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KAREN BOWERS

v.

DOCKET NO. 17-87-198-2

HARRISON COUNTY BOARD OF EDUCATION

DECISION

Grievant, Karen Bowers, is currently employed as an itinerant art teacher by the Harrison County Board of Education. Ms. Bowers began grievance proceedings following board action to eliminate the position of Coordinator of Art/-Director of Staff Development and transfer her to a teaching assignment. The grievance was denied at level one and by agreement of both parties the matter was waived at levels two and three.¹ An evidentiary hearing was conducted at level four on October 9 and briefs were submitted by November 2, 1987.

¹This information was provided in the grievant's appeal to level four and no documentation of this action was submitted into the record.

Both parties stipulate to the following factual recitation. The grievant was first employed by the board as a teacher in 1967 and has been employed under a continuing contract since 1970. The grievant was appointed as an Art Resource Specialist in 1979 and was promoted to Director of Continuing Education/Art Resource Specialist in 1983. Effective the 1987-88 school term this position was eliminated and the grievant assigned to a teaching position. The change in assignment was not related to her work performance which has been rated as "excellent" but was precipitated by a reduction in force due to financial constraints on the board. In addition to the loss of the administrative position the grievant's salary will be reduced from \$35,748.00 to \$27,253.00 annually.

The grievant presents three arguments: (1) that she does not possess certification for the position of itinerant art teacher as she is certified in the areas of English and Art, grades 7-12, and the assignment at Lumberport includes the sixth grade; (2) The board has acted in violation of W.Va. Code, 18A-4-8b and Dillon v. Board of Education of the County of Wyoming, 351 S.E. 2d 58 (W.Va. 1986) by not granting her a lateral transfer to one of several other county level administrative positions held by employees with less seniority and for

which she meets the minimum qualifications;² (3) ~~There~~ are secondary English and art teachers who have less seniority than the grievant.³

The board cites a previous decision of the Education Employees Grievance Board, Fragale v. Harrison County Board of Education, Docket No. 17-87-145-2, which held that employees do not accrue seniority in administrative positions unless a specific endorsement to the administrative certificate is required and therefore cannot "bump" less senior administrators.⁴ The board argues that the grievant was properly transferred to the position held by the teacher with least seniority in both areas of her certification and that State Board of Education Policy 5200 permits a county superintendent to assign teachers one grade level above or below their endorsement areas without further training.

²These positions are Director of Special Education, Director of Food Services, Director of Public Information and Communications and Middle Childhood Coordinator. The minimum requirements for all of these positions are a masters degree and a minimum of five years successful teaching or administrative experience, or enrollment in an approved program to meet the minimum state certification requirements. The grievant notes that she also meets the minimum requirements for the position of Administrative Assistant for Personnel which "was just moved to the Central Office" in January, 1987.

³This issue was apparently abandoned by the grievant and will not be addressed herein.

⁴As the present grievant does not argue seniority as an administrator but relies on her overall seniority, Fragale is not controlling. ^A

State Board of Education Policy 5200 established a transitional period during which county superintendents may place professional personnel in positions one grade level above or below the grade levels within the endorsement areas on their certificates. This transitional period, from 1985 through 1989, was created as part of a master plan for public education which includes certification for middle childhood education, grades five through eight. During this time personnel are given the opportunity to complete training which will allow them to extend the grade levels on their certificates to be consistent with the new patterns contained in the master plan. The grievant's present assignment, which includes a sixth grade, currently is consistent with and permitted by State Board of Education Policy 5200.

During a reduction in force a board must determine which positions are expendable and release from employment the employees with the least seniority in those areas of certification affected by the position elimination. Transfers necessitated by the reduction may be lateral or to a previously held position and are determined by the nature of the position, the employee's areas of certification and seniority.

If the reduction is in an area where there are multiple positions the transfer may be lateral. To illustrate, when a teaching position is eliminated the board must determine if there are any other teachers with less seniority in those areas of certification held by the displaced teacher. If so, that employee with the least seniority in all of the areas of certification held by the displaced employee must be released from employment and the displaced employee transferred to that position. If there are no employees with less seniority in any area of certification held by the displaced employee then he must be released from employment and placed on the preferred recall list.

Principals may also be transferred to a lateral position if the employee who held an eliminated position possesses more seniority than another. As with teachers, a displaced principal is transferred to the position held by the least senior principal. The principal with the least seniority is then transferred to "...any other professional position where he had previously been employed...", usually a teaching position if he has more seniority than any other teacher in any area in which he is certified. The least senior teacher in all of the areas of his certification will be released and the displaced principal transferred to that position.

Central office administrators, unlike teachers and principals, may hold specialized positions which may not be interchangeable. Although all county-level administrators may meet the minimum qualifications of degree and experience, a lateral transfer must be based upon certification and/or licensure. W.Va. Code, 18A-4-8b(a). It is clear that for many of these responsibilities a subject matter knowledge would be necessary to adequately fulfill the listed duties and responsibilities. Thus, subject matter and/or general administrative certification may be required beyond the minimum qualifications.

To accept the grievant's argument that she is entitled to a lateral transfer to any position for which she meets the minimum requirements could result in her supervision of the special education, middle childhood or food services programs, although she has no training or expertise in any of these areas. Just as an art teacher would not be assigned to teach a special education class because she would not be certified to do so, an art director would generally not be certified to direct the special education program.

Because of the certification required of some of these positions, a displaced county office administrator is not auto-

matically entitled to "bump" another similarly situated administrator. Although the positions are placed in the same general classification of "administrator" they are not always interchangeable positions as are teaching positions and principalships which require the same certification for all similarly-titled positions.

Not all central office administrative positions may require a specific subject matter certification. Those positions dealing with areas such as public information or personnel may be examples of general administrative positions which may be considered lateral in nature. Therefore, when reducing the number of administrative personnel the board must evaluate all administrative positions and personnel. The displaced employee is to be transferred to a lateral position for which she is certified and has greater seniority.⁵ For example, if the board determines

⁵If the displaced employee possesses certification and seniority which would entitle her to more than one lateral position she shall be transferred to that position held by the least senior employee.

that the grievant (20 years seniority) meets all of the qualifications for the positions relating to public information (and the director has 15 years seniority) and personnel (and the director has 12 years seniority) then the grievant would be entitled to a lateral transfer to the personnel position. Accordingly, lateral positions for administrators of county-wide programs are only those for which they are fully certified.⁶

This procedure is entirely consistent with W.Va. Code, 18A-4-8b and the holding in Dillon v. Board of Education of the County of Wyoming, supra, which states that the promotion and filling of a teacher's position must be based primarily upon the individual's qualifications for the position.

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

⁶If the displaced employee meets the qualifications of a subject specific area he would be entitled to a lateral transfer to that position. See Fragale v. Harrison County Board of Education, supra in which the grievant, formerly the athletic director, etc. apparently met the academic criteria of business manager but did not possess the required experience. A board must consider each case individually.

Findings of Fact

1. The grievant has been employed by the Harrison County Board of Education since 1967 and has served as Director of Continuing Education/Art Resource Specialist since 1983. This position was eliminated by the board to be effective the 1987-88 school term as part of a reduction in force.

2. The grievant was subsequently assigned to one-half time art positions at Salem Junior High and Lumberport Middle Schools. Her certification is in the areas of English and art, grades 7-12, while the assignment at Lumberport Middle School includes sixth grade. Therefore she is assigned to one grade level outside of her certificate in compliance with State Board of Education Policy 5200.

3. The grievant meets the minimum qualifications for five other county office administrative positions held by less senior employees.

4. The grievant was not considered for lateral transfer to any other county level administrative position.

5. The duties and responsibilities of many such administrators clearly require specific subject matter certification while other positions appear to be of a more general administrative nature.

Conclusions of Law

1. State Board of Education Policy 5200 permits a county superintendent to place professional personnel one grade level above or below the grade levels on their certificates during a transitional period of new certification patterns, said period to be effective until June 30, 1989.

2. Central office administrative positions may or may not be lateral in nature depending upon the required certifications.

3. When a central office administrator becomes displaced due to position elimination the board must determine which, if any, administrative positions the displaced individual is certified and held by employees with lesser seniority. The displaced employee is then transferred laterally to that position held by the least senior employee.

Accordingly, the grievance is **GRANTED** to the extent that the board is ordered to determine whether the grievant is eligible for a lateral transfer and if so, to place her in the position held by the administrator with the least seniority. If reinstated to an administrative position the grievant shall be awarded the difference in salary from the effective date of her transfer to the teaching position.

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

February 16, 1988

Sue Keller

SUE KELLER

Hearing Examiner