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**WEST VIRGINIA EDUCATION AND  
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DAVID FRIEND

V.

DOCKET NO. 38-88-163

PRESTON COUNTY BOARD OF EDUCATION

DECISION

Grievant, David Friend, is employed by the Preston County Board of Education (Board) and is presently assigned as a teacher. Mr. Friend initiated these grievance proceedings as a result of Board action taken May 30, 1988 placing him on the transfer list for the 1988-89 school term. The grievant contends this action was in violation of W.Va. Code §18A-4-8b and was taken in reprisal for his public stance on a school closing. The grievance was denied by Superintendent Elmer Pritt at level two and the Board waived consideration at level three.<sup>1</sup> A level four hearing was held on November 30 and proposed findings and conclusions were filed by December 22, 1988.

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<sup>1</sup> It is noted that the level 2 decision did not include findings of fact and conclusions of law as required by Code §18-29-6. Grievance evaluators are urged to include these findings and conclusions in their decisions to avoid remand for compliance therewith. See, Burks v. McNeel, 264 S.E. 2d 651 (W.Va. 1980); Golden v. Harrison County Board of Education, 285 S.E. 2d 665 (W.Va. 1981).

The grievant was first employed by the Board as a teacher in 1969, was granted administrative certification in August 1986, and has served as the principal at Rowlesburg High School for the past two years. Rowlesburg High School was closed at the end of the 1987-88 school term and the grievant was placed on the transfer list to later be reassigned as a teacher at Central Preston High School. The grievant argues that he should have been allowed to bump the least senior assistant principal, David Toothman, who is assigned to East Preston High School. The grievant cites an opinion of the State Superintendent of Schools dated February 25, 1985 which he contends supports his position.<sup>2</sup> The grievant also alleges the Board's action constitutes harassment and was taken in reprisal for his vocal opposition to the closing of Rowlesburg High School.<sup>3</sup>

The Board argues that Mr. Toothman received a temporary principalship license in 1982 and provisional administrative certification in 1985. He has been assigned as the assistant principal at East Preston High School since 1982 and therefore has more administrative seniority than the grievant. As the grievant was the employee with the least

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<sup>2</sup>The grievant did not make this interpretation a part of the record and thus only his translation of the document is available.

<sup>3</sup>The grievant also raises the issue of qualifications; however, they are controlling only in the filling of a vacant position and are not considered in transfers which are part of a reduction in force.

seniority in the administrative classification he was placed on the transfer list in compliance with W.Va. Code §18A-4-8b and numerous decisions of the Education and State Employees Grievance Board. The Board denies that its action was in retaliation for the grievant's stance on the school closing.

W.Va. Code §18A-4-8b clearly and unambiguously provides that whenever a county board is required to reduce the number of its professional personnel, the employee with the least amount of seniority shall be released from employment but shall be reemployed in any other professional position where he had previously been employed or to any lateral position for which he is certified/licensed if his seniority is greater than the seniority of any other employee in that area of certification/licensure. As the grievant had the least administrative seniority of all the principals and assistant principals; the Board's action was in statutory compliance.<sup>4</sup>

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

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<sup>4</sup>The Board's action was also in compliance with the holding of the W.Va. Supreme Court of Appeals in the matter of State ex rel. the Board of Education of the County of Kanawha v. Casey, 349 S.E. 2d 436 (W.Va. 1986).

### Findings of Fact

1. The grievant has been employed as a teacher by the Board since 1969 and served as the principal of Rowlesburg High School from 1986 until 1988 when it was closed.

2. Due to the closing of the school the Board implemented a reduction in personnel which resulted in the grievant being reassigned as a teacher for the 1988-89 school year.

3. The grievant had less administrative seniority than any other principal or assistant principal in the county.

### Conclusions of Law

1. W.Va. Code §18A-4-8b provides that the employee with the least amount of seniority shall be released from employment during a reduction of force, but that the employee shall be re-employed in any other professional position in which he had previously been employed or in any lateral position for which he is certified/licensed if his seniority is greater than the seniority of any other employee in that area of certification/licensure.

2. As the grievant possessed the least administrative seniority of any principal or assistant principal the Board acted properly in reassigning him to a position which he had previously held.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Preston County or to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. See W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the proper Court.

DATED

January 31, 1989

Sue Keller

SUE KELLER

HEARING EXAMINER