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ALVIN VANCE

v.

Docket No. 89-13-489

GREENBRIER COUNTY BOARD OF EDUCATION

DECISION

Grievant, Alvin Vance, is employed by the Greenbrier County Board of Education (Board) as a vocational agricultural (Vo-Ag) instructor. He initiated his grievance at Level I June 1, 1989, alleging:

I have been placed on transfer list for 1989-90 school year. I have ten years experience in Vo-Ag teaching field. My transfer is a reduction in force due to low enrollment. There is another teacher with less than 3 years experience teaching Vo-Ag at Greenbrier East High School. On the basis of seniority I should not be transferred.

After denials at that level and at Level II, following hearing held July 25, 1989, grievant advanced his claim to Level III, where the Board waived proceedings. Appeal to Level IV was made August 22, 1989, where hearing was held September 27, 1989. The parties submitted proposed findings of fact and conclusions of law by October 19, 1989.

The facts giving rise to the grievance are not disputed. Grievant has been employed by the Board for approximately ten

years. From 1980 until the beginning of the 1988-89 school term, he taught Vo-Ag machinery classes half-time at Greenbrier East High School (GEHS) and Vo-Ag production classes half-time at Lewisburg Junior High School (LJHS). Grievant holds certification in both areas. At the start of the 1988-89 term, he began full-time Vo-Ag machinery instruction at GEHS. Mr. Woody Hannah and Mr. Steve Tennant are also assigned to GEHS. Mr. Hannah teaches co-operative Vo-Ag classes and Mr. Tennant is responsible for Vo-Ag production classes, commonly referred to as Vo-Ag I, II, III and IV. Mr. Tennant's position requires him to have only certification in Vo-Ag education while grievant and Mr. Hannah must possess special certifications which they have achieved through additional college courses.¹ Mr. Hannah had greater seniority than grievant, who was senior to Mr. Tennant.

On or about April 4, 1989, grievant was informed that he was being considered for placement on a transfer list due to declining student enrollment in his classes. Grievant requested and was afforded a hearing on this recommendation and the Board subsequently voted to place his name on the list.² Grievant retained one-half of his machinery classes at GEHS and was assigned to teach production classes one-half time at LJHS. The employment of the previous Vo-Ag instructor at LJHS, Ms. Diedre

¹It is not clear whether these courses are graduate or post-graduate.

²Grievant makes no contention that he was denied any of the procedural safeguards of W.Va. Code §18A-2-7.

McVey, had been terminated prior to his assignment there. It is uncontested that Ms. McVey was the least senior Vo-Ag instructor in the county at the time and that she lost her position as the result of a reduction-in-force (RIF) of such instructors.³

Grievant concedes that there was not sufficient enrollment in his machinery classes⁴ but asserts that, since the cutback was in the Vo-Ag "program" at GEHS the least senior instructor therein, Mr. Tennant, should have been transferred to LJHS. He cites W.Va. Code §18A-4-8b(a) which in pertinent part 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, 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

³It appears a total of only one Vo-Ag position was eliminated. Grievant lost his one-half position at GEHS and a half-time position at the Alderson Correctional Center was abolished. That position was held by a Mr. Martin, who was assigned the remainder of Ms. McVey's classes at LJHS.

⁴Apparently there were only two machinery classes at GEHS. One, which was considered an advanced course, occupied the morning hours and the other the afternoon hours. Only nine students were enrolled during the 1988-89 term, with four in the latter. This would mean that during the ensuing year these four, barring transfers of students from other schools, would be the only ones eligible for the advanced class. West Virginia Board of Education regulations prohibit the payment of state funds for Vo-Ag programs unless each instructor therein has a total of fifteen students in each class. Since there was testimony indicating grievant's 1988-89 enrollment was similar to that in previous years, it is presumed that the Board had been absorbing the costs of the machinery classes for some time.

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

Grievant further contends that the Board's action was in violation of its own policy which provided that transfers were to be made strictly on the basis of seniority.

The Board maintains it followed W.Va. Code §18A-4-8b(a) when it identified one-half of grievant's Vo-Ag mechanics position it wished to eliminate and allowed him to displace or "bump" into Ms. McVey's half-time position at LJHS. The Board further asserts this action was consistent with its policy of making transfers on the basis of seniority since grievant was the only and, therefore, the least senior Vo-Ag mechanics instructor at GEHS.

Grievant's arguments are not persuasive. While his position was obviously part of the Vo-Ag program at GEHS, he was utilizing a specialized certification to teach classes distinctly different from the other instructors. Although the two certifications are obviously related the differences between teaching very basic courses, which is all the certificate for Vo-Ag production allows, and teaching the much more advanced machinery classes are sufficient to conclude that it was proper for the Board to designate him the only and, therefore, the least senior teacher in his field of instruction.

The remaining steps taken by the Board were also proper. Upon its identification of one-half of grievant's position as one to be eliminated, he was allowed, pursuant to W.Va. Code §18A-4-8b(a), to utilize his certification in Vo-Ag production

and displace or "bump" Ms. McVey, the least senior teacher in "that area of certification and/or licensure."

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

FINDINGS OF FACT

1. Due to declining enrollment in grievant's Vo-Ag machinery classes at GEHS, he was placed on a transfer list for subsequent reassignment.

2. Grievant retained one-half of his machinery classes at GEHS and was assigned Vo-Ag production classes one-half time at LJHS, a position previously held by Ms. Diedre McVey, the least senior Vo-Ag instructor in the county whose employment had been terminated.

CONCLUSIONS OF LAW

1. When a county board of education seeks to reduce its professional staff in a particular discipline, it must release the least senior employee within that discipline unless he or she holds other certifications and sufficient seniority to displace or "bump" others utilizing such certifications. W.Va. Code §18A-4-8b(a). The employee is not entitled to displace a less senior employee but must displace the least senior employee within those certifications. James v. Gilmer County Board of Education, Docket No. 11-87-181-3 (December 22, 1987).


2. The Board properly determined grievant to be the least senior employee in Vo-Ag machinery instruction, the discipline in which it desired to reduce its staff.

3. The Board complied with W.Va. Code §18A-4-8b(a) by allowing grievant to displace the least senior employee within his certification of Vo-Ag production.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Greenbrier 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. 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: March 30, 1990


JERRY A. WRIGHT
Chief Hearing Examiner