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STATE EMPLOYEES GRIEVANCE BOARD**
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MARY LOUISE MORGAN

v.

Docket No. 89-54-470

WOOD COUNTY BOARD OF EDUCATION

DECISION

Mary Louise Morgan is employed as a teacher by Respondent Wood County Board of Education. During school year 1988-89, she was an instructor for the gifted at Parkersburg High School (PHS). On or about July 18, 1989, she initiated the following grievance at Level I:

Mary Louise Morgan was placed on the transfer list by the Wood County Board of Education. A hearing was held and the school board refused to remove her name from the . . .list. Mrs. Morgan contends the school board improperly calculated her seniority when . . .[it] made . . .[its] decisions concerning who would be placed on the transfer list. Mrs. Morgan asks . . .the . . .overturn[ing of] the decision . . .and that she be returned to her . . .position [at PHS].

After waiver there, denial at Level II and waiver at Level III, she advanced her claim to Level IV on August 17,

1989,¹ for resolution on the record.² With the receipt of a brief from Respondent and fact-law proposals from the Grievant by September 29,³ plus additional material, requested by the undersigned, on October 13,⁴ this matter is ready for decision. The pertinent facts of this case are not in controversy. Grievant, at the close of school year 1988-89, had completed roughly eleven years in Respondent's

¹ The procedural history herein is somewhat convoluted. After her transfer hearing, Grievant, apparently with the consent of Respondent, filed her complaint directly at Level IV, where it was docketed under No. 89-54-249. Inasmuch as the lower level grievance procedures, W.Va. Code §§18-29-4(a), (b), (c) had not been utilized, and as Grievant was not eligible for expedited treatment pursuant to Code §18A-2-8, her case was dismissed, with leave for her to refile it at Level I, which she did around July 18.

Level I was "waived," which was appropriate if that plane was without authority, as apparently it was, to grant the remedy sought. Code §18-29-3(c); Bumgardner v. Ritchie Co. Bd. of Educ., Docket No. 89-43-222, etc. (June 12, 1989). Then, the parties agreed that the transfer hearing could be treated as the Level II hearing mandated by Code §18-29-4(b), and Respondent rendered a Level II decision. Respondent waived consideration per Code §18-29-4(c) and Grievant returned the dispute to Level IV for resolution, where it was given its current Docket No. 89-54-470.

² Level IV hearing was originally scheduled for September 12, 1989. The undersigned was advised on September 11 that the parties agreed that the matter could be decided on the record adduced below.

³ Respondent simultaneously submitted a brief.

⁴ This "additional material," from Respondent, was its Policy 4119. Grievant's representative stated he had no objection to Policy 4119's consideration, and that he did not care to respond to the issue of its applicability herein. For discussion of this applicability, see n. 7.

service.⁵ She has held certification in the areas of art (grades 1-12) and language arts (7-9) since May 1971 and in gifted (5-12) since May 1988. She has taught only gifted since June 1986 and was on permit to do so until she achieved her permanent certificate in that field.

Respondent projected a decline in gifted education enrollment for term 1989-90 and determined that PHS would require one less professional in this area. Since it was also established that no reduction-in-force, i.e., termination of employment, would be created by this situation, Grievant was placed on administrative transfer per W.Va. Code §18A-2-7.⁶ It is Respondent's policy, when the number of positions at a given school is to decrease, to identify the person working at that facility with the least time-in-certification in the targeted area and place her or him on the transfer list.⁷ T. 12. At various times throughout

⁵ Specifically, Grievant taught in Wood County from June 7, 1971, through the end of the 1979-80 term, and again continuously since the start of 1986-87. Level II Decision, Finding 1.

⁶ Grievant does not contend any procedural impropriety in the processing of the transfer, other than that her original placement on the list was in error.

⁷ There is no written policy on administrative transfers in the Wood County school system. Policy 4119, Part D, relates to reductions-in-force. Respondent's attorney represented the Policy "incorporates as official policy the practice pertaining to administrative transfers used throughout the Wood County School system." After review thereof, the undersigned still has difficulty comprehending the relationship between reductions-in-force and
(Footnote Continued)

these grievance proceedings, Respondent has utilized the term "seniority" as synonymous with time-in-certification, e.g., "[f]or these purposes, Mrs. Morgan's seniority. . . was marked from the May 7, 1988 date on which she attained certification in gifted education." Level II Decision, Finding 7.⁸ Another gifted teacher, Judy Auch, retained her position at PHS for 1989-90. Ms. Auch, although employed by Respondent for only four years, has been fully certified in gifted instruction (levels 7-12) since at least July 1985.

W.Va. Code §18A-4-8b(a) defines seniority for professional personnel⁹; however, whether Respondent applied that definition appropriately is not pertinent to this dispute.

(Footnote Continued)

administrative transfers in Wood County; however, what is clear is that Respondent's consistent practice is to place the individual with the least time-in-certification in the targeted area at the school in question on administrative transfer, and that it has not at pertinent times been Respondent's intention to operate in a contrary manner or to confer broader rights upon its employees.

⁸ It is thus puzzling why Respondent's agents considered each of Grievant's specializations, not just gifted instruction, prior to placing her on the transfer list. Level II Decision, Finding 7. However, the situation is of no moment.

⁹ "The seniority of professional personnel shall be determined on the basis of the length of time the employee has been professionally employed by the county board of education. For purposes of establishing seniority as hereinafter provided, when an employee holds valid certification or licensure in one or more areas, the seniority shall accrue in each area. Employment for a full employment term shall equal one year of seniority, but no employee may accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated."

The authority upon which county boards of education in West Virginia base administrative transfer decisions is not §18A-4-8b(a), but Code §18A-2-7. This latter provision does not even mention seniority, and Respondent quite correctly points out that there is no legal requirement that transfer decisions be based on seniority.¹⁰ See, e.g., State ex rel. Hawkins v. Tyler Co. Bd. of Educ., 275 S.E.2d 908 (W.Va. 1981). Nor is there any impediment to seniority or other reasonable bases being utilized for purposes of administrative transfer.¹¹ In the instant circumstances Respondent, in accordance with its usual practice, determined that the PHS teacher with the least time-in-certification in gifted instruction would be placed on the transfer list. This practice is not arbitrary or capricious, and was established in good faith and with the best interests of the system in mind, see T. 26-27. Therefore, in the context of this case, it is a "reasonable basis."

¹⁰ Grievant's reliance on Proctor v. Putnam Co. Bd. of Educ., Docket No. 40-88-182 (Feb. 1, 1989), is misplaced, in that Proctor involved procedures for hiring and not administrative transfer. Hiring decisions, in professional education vacancy situations, must be based primarily on qualifications, with seniority having a bearing if the top candidates are equally qualified. Code §18A-4-8b(a).

¹¹ See McClure v. Kanawha Co. Bd. of Educ., Docket No. 20-88-131 (Oct. 24, 1988). In McClure, the board of education referenced a concept of "in-school seniority"; however, overall worktime with the respondent was what was actually relied upon.

The remainder of this Decision will be presented as formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant, a teacher of gifted students at Parkersburg High School, was placed on administrative transfer. This was pursuant to Respondent's determination that PHS would need one less gifted teacher for school term 1989-90.

2. Ms. Judy Auch retained her job as a gifted instructor at PHS for 1989-90. Ms. Auch has several years' less service with Respondent, but has been certified in the area of gifted education at least three years longer than Grievant.

3. Respondent's policy is to utilize time-in-certification, which it sometimes calls "seniority," as a basis for determining which employees to put on the transfer list. In this case, the later date of Ms. Morgan's gifted certification was considered the relevant "seniority"; hence she, and not Ms. Auch, was placed on the list.

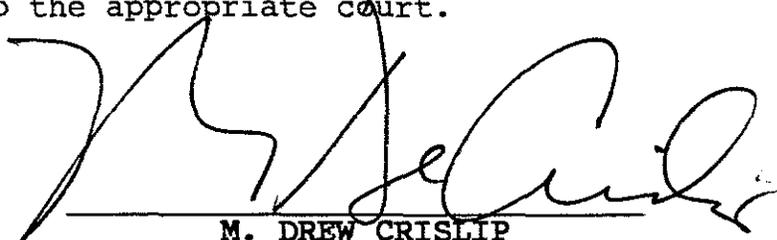
CONCLUSIONS OF LAW

1. A county board of education is bound by procedures it has properly established to conduct its affairs. Powell v. Brown, 238 S.E.2d 220 (W.Va. 1977); Fairchild v. Boone Co. Bd. of Educ., Docket No. 03-88-160 (Dec. 7, 1988).

2. Respondent's practice of placing the individual with the the least time-in-certification in the targeted area at the school in question on administrative transfer is reasonable. See State ex rel. Hawkins v. Tyler Co. Bd. of Educ., 275 S.E.2d 908 (W.Va. 1981). When this practice is correctly and consistently applied, as herein, resultant transfers will not be overturned. See id.

Accordingly, this grievance is **DENIED**.

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



M. DREW CRISLIP
HEARING EXAMINER

Dated: November 29, 1989