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CAROL GWINN

v

DOCKET NO. 89-47-254

TUCKER COUNTY BOARD OF EDUCATION

DECISION

Grievant, Carol Gwinn, was employed by the Tucker County Board of Education (Board) as the Director of Vocational Education when she filed a level one grievance on May 18, 1989 in which she alleged that she was demoted in title, position, duties and salary in violation of W.Va. Code §§18A-2-2, 18A-2-6, 18A-4-8(b) and Tucker County Board Policy BPS-84 when she was transferred part-time. Superintendent Mary Alice Klein, the grievant's immediate supervisor, denied the grievance and the Board waived participation. A level four appeal was filed on June 9 and a evidentiary hearing was conducted on July 17; briefs were filed on behalf of both parties by August 14.

By letter dated March 28, 1989 Superintendent Klein advised the grievant that, due to declining enrollment resulting in reduced state aid funding mandated by the

Education Reform Bill of 1988, she would be transferred effective the 1989-90 term to a teaching position or a lateral position for which she had certification. At the grievant's request a hearing was conducted by the Board on April 18 after which the proposed transfer list was approved. At a meeting held on May 2 the Board voted to eliminate one-half of the Vocational Administrator position and approved the creation of a half-time instructional position titled Job Placement Coordinator. The grievant submitted a bid form and was later awarded the position establishing her assignment for the 1989-90 school term as Vocational Director (half-time) and Job Placement Coordinator (half-time). The grievant retained an additional forty days of summer employment as the Vocational Director. The result of these actions for the grievant was the loss of half of an administrative position during the instructional term with an attendant reduction in salary (due to the prorated loss of the administrative increment) of \$1,456.00.

The grievant argues that transfer was an improper process for changing her job status, term and salary. She asserts that the terms of employment may only be changed without the employee's consent through termination under W.Va. Code §18A-2-2, and re-employment under the new terms. In support of this argument the grievant cites interpretations of the State Superintendent of Schools which state that supplements and indices are matters of contract which must be processed pursuant to W.Va. Code §18A-2-2 and that

prior to reducing an administrator's position he or she must be given an opportunity to know the reasons why and refute them through the termination procedure set forth in W.Va. Code §18A-4-4. She also cites the Education and State Employees Grievance Board decision in the matter of Williams v. Gilmer County Board of Education, Docket No. 11-87-182-3 (Feb. 3, 1988) which held that the reduction of a counselor's employment term through the transfer process was in violation of W.Va. Code §18A-2-2. The grievant additionally asserts that if the Board's action was a reduction in force as defined in W.Va. Code §18A-4-8b, she was entitled to certain rights set forth within that statute.

The Board argues that the grievant's transfer did not violate her contract because it includes a specific provision permitting the Board to assign the employee to different positions with salary adjustments made accordingly. The Board denies that the partial reassignment was a reduction in force inasmuch as there was no reduction in the number of professional personnel in its employment. It asserts its right to transfer personnel for administrative purposes and argues that because the action was reasonable and in the best interest of the school system it must be upheld in compliance with numerous decisions of the West Virginia Supreme Court of Appeals including Holland v. Board of Education of Raleigh County, 327 S.E. 2d 155 (W.Va. 1985)

and Hawkins v. Tyler County Bd. of Educ., 275 S.E. 2d 908 (W.Va. 1980).

The Board's reliance on the contractual provision allowing the reassignment of personnel, with attendant salary adjustments, must be construed in light of relevant legal authority. If a vacancy existed within the grievant's assigned classification and she was appropriately certified to hold that position a lateral transfer should have been implemented. See State ex rel. Bd. of Educ. v. Casey, 346 S.E. 2d 436 (W.Va. 1986).¹ If no vacancy within the classification currently existed at the time the Board voted to eliminate half of the position held by the grievant, a reduction in force within the classification of "directors" occurred imposing upon the Board the non-discretionary duty to comply with the guidelines of W.Va. Code §18A-4-8b(a).

Even though no personnel were terminated the Board's action to eliminate one-half of an administrative position which reduced one-half of one position in a distinct classification of professional educational personnel, i.e., county-level, program administrators, constituted a reduction in force as contemplated by Casey requiring that the employee with the least seniority be released and employed

¹Because Superintendent Klein's letter to the grievant dated March 28, 1989 stated that the grievant would be transferred to a teaching position or a lateral position for which she was certified the grievant's subsequent transfer into an instructional position may indicate there were no vacancies within the classification.

in another 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 that of any other employee in that area of certification and/or licensure.

Interpreting this statute in Casey the Court held that the secondary principal with the least seniority should be released and replaced by the principal from the school to be closed. The Education and State Employees Grievance Board has applied this reasoning to the classification of county-level, program directors in the matter of Bowers v. Harrison County Board of Education, Docket No. 17-87-198-2 (Feb. 16, 1988) which held that the positions within this classification may or may not be lateral in nature, depending upon the certification required by each position. Due to this unique situation, whenever a director's position is eliminated the Board must determine whether any other employees within that classification have earned less seniority than the grievant and, if so, whether the grievant is certified to hold any of those positions. If the answer is yes to both questions then the employee with the least seniority and holding a position for which the grievant is certified must be released and the grievant assigned to that position.

The proper procedure for the Board to have followed in this instance was to first determine whether there existed a lateral position vacancy for which the grievant was certified and, if so, to transfer her into the position. If no

vacancy existed then the Board was required to process the personnel action as a reduction in force. Because the Board did not transfer the grievant into a vacant, lateral position and failed to process the action as a reduction in force, the transfer action is void.

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

Findings of Fact

1. The grievant was first employed by the Tucker County Board of Education in 1974 and is presently assigned the administrative position of Vocational Director (half-time) and the instructional position of Job Placement Coordinator (half-time) for the 200 day instructional term and as full-time Vocational Director for an additional 40 days of employment.

2. Prior to the 1989-90 school term the grievant had been assigned the position of Vocational Director on a full-time basis since 1980.

3. By letter dated March 28, 1989 Superintendent Mary Alice Klein advised the grievant that, due to declining enrollment resulting in reduced state aid funding mandated by the Education Reform Bill of 1988, she would be recommended for transfer to a teaching position or a lateral position for which she had certification.

4. The Board voted to place the grievant on the transfer list at a meeting held April 18. On May 2 the Board voted to eliminate one-half of the Vocational Administrator position and approved the half-time position of Job Placement Coordinator, an instructional position. The grievant was later reassigned to the position of Coordinator.

5. The grievant no longer receives one-half of the administrative salary supplement during the 200 day school year for a loss of \$1,456.00 per year.

Conclusions of Law

1. Where no vacancy exists within a specific classification of employees at the time a board of education votes to eliminate a position a reduction in force occurs imposing a duty on the Board to conform to the procedural mandates of W.Va. Code §18A-4-8b(a). State ex rel. Bd. of Educ. v. Casey, 349 S.E. 2d 436 (W.Va. 1986).

2. A reduction in force of county-level program administrators requires a Board to determine if the displaced employee holds the proper certification and seniority to implement a lateral transfer. Bowers v. Harrison County Board of Education, Docket No. 17-78-198-2 (Feb 16, 1988).

3. The Board has failed to properly implement the reduction in force.

Accordingly the grievance is GRANTED and the Board is ORDERED to reinstate the grievant to the full-time position of Vocational Director and to reimburse her for all lost salary and benefits.

Either party may appeal this decision to the Circuit Court of Tucker County or to 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) 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 appropriate Court.

DATED: November 15, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER