohibited him from employment as a assistant or vice-principal.

8. When grievant was given his first assignment as assistant or vice principal, there was no statutory requirement that an assistant principal be certified. In 1981, W.Va. Code, 18A-2-9 was amended to compel such certification for employment of assistant principals. The amendment could only be perceived as a legislative attempt to correct abuse and require all principals to hold proper administrative certification, the requisites of which were already in place by the State Department of Education.

9. There is no requirement of law or policy to accord seniority to a principal for employment years in that capacity when proper certification was not held by the professional employee and the exact status of the employee as an administrator is ambiguous and not constant. Grievant's seniority as a principal began to accrue from the date he attained his principal's certificate, July 1, 1983.



10. The assessment of grievant Martin's seniority for the position of principal must be determined in accordance with law, regulations and the interpretations of the State Superintendent of Schools.

#### CONCLUSIONS OF LAW

1. Pursuant to W.Va. Code, 18A-4-8b(a) a professional employee of a board of education accrues seniority in multiple areas when such certification or licensure is held or attained.

2. Interpretations of school law made by the State Superintendent of Schools are considered as persuasive authority in the grievance procedure unless such decisions are clearly wrong. Raymond Dunleavy v. Kanawha County Board of Education, Docket No. 20-87-040-1.

3. An interpretation by the State Superintendent of Schools is considered as persuasive authority and will be applied unless clearly erroneous. Smith v. Logan County Board of Education, 341 S.E.2d 685 (W.Va. 1985); Billy A. Moore v. Fayette County Board of Education, Docket No. 10-86-137-1; Truman Thompson v. Kanawha County Board of Education, Docket No. 20-86-366-1.

4. The grievant has failed to prove by the probative evidence, law or policy, any basis upon which to grant the relief he seeks and to remove him from the transfer list until matters regarding possible RIF actions are concluded.

Accordingly, the grievance is **DENIED** and grievant Martin's computation of seniority for the purposes of retention as a principal must not be inconsistent with the findings and determinations above.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mason 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:

August 29, 1987

Nedra Koval

NEDRA KOVAL  
Hearing Examiner