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LORETTA LaMASTUS

v.

Docket No. 55-87-290-4

WYOMING COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Loretta LaMastus, was hired as a teacher by the Wyoming County Board of Education at the beginning of the 1984-85 school term and assigned to Pineville Grade School. She filed a grievance when she learned she had been transferred to Baileysville Grade School at the beginning of the 1987-88 school term. A Level II decision was adverse to grievant and the Board waived Level III proceedings. A Level IV evidentiary hearing was held on December 9, 1987.

Apparently the Wyoming County Board of Education was experiencing a loss of state funds due to a decrease in student enrollment and during February 1987 decided to make cuts in personnel and at the same time implement a redistribution of staff. It appears approximately four teachers at Baileysville Grade School were recommended

for termination and two teachers from Pineville Grade School would be transferred to two of the vacancies created there. (Board's Exhibit No. 4) Grievant and two other teachers at Pineville, Debora Lee and Betty Griffin, were all given notices they might be placed on a transfer list. All three employees have the same seniority date. Grievant contends she was told by her principal only two of the three teachers would actually be transferred to Baileysville and at a Board meeting held on April 21, 1987 she learned the decision would be based on a random selection process. Ms. LaMastus did not request a transfer hearing and during the summer one teacher left Pineville Grade School voluntarily and it only became necessary to transfer one teacher to Baileysville. Ms. LaMastus filed the grievance when she learned the random selection process had not been used and she had been the one transferred. She makes two basic allegations of illegal action on the part of the Board:

1. W.Va. Code, 18A-4-8b requires a county board of education to use a random selection method to determine priority if two or more employees accumulate identical seniority.<sup>1</sup>

2. The Board's failure to follow this provision and the fact she is now required to teach eighth graders at Baileysville, something for which she is not certified, are clearly indicative of an arbitrary and capricious decision to transfer her to Baileysville.

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<sup>1</sup>Minutes of a Board meeting held April 21, 1987 show the question of how to decide on a transfer when employees of equal seniority were involved was discussed and the superintendent notified the board a random selection process would be used.

W.Va. Code, 18A-4-8b does allow the use of a random selection process but there is no language contained therein making such a process mandatory when school employees are transferred. W.Va. Code, 18A-2-7 provides the procedures to be used in such cases and it contains no requirement that seniority be a factor in transfers. The Board in this case was also proceeding under the reduction in force provisions of W.Va. Code, 18A-4-8b(a) and seniority is only a factor under those provisions insofar as the least senior employee in a particular area is terminated.

As to grievant's second argument the evidence is not sufficient to support her claim the Board acted arbitrarily or capriciously in her transfer. Originally all three teachers at Pineville were placed on the proposed transfer list and when one left voluntarily the Board was faced with a choice between two teachers and was under no obligation to use any tie-breaker process to decide which would be transferred. Mr. Wilcox, Associate Superintendent, testified at the Level IV hearing the legal department of the West Virginia Department of Education was consulted and the Board was advised to consider what was best for the school system when the choice was made and it was determined grievant's transfer would be less disruptive on the overall program at Pineville. (T.\_\_) The fact that grievant is now assigned some classes which are outside her area of certification is indicative of an improper assignment within the Baileysville school but this in itself is not enough to establish a charge of arbitrariness.

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

#### FINDINGS OF FACT

1. Grievant, Loretta LaMastus, has been employed as a teacher by the Wyoming County Board of Education since the beginning of the 1984-85 school term.

2. On March 24, 1987 grievant was notified she might be placed on a transfer list and reassigned at the beginning of the 1987-88 school term and that she had a right to a statement of reasons for this proposal and a hearing before the Board.

3. Grievant chose not to request a statement of reasons or a hearing before the Board.

4. Grievant was subsequently transferred from her position at Pineville Grade School to Baileysville Grade School at the beginning of the 1987-88 school term.

#### CONCLUSIONS OF LAW

1. W.Va. Code, 18A-2-7 vests great discretion in the county superintendent and a board of education to transfer and assign teachers

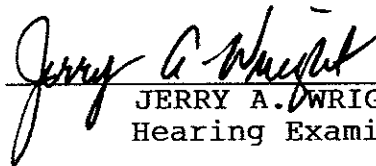
to designated schools and courts should not interfere with the exercise of that discretion when an action is taken in good faith for the benefit of a school system and is not arbitrary. Hawkins v. Tyler County Board of Education, 275 S.E.2d 908 (W.Va. 1980); Tenney v. Barbour County Board of Education, Docket No. 01-87-166-2.

2. There is no provision in W.Va. Code, 18A-2-7 which requires a county board of education to make decisions regarding the transfer of professional personnel on the basis of seniority.

3. Grievant has failed to prove by a preponderance of the evidence that her transfer from Pineville Grade School to Baileysville Grade School was an arbitrary and/or capricious action on the part of the Wyoming County Board of Education.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Wyoming 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.

  
JERRY A. WRIGHT  
Hearing Examiner

DATED: March 23, 1984