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CYNTHIA VANCE

v.

DOCKET NO. 03-88-093

BOONE COUNTY BOARD OF EDUCATION

DECISION

Grievant, Cynthia Vance, is employed as a teacher by the Boone County Board of Education and was assigned to Wharton Elementary School during the 1987-88 term. Ms. Vance filed a level four grievance appeal on May 23, 1988 in which she alleged an "adverse transfer decision". The matter was submitted for decision based upon the record which consisted of a transcript of the hearing held before the Boone County Board of Education on April 12 prior to voting on the recommended transfer of the grievant and was supplemented with the proposed findings of fact and conclusions of law filed by the grievant.¹

¹By letter of May 23 the grievant's representative advised this Board of an agreed upon "briefing schedule" which provided that the board of education would submit "...the transcripts, etc. from the hearing on the transfer..." and the grievant would submit a brief. Superintendent Mabe complied in apparent agreement with this arrangement.

Documentation submitted by the grievant attached to the proposed findings and conclusions indicates that she was notified by letter of March 15 that Superintendent Kenneth Mabe would recommend to the board of education at its meeting on April 19 that she be placed on the transfer list for reassignment the ensuing school year. The reason given for the recommendation was a decrease in staff requirements precipitated by an anticipated decrease in enrollment.² A hearing was held before the board on April 12 and on April 19 the proposed placement of the grievant on the transfer list was approved.

The grievant argues that she and another teacher at Wharton Elementary School, Ms. Crawford, have accumulated identical (county) seniority and that the board's failure to use a random selection process to determine which should be placed on the transfer list was a violation of W.Va. Code, 18A-4-8b.³ She requests that she be reinstated to her position at Wharton Elementary School.

²This transfer was part of a countywide reduction in force in which elementary teachers with less seniority than the grievant were released from employment. She is to be reassigned to one of those vacant positions as there will be one less elementary teacher at Wharton Elementary School in 1988-89.

³The grievant and Ms. Crawford had apparently drawn straws to determine who would receive a particular assignment some years ago. (T. p.4)

The board's position has not been stated; however, a reading of the transcript indicates that the grievant was chosen to be placed on the transfer list as she was the teacher with the least seniority within the school. (T.p.1)

W.Va. Code, 18A-4-8b(a) defines seniority for professional personnel and provides that a random selection system shall be used to determine the priority if two or more employees accumulate identical seniority. Seniority is a controlling factor when a county board of education is required to reduce the professional work force as those individuals with the least seniority must be the first to be released from employment. W.Va. Code, 18A-4-8b(a) does not provide criteria or guidelines for administrative transfers which occur as a result of a reduction in force. The record did not reflect that the board acted in an arbitrary or capricious manner and as the grievant did not allege any other violations of statute or policy it must be accepted that the transfer was proper.

In addition to the foregoing narration it is appropriate to make the following specific findings of fact and conclusions of law.

Findings of Fact

1. The grievant is employed as a teacher by the Boone County Board of Education and was assigned to Wharton Elementary School for the 1987-88 school year.

2. The grievant was notified by Superintendent Mabe in March that he would recommend that she be placed on the transfer list for assignment the following school year.

3. The reason for the proposed transfer was a reduction in the professional staff due to a decrease in enrollment.

4. Following a hearing held by the board it voted to accept the recommended transfer of the grievant.

5. Another teacher at Wharton Elementary School had accrued the same seniority as the grievant and they had drawn straws to determine a personnel matter arising some time ago.

Conclusions of Law

1. W.Va. Code, 18A-4-8b(a) does not require that administrative transfers occurring as a result of a reduction in force be made on the basis of seniority.

2. Statutes which are clear and unambiguous are to be applied and not interpreted. Lavender v. McDowell County Board of Education, 327, S.E. 2d 691 (W.Va. 1984); Hatfield v. Mingo County Board of Education, Docket No. 29-87-019-4; West et al. v. Wetzel County Board of Education, Docket No. 52-86-029-3.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Boone 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 29, 1988

Sue Keller

SUE KELLER

HEARING EXAMINER