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DONNA BRADFORD

v.

Docket No. 55-87-291-4

WYOMING COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Donna Bradford, was first employed by the Wyoming County Board of Education in January 1986 as a teacher in special education at Pineville Middle School. By letter dated March 17, 1987 she was notified by the Superintendent of Schools, Gerald Short, that he would recommend to the Board that certain non-tenured employees not be rehired for the 1987-88 school term and her name would be included in the list of employees. She was subsequently given notice by letter dated April 24, 1987 that the Board had voted to terminate her employment. Ms. Bradford was rehired at the beginning of the 1987-88 school term but filed a grievance alleging among other things

that the Board's rehiring process should have been based on seniority.¹
A Level II decision was adverse to the grievant; the Board waived Level III proceedings and a Level IV evidentiary hearing was held on December 9, 1987.²

Ms. Bradford signed a probationary contract with the Board on February 3, 1986 effective January 31, 1987 and was teaching special education classes at Pineville Middle School with a permit for this particular curriculum. After completing the 1985-86 school term she was rehired for the 1986-87 term and continued at Pineville with this special education permit. When first notified of the recommendation for termination on March 17, 1987, grievant was informed the reason

¹The Board did not raise the issue of timeliness at Level IV or address it in the grievance response at Level II but it is relevant to a particular part of grievant's allegations and will be addressed herein.

²Both parties were asked to submit proposed findings of fact and conclusions of law within twenty (20) days of the date of the Level IV hearing. The Board's proposals were received January 8, 1988 and the grievant's proposals were received February 3, 1988.

was her lack of certification for the position for which she was employed.³ She requested and received a formal statement of reasons for the recommendation which listed additional factors including "possible lack of need due to enrollment decrease" and "possible lack of need due to shifts in enrollment." (Board's Exhibit No. 4) Both the notice and formal statement explained to grievant her right to a hearing before the Board but she chose not to ask for one and later received the notice of the Board's final action on the termination. This notice again informed her of a right to a hearing and she again elected not to request one. In August 1987 Ms. Bradford was asked to submit an employment application for the 1987-88 school term listing in order of preference the schools where she would accept assignment. (T.__) She made the application listing five different schools with Pineville Middle School, Special Education as her first preference and Baileysville Grade School, Special Education as her second. (Grievant's Exhibit No. 2) She was then rehired and assigned to Baileysville as a special education teacher. Subsequent to her rehiring she filed

³Grievant was required to renew her permit annually and her then current permit was to expire on June 30, 1987. It was the Board's policy to terminate the contracts of non-tenured employees in such circumstances to avoid the possibility of having non-certified teachers on staff the following school year in the event the employee failed to obtain renewal of their permits during the summer.

a grievance alleging:

1. The Board was involved in a reduction of force in March 1987 and should have proceeded to make cuts in its professional staff under the provisions of W.Va. Code, 18A-4-8b(a) which would have required the Board to place her on a preferred recall list.
2. Placement on this preferred recall list would have entitled grievant to her former position at Pineville Middle School for which she applied since her seniority was greater than the person chosen for that position.⁴
3. Notwithstanding the Board's failure to follow the guidelines of W.Va. Code, 18A-4-8b(a) the rehiring should have been based on seniority because she had relied on verbal and written promises to that effect made by an agent of the Board.

Grievant's first two arguments are simply not supported by the applicable law found in W.Va. Code, 18A-4-8b(a) which provides:

Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority shall be properly notified and released from employment pursuant to the provisions of section two [§18A-2-2], article two of this chapter: Provided, that such employee shall be employed in any other professional position where he had previously been employed or to any lateral area for which he is certified and/or licensed if his seniority is greater than the seniority of any other employee in that area of certification and/or licensure.

⁴The evidence was conflicting on whether or not grievant was actually the more senior of the applicants for the position at Pineville. It appears there were actually three special education vacancies there and one was filled by a certified special education teacher and the other two were filled by a Ms. Tina Adams and Ms. Tamela McKinney. Copies of Board minutes submitted
(footnote cont.)

This section of the W.Va. Code clearly does not grant any probationary employee any procedural rights over and above those contained in W.Va. Code, 18A-2-8a or afford placement on a preferred recall list when their contracts are terminated. Alltop/Boggs v. Gilmer County Board of Education, Docket No. 11-87-167-3. Moreover, the grievant had the opportunity to raise this question before the Board in March, 1987 and chose not to do so and she is precluded from raising the issue in the form of a grievance some five months after the Board voted not to renew her probationary contract subsequent to notice of her right to a hearing under W.Va. Code, 18A-2-8a. See generally, Murphy v. Mingo County Board of Education, Docket No. 29-86-341-4; Scarberry v. Mason County Board of Education, Docket No. 26-86-291-1; Scroggs v. West Virginia University, Docket No. BOR1-87-054-2.

As to the third argument, grievant has failed to prove by a preponderance of the evidence that any enforceable verbal or written promises that she would in fact be rehired at the beginning of the 1987-88 school term were made or that she received any such promises that any rehiring would be based on seniority. Her testimony concerning conversations with Ms. Sandra Lucento, Administrator of Special Services, indicated she was only told she had a "good chance" of being

(footnote cont.)

by grievant tend to support her claim that she had the most seniority than Ms. McKinney and Ms. Adams. (Grievant's Exhibit No. 3) Board personnel records however show grievant and Ms. Adams each had one year four months seniority and Ms. McKinney had two years. (Board's Exhibit No. 13) For reasons contained herein this issue need not be reached.

rehired and that she (grievant) was aware Ms. Lucento was not a representative of the Board who had the authority to make binding commitments in such matters. (T.___) The grievant did receive a memorandum dated March 17, 1987 from Ms. Lucento but it made no promises of employment and merely advised grievant that the Board would help her prepare herself to be "in a position to become re-employed" at the beginning of the ensuing school term. (Grievant's Exhibit No. 1) Additionally, had the Board based the hiring process used to fill the position at Pineville Middle School solely on seniority, it would have been ignoring the requirement of W.Va. Code, 18A-4-8b(a) that the filling of the vacant professional positions be based on qualifications. The testimony of Mr. Harless, Assistant Superintendent, at the Level IV hearing revealed the determining factor in the process was qualifications in that the number of hours held by the applicants toward achievement of the special education certificate was the basis for the selection. (T.___) The grievant provided no rebuttal or presented any evidence pertaining to the qualifications of the other candidates for the position.

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

FINDINGS OF FACT

1. Grievant was first employed by the Wyoming County Board of Education in January 1986.

2. In March 1987 grievant was notified the superintendent of schools would recommend to the Board that her probationary contract not be renewed for the 1987-88 school term and of her right to a statement of reasons and hearing before the Board.

3. Grievant requested and received a formal statement of reasons for the recommendation.

4. The Board voted not to renew grievant's probationary contract and she was notified of this action and her right to a hearing by letter dated April 24, 1987.

5. Grievant chose not to request any hearings before the Board prior to or after its decision not to renew her contract.

6. During the summer of 1987 grievant was asked by a representative of the Board to submit an application of employment for the 1987-88 school term listing the schools in order of preference where she would accept assignment.

7. Grievant's first preference was Pineville Middle School and her second was Baileysville Middle School and she was rehired and assigned to the latter as a special education teacher.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-2-8a requires county boards of education to give any probationary employee who has not been rehired for the upcoming school year notice of such action and upon request a statement of the reasons for not having been rehired and/or a hearing before the board.

2. The Wyoming County Board of Education granted the grievant in the present case procedural rights over and above what is required by W.Va. Code, 18A-2-8a by allowing her the right to a hearing and statement of reasons prior to and after the decision to terminate her probationary contract and grievant chose only to exercise her right to a statement of reasons.

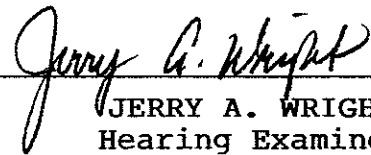
3. W.Va. Code, 18A-4-8b(a) requires a county board of education to fill vacancies on the basis of qualifications and the grievant failed to prove by a preponderance of the evidence that the Wyoming County Board of Education did not fill the position(s) in special education at Pineville Middle School on that basis.

4. The grievant also failed to prove by a preponderance of the evidence that a duly authorized representative of the Wyoming County Board of Education made any enforceable promise that she would be rehired for the 1987-88 school term or that any such rehiring

would be made on the basis of seniority instead of qualifications.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to either 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 this 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 2, 1988