



**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**

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NEVA McCLURE

v.

Docket No. 20-88-131

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant Neva McClure has been employed by the respondent Kanawha County Board of Education (BOE) as a Classroom Aide since at least 1975. She alleges that she was placed on the administrative transfer list in violation of W.Va. Code §18A-4-8b and requests that she be reinstated to her position as Kindergarten Aide at Weimer Elementary School.

During school year 1987-88, and for some years prior to that, four Aides were employed by BOE at Weimer. They were: Joyce Robinson, Chapter I,¹ Math Aide; Doris Carter, Chapter I

¹ Chapter I is a program funded by the United States government. See Title 20, U.S. Code.

Reading Aide; Anna Simms, Behavior Disorders-Intensive Service Unit (BD-ISU) Aide;² and grievant McClure, Kindergarten Aide. Due to a projected reduction in the number of students eligible for Chapter I services at Weimer, the two Aide positions related to that program were eliminated for school year 1988-89. Grievant and Ms. Simms each had less seniority with BOE and at Weimer than either Ms. Robinson or Ms. Carter, and "based upon the long standing practice in Kanawha County to address reductions in individual schools by identifying the least senior employees,"³ the former two women were placed on the transfer list.⁴ Ms. Robinson moved into the BD-ISU job, and Ms. Carter assumed the Kindergarten position for school year 1988-89.⁵

² Anna Simms was also a party to this grievance; however, she withdrew herefrom on August 24, 1988.

³ Memorandum of Law, BOE, pp. 1-2.

⁴ Although grievant cites Murray et al. v. Preston Co. Bd. of Educ., Docket No. 39-86-226-2 (December 29, 1986) and proposes, in effect, that we treat this situation as a reduction-in-force (RIF), she admits that it is not a RIF. Grievant's Reply Memorandum, pp. 3-4. The Board thus must presume that BOE had vacant Aide positions at the time grievant was placed on the transfer list. If no positions had then been open, this situation would clearly have been a RIF and not an administrative transfer, and today's outcome might well have been different. See State ex rel. Bd. of Educ. v. Casey, 349 S.E.2d 436, 440 (W.Va. 1986); also see Murray, supra.

⁵ It is presumed that Ms. Robinson and Ms. Carter were also placed on the transfer list, and thereafter assigned to their new Aide positions.

Grievant was notified of her proposed transfer by letter dated March 6, 1988. A hearing before BOE was held on the matter, upon grievant's request, on April 18, 1988. By letter of April 19, 1988, Dr. Richard Trumble, Superintendent of Schools for Kanawha County, advised grievant that BOE had approved the following motion:

I move that ...[BOE] approve the Superintendent's recommendation that Neva K. McClure be considered for transfer and subsequent assignment for the next ensuing school year, that being the 1988-89 school year.

On April 22, 1988, Ms. McClure filed a Level I grievance with her immediate supervisor, Weimer Principal John Handley. Mr. Handley denied the grievance by written response, explaining that BOE's "personnel office directed me to...identify the two least senior aides on the staff which resulted in Ms. Neva McClure and Ms. Anna Simms... [being] placed on administrative transfer." On May 24, 1988, grievant filed this action at Level IV. A hearing was held before the undersigned Hearing Examiner on August 24, 1988.⁶ At that hearing, BOE presented a Memorandum of Law, and it was agreed by the parties that grievant's Reply Memorandum plus additional documentary evidence would be submitted for consideration. Such material having been received, this case is mature for final disposition.

⁶ Although this grievance was technically never considered at Levels II or III, the parties appeared in person at Level IV on August 24, 1988 and the undersigned opted to proceed with hearing. In light of the taking of evidence at Level IV, and in recognition that BOE heard and considered grievant's complaint at the April 18, 1988 transfer hearing, remand would create an unnecessary delay in the adjudication of this case. See Casey, supra, at 438.

Grievant alleges that Ms. Carter, who undisputedly has more seniority with BOE and at Weimer than does she, has "bumped" her from her position at Weimer, and that such action is a violation of Code §18A-4-8b. In support of her argument, grievant cites Op., Supt. Schools, April 24, 1986, Re: Aide Seniority,⁷ which states, in pertinent part:

[A] service employee can not "bump" a less senior service employee from a job in the same school in another area.

What happens, instead, is that when the number of aides must be reduced the aide with the least seniority -- regardless of the types of jobs and training -- is laid off...[and t]he most senior aide may then be transferred and reassigned to the job vacated by the less senior aide who was laid off.

BOE also cites this Op., proposing that we read it to state that the Aide with the least in-school seniority may be laid off when there is a reduction in the number of Aides at a school. Memorandum, BOE, p. 2.⁸

In this action, it is appropriate to make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Grievant has been employed as a Classroom Aide with BOE since at least 1975.

⁷ Classroom aides are service employees. Code §18A-4-8.

⁸ While Opinions of the West Virginia State Superintendent of Schools which constitute interpretations of law are relevant for consideration by this Board, the April 24, 1986 Op., in pertinent part, relates only to RIF's; therefore, it has been afforded no weight herein.

2. During the 1987-88 school year, and prior thereto, grievant was employed by BOE as a Kindergarten Aide at Weimer Elementary School. Other aides employed at Weimer were Anna Simms (BD-ISU Aide), Joyce Robinson (Chapter I Reading Aide) and Doris Carter (Chapter I Math Aide).

3. Due to a projected reduction in the number of Weimer students eligible for Chapter I assistance, a reasonable need to reduce the number of Aides at Weimer for school year 1988-89 existed, and the two positions funded by Chapter I were accordingly eliminated.

4. Both Ms. Robinson and Ms. Carter had more seniority with BOE and at Weimer than either Ms. Simms or grievant.

5. BOE's practice is to use in-school seniority as the basis for administrative transfer decisions; accordingly, Ms. Simms and grievant were placed on the transfer list for possible employment in other Kanawha County schools, and Ms. Robinson and Ms. Carter assumed the BD-ISU and Kindergarten Aide positions at Weimer.

CONCLUSIONS OF LAW

1. Opinions by the West Virginia State Superintendent of Schools which constitute interpretations of law are relevant for consideration by the West Virginia Education and State

Employees Grievance Board.

2. A county board of education in West Virginia has substantial discretion in matters relating to the assignment and transfer of school personnel. This discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Dillon v. Wyoming Co. Bd. of Educ., 351 S.E.2d, 58, 64-65 (W.Va. 1986); Loughman v. Marshall Co. Bd. of Educ., Docket No. 25-87-131-3 (September 1, 1987).

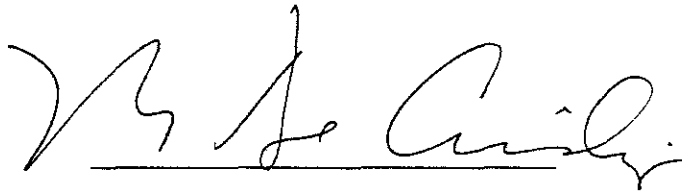
3. A county board of education in West Virginia is bound by procedures it properly establishes to conduct its affairs. Dillon, supra; State ex rel. Hawkins v. Tyler Co. Bd. of Educ., 275 S.E.2d 908, 912 (W.Va. 1980).

4. BOE's practice of using in-school seniority for administrative transfer, for need, of service personnel is fair and not arbitrary or capricious when exercised correctly. W.Va. Code §18A-2-7; see Loughman, supra.

5. In this situation, BOE exercised its discretion reasonably, in the best interest of the schools, and in a manner not arbitrary or capricious.

Accordingly, this grievance is DENIED.

This decision may be appealed to the Circuit Court of Kanawha County, but only within thirty (30) days of its receipt. See W.Va. Code §18-29-7. The West Virginia Education and State Employees Grievance Board must be advised of any intent to appeal so that the record of this case can be prepared and transmitted to the Court.



M. DREW CRISLIP
HEARING EXAMINER

Dated: 10/24/88