TERESA DODSON

v. Docket No. 93-33-243

McDOWELL COUNTY BOARD OF EDUCATION

DECISION

The grievant, Teresa Dodson, was employed by the McDowell County Board of Education as an Early Childhood teacher assigned to Switchback Elementary School (SES). During the 1992-93 school year she was a "split" fifth/sixth grade teacher at SES. She filed a grievance April 7, 1993 alleging that her transfer to the kindergarten position was in violation of W.Va. Code §18A-4-8f. Her supervisor was without authority to grant relief and the grievance was denied at Level II following a hearing held June 1, 1993. The Board waived consideration of the matter and an appeal to Level IV was made July 2, 1993. The parties subsequently agreed to submit the case for decision on the record developed at Level II and briefs. The grievant submitted proposed findings of fact and conclusions of law by September 1, 1993. The Board elected to rely on its Level II findings and conclusions.

FACTS

There is no dispute over the facts of the case. The Level II record supports the following findings.

1) During the 1992-93 school term the Board decided to close Keystone Elementary School (KES) effective the end of that term. The Board further decided to transfer some if not all KES students to SES effective the beginning of the 1993-94 term.

2) During the 1992-93 school term, the grievant taught both fifth and sixth grade students in a "self-contained" classroom, meaning she provided instruction to those students in all subject areas.

3) The Board determined that with the influx of KES students there would be a need during the 1993-94 term for both a fifth grade class and a sixth grade class at SES and grievant's "split" level position would be abolished. The influx also necessitated the creation of other positions at SES.

4) By letter dated March 4, 1993, Superintendent of Schools Kenneth Roberts notified the grievant that he would recommend to the Board that her name be placed on a transfer list for the 1993-94 term "due to the reduction-in-force created by the financial need to reduce staff to the State

Aid Formula for professional personnel, budget reductions, and school closings." He also advised her that she could request a hearing before the Board on the recommendation.

5) The grievant was afforded a hearing and the Board subsequently accepted the Superintendent's recommendation that she be placed on the "unassigned" transfer list.

6) On April 2, 1993, the Board posted the following positions at SES created by the transfer of KES students: Early Childhood, fourth/fifth grade, fifth grade, and two sixth grade vacancies at SES. The grievant submitted an application letter in which she indicated her interest in all the vacancies, listing grade five and grade six as her first two preferences. She was eventually awarded the Early Childhood position.

7) The persons selected for the fifth and sixth grade positions were more senior than the grievant. At least one SES fifth grade teacher who was not placed on the transfer list and who retained his position was less senior than the grievant.

ARGUMENT

The grievant's legal position is most difficult to discern. At the Level II hearing her representative asserted that she had a right under W.Va. Code §18A-4-7a, ¶12 to displace or "bump" less senior teachers at SES and should not have been placed on the transfer list. In her Level IV proposals she asserts that W.Va. Code §18A-4-8f controlled all personnel actions arising from the transfer of KES students and that provisions therein granted her a "seniority right" to one of the newly-created fifth or sixth grade positions. It is accepted that the grievant contends her seniority entitled her to one of those positions without having to apply therefor and that there is support for that assertion in one of thecited statutes. The Board asserts that the grievant was merely the subject of an administrative transfer and that the review of such actions is governed by the "arbitrary and capricious" standard. The Board further maintains that the grievant has failed to show that it abused its discretion in the transfer.

CONCLUSIONS

After a thorough review of the parties' positions, the applicable statutes and the foregoing findings of fact, the undersigned makes the following conclusions of law.

1) W.Va. Code §18A-4-7a, ¶¶11 and 12 contain specific provisions for reductions in force and realignment of positions in elementary schools which are applicable when the number of teaching positions at a particular school is to remain the same or be reduced. Since there was an increase in

positions at SES, those provisions were not applicable to the personnel changes made at the school.

2) Since the record does not support that the Board was attempting to reduce overall the number of professional employees on its staff, the more general reduction-in-force provisions of Code §18A-4-7a, ¶6 also were not applicable.

3) W.Va. Code §18A-4-8f provides for preferences in hiring for teachers whose school is merged with another if a majority of teachers employed by a county board of education agree, through formal vote, to such preferences. There being no evidence that anysuch vote was taken in the present case, those provisions had no bearing on the personnel actions affecting SES and KES.

4) Substantial changes in a teacher's assignment constitute a transfer and a county board of education must comply with the provisions of W.Va. Code §18A-2-7 when effecting such changes. Dotson v. Greenbrier County Bd. of Educ., Docket No. 13-87-321-4 (March 7, 1988).

5) County boards of education have broad discretion in personnel matters, including transfers, but must exercise that discretion in a manner which is not arbitrary or capricious. Dillon v. Bd. of Ed. of County of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

6) The change in the grievant's assignment at SES from "split" fifth/sixth grades to Early Childhood was substantial and constituted a transfer. The grievant has failed to demonstrate that the Board did not comply with Code §18A-2-7, or that it acted arbitrarily in effecting the change.

Accordingly, the grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of McDowell 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 notbe 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.

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JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: February 15, 1994