



REPLY TO:
401 Davis Avenue
Suite 315
Elkins, WV 26241
Telephone: 636-1123

Members
James Paul Geary
Chairman
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
GASTON CAPERTON
Governor

Offices
240 Capitol Street
Suite 515
Charleston, WV 25301
Telephone 348-3361

CRISTAL O'NEAL

v.

DOCKET NO. 24-88-190

MARION COUNTY BOARD OF EDUCATION

DECISION

Grievant, Cristal O'Neal, is employed as a teacher by the Marion County Board of Education (Board). Ms. O'Neal filed a level four grievance appeal on October 4, 1988 in which she alleged violations of W.Va. Code §§18-29-2(a), 18A-2-7, 18A-2-9 and Board Transfer Policy. A level four hearing was conducted on December 1, 1988 at which time the parties agreed to a tentative settlement to be submitted for Board approval. The Board subsequently failed to approve the settlement and the hearing was reconvened on February 14, 1989. Proposed findings of fact and conclusions of law were submitted by March 14.

The facts of this matter are not in dispute. In the spring of 1988 Board administrators determined that, due to declining enrollment, the professional staffs at several schools would have to be reduced. Mannington Elementary School was scheduled to lose two positions, one first grade teacher and one second grade teacher. The procedure used to

determine which teachers would be RIFFED was to place the least senioered staff member assigned to the affected grade levels and the least senioered staff member within the building on transfer. The intent was to create a vacancy for which the more senioered staff member might apply and remain assigned within the building.

During the 1987-88 school term Mannington Elementary had been assigned four first grade teachers: I. Rezillo (38 years seniority); L. Swiger (4 years); Grievant (2 years effective 9/16/85) and M. Domico (2 years effective 8/19/85). Four second grade teachers were also assigned to Mannington: D. Kizer (12 years); C. Malcolm (15 years); N. Michael (15 years) and C. Shutler (9 years). Ms. Shutler and the grievant were the least senioered individuals within the affected grade levels. Ms. Dotson (Early Childhood Education, seniority date 8/26/86) and Ms. Domico were determined to be the least senioered of the remaining building staff and were scheduled to be placed on the transfer list. Due to the resignation of Ms. Rezillo, Ms. Domico was not recommended for transfer. In theory Ms. Dotson's transfer would create a potential vacancy for the grievant whose vacated position would be available for Ms. Shutler. Apparently Ms. Shutler has been placed into the grievant's first grade assignment; however, the grievant was not assigned to Ms. Dotson's Early Childhood Education class as a teacher with greater seniority from another school bid on and was awarded the position. The grievant has been

assigned where needed as a substitute during the 1988-89 school term.

The grievant argues that the transfer was unnecessary and improper as the resignation of Ms. Rezillo fulfilled the reduction of the first grade position and that she was placed on the transfer list only to accommodate Ms. Shutler's remaining in the school, an act constituting favoritism. The Board argues that the grievant's transfer was proper and consistent with the county policy and was not arbitrary, unreasonable, capricious or contrary to the best interests of the school.

W.Va. Code §18A-4-8b(a) requires that whenever a county board of education is required to reduce the number of its professional personnel the employee with the least amount of seniority shall be released. 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 that of any other employee in that area of certification and/or licensure. Statutes which are clear and unambiguous are to be applied and not interpreted. Lavender v. McDowell County Board of Education, 327 S.E.2d 691 (W.Va. 1984); Hatfield v. Mingo County Board of Education, Docket No. 29-87-019-4 (May 29, 1987); West, et al. v. Wetzel County Board of Education, Docket No. 52-86-279-3 (May 4, 1987). Accordingly, it has been held that reductions in

professional staff are to be effected within areas of certification and on a county-wide basis. See State ex rel. Board of Education v. Casey, 349 S.E.2d 436 (W.Va. 1986); Friend v. Preston County Board of Education, Docket No. 38-88-163 (Jan. 31, 1989); Bowers v. Harrison County Board of Education, Docket No. 17-87-198-2 (Feb. 16, 1988); James v. Gilmer County Board of Education, Docket No. 11-87-181-3 (Dec. 22, 1987). In the present matter a reduction based on seniority within a school was improper. Once the positions to be eliminated within the county were identified an equal number of teachers assigned to the same certification and with the least seniority within the county were to be released and placed on the transfer list. The displaced teachers, if they are not the least senior and to be released from employment, are to be transferred to the positions vacated by the released teachers.

The Board's intention to keep teachers within the same building was misdirected and resulted in improper staff reductions based upon the seniority of a school staff rather than on that of all teachers within the area assignment throughout the county.

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

Findings of Fact

1. The grievant is employed by the Marion County Board of Education as a teacher. She was assigned to teach first grade at Mannington Elementary School during the 1987-88 school term.

2. In the spring of 1988 the Board determined that professional staff reductions would have to be made in numerous schools. Mannington was scheduled to lose one first and one second grade teacher.

3. Based upon their county seniority the least senior staff member of the affected grade levels and the least senior staff member within the building were placed on the transfer list. The purpose of this procedure was to create a potential vacancy for the more senior staff member to remain assigned to the same building.

4. Another first grade teacher resigned thereby decreasing the number of first grade teachers by one through attrition.

5. The second grade teacher with nine years seniority, the grievant, and an Early Childhood Education teacher with one year seniority (the least senior employee within the building) were placed on the transfer list.

6. The second grade teacher was placed in the grievant's first grade position and the grievant was assigned as a substitute when a teacher from another school

with more seniority applied for and received the Early Childhood Education position at Mannington.

Conclusions of Law

1. Whenever a county board of education is required to reduce the number of professional personnel which it employs, the employee with the least amount of seniority shall be released and 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 that of any other employee in that area of certification and/or licensure. W.Va. Code §18A-4-8b(a).

2. Reductions in the number of professional staff employed by a board must be effected within designated area assignments and implemented on a county-wide basis. Board of Education v. Casey, 349 S.E.2d 436 (W.Va. 1986); Friend v. Preston County Board of Education, Docket No. 38-88-163 (Jan. 31, 1989); Bowers v. Harrison County Board of Education, Docket No. 17-87-198-2 (Feb. 16, 1988); James v. Gilmer County Board of Education, Docket No. 11-87-181-3 (Dec. 22, 1987).

3. The grievant was improperly transferred as her position of first grade teacher was not abolished and she was not the least senior employee within the county assigned to a position requiring elementary certification.

Accordingly, the grievance is **GRANTED** and the Board is hereby Ordered to reinstate the grievant to the position of

first grade teacher at Mannington Elementary School and to reimburse her for any time which she has not worked as a result of the improper transfer during the 1988-89 school term.

Either party may appeal this decision to the Circuit Court of Marion 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: April 28, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER