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JOHN OSHEL

Docket No. 26-87-136-3

BRUCE FAULKNER

Docket No. 26-87-158-3

v.

MASON COUNTY BOARD OF EDUCATION

DECISION

Grievants, John Oshel and Bruce Faulkner, are employed by the Mason County Board of Education as a principal and "supervising" assistant principal, respectively. Pursuant to W.Va. Code, 18A-2-7 they were placed on a transfer list in contemplation of a staff reorganization and reduction of principals. In anticipation of transfer Oshel filed a grievance challenging the board's determination of his seniority and Faulkner filed a grievance in anticipation of possible transfer. The grievances were waived to level four and a transcript of the proposed transfer hearings were made a part of the record. A de novo hearing at level four was conducted July 7, 1987.¹

¹Proposed findings of fact and conclusions of law were filed by the respondent July 9, 1987 and grievant Oshel's were received July 23, 1987.

In these grievances 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.²

Oshel, who is certified for secondary principalship, and Faulkner, certified for an elementary principalship, posit that 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.³ 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.

The school board and school officials' belief is 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

² A third grievance was filed by yet another Mason County principal and although the legal issues are similar, there are extenuating circumstances attendant to the dispute which compel a separate adjudication. See, Lawrence Martin v. Mason County Board of Education, Docket No. 26-87-156-3.

³ Subsequent to his placement of the transfer list, grievant Faulkner was rehired as an elementary principal and thus, his grievance complaint is moot and does not require a specific determination herein.

at the time of the initial hiring. Respondent's reliance on a January 14, 1986 state superintendent's decision which they believe supports their position is not persuasive.⁴

The controlling statute determinative of 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.

The respondent board offers no precedent or argument of law to support its position and the plain language of the statute clearly states that a professional employee's seniority for multiple areas

⁴The superintendent defines seniority and cites W.Va. Code, 18A-4-8b(a): "This means that, for all purposes, a professional employee's seniority begins with her (or his) initial date of employment as recorded in the minutes of the county board of education." This particular statement may appear to be in conflict with the numerous other advisories regarding a principal's seniority for that position but the opinion responds to a question regarding initial hiring dates and makes no mention of or distinction for professional employees with multi-certifications in teaching disciplines, grade areas, administrative certificates or the like. Therefore, its usefulness in the instant case has little or no value.

shall only accrue when certification is held. Moreover, interpretations 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.

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, John Oshel, was employed by the Mason County Board of Education as Principal at Hannan High School prior to being placed upon the transfer/subsequent assignment list.

2. The grievant, Bruce Faulkner, was employed by the Mason County Board of Education as a Supervising Principal at Hannan Elementary School prior to being placed upon the transfer/subsequent assignment list. He has been rehired to that position for the 1987-88 school year and his particular grievance is moot.

3. 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.

4. As part of the reorganizational plan, Richard Haycraft's position as Principal at the Mason County Vocational Center was to be eliminated.

5. The board of education determined that grievant 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.

6. 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 professional employee currently employed as a principal began to accrue principal's seniority 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.

7. The numerous interpretations of the State Superintendent of Schools attempt to determine a principal's seniority, for job retention purposes, under various employment circumstances. Expanded and stated another way:

(1) When a professional employee is initially hired by a board of education as a principal, principal seniority accrues from the initial date of hiring if the individual held a principal's administrative certificate at that time. If the individual was not certified as a principal, seniority will only begin to accrue when the certification is attained (seniority begins on the date the certificate was issued).

(2) When a professional employee is initially hired by a board of education as a teacher but is later employed as a principal, the individual will accrue principal's seniority retroactively from the date of the initial hiring in the county if a principal's certificate was held at that time. If at the time of initial employment the principal did not hold a principal's certificate, that principal's seniority as a principal will then accrue from the date when a principal's certificate was attained and issued.

(3) No professional employee of a board of education can attain principal's seniority, even if the principal's certificate is held, until an initial employment as a principal by that board of education and then rule two (2) would apply.

8. Richard Haycraft was first employed in Mason County on July 27, 1967 as a classroom teacher; he was first hired as a principal on June 30, 1975. The date of his administrative certificate was July 1, 1973. Haycraft held a principal's certificate in 1973, was hired as a principal in 1975, thus his principal's seniority begins July 1, 1973.

9. The grievant, John Oshel, was first employed in Mason County on July 11, 1975 as a classroom teacher and employed as a principal on May 2, 1983. He was issued an administrative certificate by the West Virginia Department of Education on August 14, 1964 and was so certified upon his initial employment with the board of education, thus his principal's seniority tolls from the date of his initial employment, July 11, 1975.

10. Jim Reymond was first employed in Mason County on August 12, 1969 as a classroom teacher. He was employed as an Assistant Principal on July 25, 1983, and his administrative certificate is dated December 20, 1980. Reymond's seniority as a principal begins on that date in 1980.

11. Principal Haycraft is senior to Grievant-Principal Oshel but Oshel is senior to Principal Reymond. Therefore, Oshel is not the least senior principal in Mason County and is not subject to displacement from his principal's position at Hannan High School in the event of the elimination of Haycraft's principalship at the vocational center.

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.

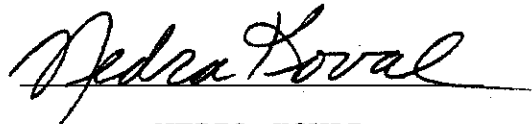
3. An interpretation by the State Superintendent of Schools is considered as persuasive authority and will be applied unless clearly erroneous. Smith v. Logan County Board of Education, 341 S.E.2d 685 (W.Va. 1985); Billy A. Moore v. Fayette County Board of Education, Docket No. 10-86-137-1; Truman Thompson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

Accordingly, the grievance of John Oshel, Docket No. 26-87-136-3 is GRANTED.

Although the grievance of Bruce Faulkner, Docket No. 26-87-158-3 has been deemed moot, his seniority as an elementary principal shall be computed in the manner set forth in this decision.

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 20, 1987

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

NEDRA KOVAL
Hearing Examiner