



**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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THOMAS J. WHEELER, JR.

vs.

DOCKET NO. 42-86-055

RANDOLPH COUNTY BOARD OF EDUCATION

DECISION

Thomas J. Wheeler, Jr. the grievant, has been employed by the Randolph County Board of Education since 1969 and has held the positions of teacher, assistant principal, principal and Co-ordinator of Personnel, Attendance, Adult Basic Education and G.E.D.. Mr. Wheeler had been assigned to the coordinator position for six years prior to his termination as a result of a reduction in work force.

Upon his release, Mr. Wheeler was placed on a preferred recall list as is required by W. Va. Code, 18A-2-2. Subsequent to this action two administrative positions became vacant: the principalship at Pickens School and the assistant principalship at Tygarts Valley High School. The grievant requested the position of assistant principal but was informed by the superintendent that the only position he was entitled to was the principalship at Pickens School. Due to the location of the school the grievant felt the travel involved would create a hardship and declined that position.

The grievant was later offered, and accepted, a position for the 1985-86 school year as a full time substitute teacher reporting to Elkins Junior High School. In addition, the grievant would continue his assignment as supervisor of the A.B.E. and G.E.D. programs after school hours.¹ The grievant and superintendent agreed, in writing, that he would remain on the preferred recall list for an administrative position.²

In November, 1985, Mr. Wheeler received a letter from Assistant Superintendent White noting that the grievant remained on the preferred recall list for an administrative position and that the principalship of Tygarts Valley High School was being posted. The grievant notified the Assistant Superintendent that he was interested in this position.

The grievant was not placed in this position as a result of being on the preferred recall list but was required to submit an application and interview along with several other applicants. The grievant was not offered the position and, even though he was the senior applicant, he was not provided with a statement of reason and suggestions for improving his qualifications.³

¹The Grievant's salary as a full time substitute was based on the county teacher's salary schedule. Mr. Wheeler received additional compensation for his work with the A.B.E. and G.E.D. programs.

²The Board argues that it cannot be bound by this agreement entered into by the grievant and the former superintendent. This issue is irrelevant as the grievant's rights are statutory and not granted or controlled by the board.

³The Board refused to give Mr. Wheeler any reason for the decision not to hire him as it involved an administrative position. This Board has previously held the requirement that a board furnish the most senior applicant a list of reasons why he was not hired is mandatory and is not limited to class of employees, but that all employees are entitled to such reasons. (William W. Slade v. McDowell County Board of Education, Docket No. 33-86-050.)

The grievant alleges a violation of W. Va. Code, 18A-4-8b and asks to be awarded the position of principal at Tygarts Valley High School.

The board of education argues that Mr. Wheeler has retained his position as coordinator of the A.B.E. and G.E.D. programs, therefore he has been assigned to a professional position within the area where he had previously been employed. The board states that the time when the A.B.E. and G.E.D. duties are to be fulfilled is not controlling but rather the administrative nature of the duties relieves the board from any further obligations to the grievant under Code, 18A-4-8b.

The purpose of Code, 18A-4-8b is to protect employees affected by a reduction of work force. It requires these individuals to be placed on a preferred recall list and that they be notified of any vacancies for which they have certification or licensure. An 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 if his seniority is greater than the seniority of any applicant with that certification or licensure. The directive is mandatory and to apply any other interpretation would be to render the statute meaningless.

While it is true that Mr. Wheeler retains his responsibilities as A.B.E. and G.E.D. coordinator, an administrative position, it is an extracurricular assignment performed after the completion of his regularly scheduled working hours. Mr. Wheeler is a certified administrator and was employed full time as such. A part time extracurricular position does not fulfill the spirit or intent of the statute.

The facts are clear and the law unambiguous in this matter. Mr. Wheeler accepted the position of permanent substitute teacher and coordinator of the A.B.E. and G.E.D. program as a part of an agreement with the superintendent that he would remain on the recall list. He possesses the proper certification

and/or licensure to hold a principalship and, as the senior applicant, was entitled to the position at Tygarts Valley High School.

Accordingly, it is ordered that Thomas J. Wheeler, Jr. be assigned the position of principal at Tygarts Valley High School and receive compensation for any difference in salary of which he was improperly deprived since first denied this position in November, 1985.

FINDINGS OF FACT

1. The grievant has been employed by the Randolph County Board of Education since 1969 and has held the positions of teacher, assistant principal, principal and coordinator.

2. Mr. Wheeler was released from his position as coordinator in 1985 as a part of a reduction in work force.

3. Mr. Wheeler reached an agreement with Superintendent Kittle that he would remain on the recall list for an administrative position but until such a vacancy occurred, the grievant would hold the full time position of permanent substitute teacher and continue as supervisor of the A.B.E. and G.E.D. programs after school hours.

4. In November, 1985, the grievant applied for the position of principal at Tygarts Valley High School.

5. Although the senior applicant, Mr. Wheeler was not offered the position nor was he given a written statement of reasons for his non-selection.

6. The board of education asserts the grievant had been placed in an administrative position as he remained supervisor of the A.B.E. and G.E.D. programs and was not entitled to remain on the recall list.

CONCLUSIONS OF LAW

1. Professional personnel whose seniority is insufficient to allow their retention during a reduction in work force shall be placed on a preferred recall list. These employees shall be recalled on the basis of seniority as to any professional position opening within the area where they had previously been employed or to any lateral area for which they have certification and/or licensure, if no regular full time professional personnel, or those returning from leaves of absence, with greater seniority, are qualified, apply for and accept such position.

2. If an applicant is not the most qualified applicant for a position but is the most senior applicant, he is entitled to a statement of reasons for his non-selection with suggestions for the improvement of his qualifications.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Randolph 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.

DATED: August 4, 1986

Sue Keller

SUE KELLER

Hearing Examiner