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MIKE GUELLA

v.

Docket No. 33-88-100

MCDOWELL COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Mike Guella, has been employed by the McDowell County Board of Education as a mechanic. He filed a grievance on April 27, 1988 alleging his employment had been improperly terminated in a reduction of force in service personnel. A Level II hearing was held on May 4, 1988 and a subsequent decision was adverse to the grievant. A Level IV hearing was held on July 13, 1988.¹

The facts of the case are essentially undisputed. The Board determined sometime in the spring of 1988 that two mechanic positions would have to be eliminated because of lack of need and

¹ There was no indication from the parties that the Board waived Level III proceedings.

Mr. Guella was notified his employment would be terminated effective July 1, 1988. Mr. Terry Mills, another mechanic, was similarly notified. Grievant does not assert there was no actual lack of need or any denial of procedural due process but contends he was not the least senior mechanic employed at the time the reduction in force was made and his termination was therefore a violation of a provision of W.Va. Code, 18A-4-8b(b), which provides:

Should a county board of education be required to reduce the number of employees within a particular job classification, the employee with the least amount of seniority within that classification or grades of classification shall be properly released and employed in a different grade of that classification if there is a job vacancy: Provided, that if there is no job vacancy for employment within such classification or grades of classification, he shall be employed in any other job classification which he previously held with the county board if there is a vacancy and shall retain any seniority accrued in such job classification or grade of classification.

Grievant began his employment with the McDowell County Board of Education on April 5, 1979 as a mechanic assistant and was classified a mechanic on July 1, 1984. (Joint Exhibit No. 1,3) Mr. Terry Price was hired by the Board as an assistant mechanic on July 2, 1979 and also classified as a mechanic on July 1, 1984.² Grievant contends the above-cited section of the West

²It should be noted that Mr. Terry Mills, the second mechanic terminated, was similarly classified a mechanic on the same date.

Grievant contends the above-cited section of the West Virginia Code requires a county board of education to consider the total seniority of service employees in a reduction of force situation and therefore Mr. Price should have been one of the two employees terminated.

The Board disagrees with grievant's interpretation of W.Va. Code, 18A-4-8b(b) and asserts the provisions therein required it to consider only the seniority attained within the particular job classification in which the reduction of force was being made. Accordingly, it was determined that three mechanics, grievant, Mr. Price and Mr. Mills, had the same seniority date in the classification of mechanic and because Mr. Price was the only one with body work experience he would be retained.

The interpretation placed on the requirements of 18-4-8b(b) by the Board is the more logical, particularly when those requirements are read with the two proceeding paragraphs, which provide:

All decisions by county boards of education concerning reduction in work force of service personnel shall be made on the basis of seniority, as hereinafter provided.

The seniority of any such service personnel shall be determined on the basis of the length of time the employee has been employed by the county board of education within a particular job classification. For the purpose of establishing seniority for a preferred recall list as hereinafter provided, when an employee has been employed in one or more classifications, the seniority accrued in each previous classification shall be retained by the employee.

(Emphasis added)

It is clear that a county board of education must use an initial hiring date to determine the seniority of school service employees when it makes a decision on which employees to recall but for the purposes of determining which employees are terminated in a reduction of force, seniority accrued in a particular classification must be used. However, the Board's assertion that it was free to take into consideration the need for Mr. Price's expertise in body repair when it decided which of three employees with identical seniority dates as mechanics would be terminated is without legal basis. W.Va. Code, 18A-4-8 provides the job descriptions for the various service employee classifications and no such classification is contained therein for "automobile body work mechanic".³ W.Va. Code, 18A-4-8b(b) also does not contain provisions which would allow a county board of education to consider any factors other than classification and seniority within that classification. The Board therefore was required to make its

³W.Va. Code, 18A-4-8 specifically defines the position of mechanic as:

Personnel employed who can independently perform skilled duties in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system.

decision on which two mechanics to terminate on the basis of seniority and the procedure to be used in situations in which service employees have accrued identical seniority is another provision found in W.Va. Code, 18A-4-8b(b), which reads:

If two or more employees accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the county board.

Although this language does not explicitly indicate in what circumstances such a process is to be used, it is contained in those parts of W.Va. Code, 18A-4-8b(b) which deal exclusively with reduction in force procedures and it would be difficult to imagine more appropriate circumstances for its implementation than those presented in the grievant's case.

It should also be noted that although Mr. Terry Mills did not join in Mr. Guella's grievance, his seniority date as a mechanic was the same as that of the grievant and Mr. Price and he should therefore be included in any random selection process initiated. His exclusion would not be consistent with the provisions of W.Va. Code, 18A-4-8b(b) requiring the process.

In addition to the foregoing, the following findings of fact and conclusions of law are made.

FINDINGS OF FACT

1. Grievant was hired by the McDowell County Board of Education on April 5, 1979 as an assistant mechanic and classified

as a mechanic on July 1, 1984.

2. Mr. Terry Price was hired by the McDowell County Board of Education on July 2, 1979 as an assistant mechanic and classified as a mechanic on July 1, 1984.

3. Mr. Terry Mills was hired by the McDowell County Board of Education on June 16, 1980 as as assistant mechanic and classified as a mechanic on July 1, 1984.

4. In April 1988 the Board notified the grievant his employment would be terminated effective July 1, 1988 because of a lack of need.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-8b(b) requires a county board of education to terminate the least senior school service employee when it is required to reduce the number of employees within a particular job classification and the seniority of said employees must be calculated on the basis of the length of time an employee has served within said classification.

2. W.Va. Code, 18A-4-8b(b) makes no distinction between employees within a given classification who perform different

duties and when said employees are given the same job classification differences in the nature of their work cannot be the basis for exemption from a reduction in force.

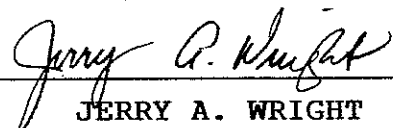
3. When a county board of education is required to reduce the number of employees in a particular job classification and there are two or more employees within said classification with identical seniority, a random selection process must be used to determine which will be terminated. W.Va., Code 18A-4-8b(b)

Accordingly, the grievance is **DENIED** as to the request for reinstatement, however, the McDowell County Board of Education is hereby **ORDERED** to conduct a random selection process for the purpose of determining which of the employees, Terry Price, Mike Guella or Terry Mills, will retain their position with the McDowell County School System, said process to be established by the employees and approved by the Board.

Either party may appeal this decision to the Circuit Court of McDowell County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of said decision. (W.Va. Code, 18-29-7) Please inform this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

Dated:

August 2, 1986


JERRY A. WRIGHT

Hearing Examiner