NANCY RADCLIFF

v. Docket No. 93-24-194

MARION COUNTY BOARD OF EDUCATION

DECISION

Grievant, Nancy Radcliff, employed by the Marion County Board of Education (Board), initiated grievance proceedings at level two on March 15, 1993, alleging a violation of W.Va. Code §18A-4-7a when her employment was terminated as part of a reduction in force, even though another employee had accrued less seniority. (See footnote 1) **Grievant requested that she be reinstated to the position she held during the 1992-93 school year with back pay, interest, and benefits. Superintendent Jane Reynolds denied the grievance finding that Grievant was the least senior employee in the area of business math, the certification held by Velma Burton, whose position at the Marion County Technical Center had been abolished. Grievant appealed the decision to level four on May 28, 1993. Both parties agreed that a decision could be made based upon the lower-level record, supplemented with proposed findings of fact and conclusionsof law which were filed by July 12, 1993.**

The facts of this matter are not in dispute. Grievant was first employed by the Board in August 1978 and was assigned as a business education teacher at Fairmont Senior High School during the 1992-93 school year. Grievant's only area of certification is business education/business math, grades 7-12. In March 1993 the Board implemented a reduction in force which resulted in the elimination of a business education position at the Technical Center held by Velma Burton. Ms. Burton holds certification in the areas of secretarial studies/business math, grades 7-12, and her seniority date with the Board is May 1972.

Ms. Burton was subsequently transferred into the business education position held by the employee with the least seniority, i.e., Grievant, who was in turn transferred to the White Alternative Learning Center, bumping Connie Pirner, whose seniority date is August 1989. Ms. Pirner's employment was thereafter terminated and she was placed on the preferred recalled list. No specific certification is required of teachers assigned to the White ALC.

Grievant argues that she should not have been included in the reduction-in-force process because she was not the least senior employee within Ms. Burton's areas of certification. Grievantnotes that she and Ms. Burton have the same certification areas; therefore, Ms. Burton should have displaced Ms. Pirner at the White ALC. The Board asserts that it properly transferred Ms. Burton to the business education position held by the least senior employee and that the transfer of Grievant to the White ALC was not in violation of any statutory provision or policy.

Grievant's argument that Ms. Burton should have been transferred to the White ALC is rejected. When a board of education reduces the number of professional employees in a distinct teaching area or in an administrative employment area, a reduction in force occurs. See State ex rel. Bd. of Educ. v. Casey, 349 S.E. 2d 436 (W.Va. 1986); Pulice v. Marion County Bd. of Educ., Docket No. 93-24-169 (Aug. 20, 1993). During a reduction in force, the employee in the targeted area with the least seniority shall be released from employment. Bishop v. McDowell County Bd. of Educ., Docket No. 92-33-226 (April 30, 1993). However, that employee subject to release, may bump into any other professional position for which said employee is certified and/or licensed and the employee's seniority is greater than the seniority of any other employee in that area of certification and/or licensure. W.Va. Code §18A-4-7a.

In the present matter the reduction in force occurred in thecertification of business math; therefore, the employee subject to release was Grievant, the employee with the least seniority in that area. The Board then properly transferred Ms. Burton into the position held by the least senior business math teacher, i.e., Grievant.

In addition to the foregoing, the undersigned makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant was employed by the Marion County Board of Education in August 1978 and was assigned as a business education teacher at Fairmont Senior High School during the 1992-93 school year.

2. In March 1993 the Board eliminated a business education position at the Marion County

Technical Center held by Velma Burton.

3. Ms. Burton was subsequently allowed to bump into the position held by Grievant, who was the business education teacher with the least seniority in the county.

4. Grievant was then transferred to the White AlternativeLearning Center, bumping Connie Pirner, who had less seniority than Grievant.

5. No specific certification is required of teachers assigned to the White ALC.

CONCLUSIONS OF LAW

1. W.Va. Code §18A-4-7a requires that when a board of education reduces the number of professional personnel in its employment, the employee(s) with the least amount of seniority shall be released from employment. However, an employee subject to release shall be employed in any other professional position where he or she is certified and was previously employed or to any lateral area for which he or she is certified and/or licensed, if his or her seniority is greater than the seniority of any other employee in that area of certification and/or licensure.

2. Grievant was properly identified as the employee subject to release as a result of a reduction in force within the targeted area of business math.

Accordingly, the grievance is Denied.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Marion 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 Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

DATED February 25, 1994 _____

SUE KELLER

SENIOR ADMINISTRATIVE

LAW JUDGE

Footnote: 1Grievant was apparently allowed to bypass level one.