BERTHA GONGOLA

v. Docket No. 95-35-276

OHIO COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Bertha Gongola, professionally employed by Respon
dent Ohio County Board of Education (OCBE) as a teacher, claims
a violation of W.Va. Code 18-2-7 as follows:

I have arbitrarily been moved from Ritchie School and
a false vacancy was created with another teacher in my
position. I feel my rights have been violated. It
can be resolved by my remaining at my present assign
ment.

At Grievant's request, the matter was scheduled for a level four
hearing, but the hearing was canceled when the parties agreed
that a level four decision could be based upon the lower-level
record. Thereafter, the case became mature for a decision on
the designated last day for receipt of fact/law proposals,
September 29, 1995.

There is no dispute between the parties as to the facts
developed at the level two hearing. Based on all matters of
record, the following findings of fact are made.1

Findings of Fact

1. Grievant has approximately twenty-one years of senior
ity with OCBE. She is certified in elementary education, grades
1-8; art, 7-9; and English, 7-9. T.6-7.

2. Sometime prior to the 1993-94 school year, Grievant
requested a transfer from her fifth grade teaching job in an
elementary school. Because an elementary art teaching vacancy
existed for Ritchie Elementary school, and no other art-certi

fied persons applied, Grievant received the position. T.35-36. During 1993-94, she taught kindergarten through fifth grade art education at Ritchie and Clay elementary schools. Prior to the start of the 1994-95 school year, a third school, Elm Grove Elementary, was added to her 1994-95 teaching assignment.

3. During the 1994-95 school year, Grievant was scheduled to spend three full days, Monday through Wednesday, and two half days, Thursday morning and Friday afternoon, at Ritchie. Thursday afternoon, Grievant taught three kindergarten classes at Elm Grove, and Friday morning, she was scheduled for Clay.

4. Due to ongoing changing needs, pupil enrollment, or financial constraints, OCBE has regularly placed primary and middle school "resource" teachers, in subject areas such as art,

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1The record contains the pleadings, adverse lower-level decisions and transcript and exhibits of the June 12, 1995, level two hearing.

music, media and physical education, on the transfer, subsequent assignment list in the Spring preceding the end of the school year, and some may be ultimately transferred. T.31-32, 38.

5. By letter dated March 17, 1995, Grievant received notice that she was being considered for transfer for the 1995-96 school year. Specifically, she was advised that

Your transfer is being considered because of shifting county pupil enrollment causing the possible need for reorganization of programs, services, staff within the county for the '95-96 year. This transfer may result to a transfer in a lateral area of your certification. Upon request, a copy of the Guidelines for Personnel

Hearings may be obtained from the superintendent's office.

6. Grievant did not request OCBE's Guidelines or a hearing on the proposed transfer. However, at some point, Grievant did meet with Assistant Superintendent Lawrence Miller and another administrator to discuss the transfer. She was told the reason for the transfer was that she was not certified to teach art at the elementary level. T.7, 9-10, 35.

7. OCBE met on March 27, 1995, and approved the elimina tion of several positions, including an art teaching position, and acted on recommendations to place various personnel on the reduction in force (RIF) list, effective the end of the 1994-95 school year. In particular, OCBE's least senior art teacher was placed on RIF. She was assigned to Bridge Street Middle School, grades six through nine, during the 1994-95 school year.

8. By letter dated April 11, 1995, Grievant was notified that OCBE had, on April 10, 1995, placed her on the transfer, subsequent assignment list for the 1995-96 school year.

9. Because of the loss of one art teaching position in the elementary/middle school area, and due to the downsizing of the elementary art education program for fiscal reasons, the schedules of county-wide elementary art resource teachers had to be adjusted for the 1995-96 school year. Specifically, the use of an art resource teacher to teach kindergarten art classes at Elm Grove, and more precisely, the use of resource teachers for the twenty kindergarten sections at various elementary schools throughout the school system, was to be discontinued. Thus, the exact position held by Grievant during the 1994-95 school year was no longer available. As a result, remaining grade-level certified art resource teachers less senior than Grievant were

scheduled to teach elementary art education at Ritchie (project ed half-time basis, thirteen "sections") and Clay (projected two hours per week, two "sections") for the 1995-96 school year. T.48-51.

10. At its May 8, 1995 meeting, OCBE removed Grievant from the transfer, subsequent assignment list and assigned her to teach art at Bridge Street Middle School, a teaching area for which she was fully grade-level certified.

Discussion

Grievant expressly denied that she was raising any proce dural issues regarding the transfer process. Instead, Grievant claims she was improperly transferred because the position she held during 1994-95 was, in fact, still available for the 1995-96 school year. In her view, she should not "lose" the job she held in the elementary schools, or get "bumped" by a less senior teacher simply to accommodate the restructuring of programs or classes.2 She claims such a transfer is "contrary to the spirit" of Code 18A-2-7. Grievant seeks reinstatement to the same elementary art teaching assignment she held during the 1994-95 school year, or an elementary art teaching assign ment in one or more of the schools in which she taught the prior year. T.5.

OCBE relies on the provisions of Code 18A-2-7 which authorizes the superintendent, subject only to the approval of the board, to transfer and assign school personnel following strict notice and hearing requirements. OCBE contends it met all the procedural requirements of the statute. OCBE also maintains that, following the decision to eliminate the use of art resource teachers for kindergarten art education and the loss/RIF of one art teacher, one or more of the nine remaining

art resource teachers, including Grievant, had to be properly placed, based on their seniority and certification. Because the middle-school art teacher was reduced in force, but the position

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2In her level four fact/law proposals, Grievant raised a new issue. She invoked the provisions of Code 18A-4-7a(6) and argued that the statute
does not allow one less senior teacher to displace a second more senior teacher on the basis that the second is teaching out of field; rather, a professional employee can only displace a less senior employee under that provision. [Cite ommitted].

Simply put, Grievant was not "bumped" by a less senior employee as part of a RIF procedure. Rather, Grievant was transferred as a result of the restructuring of the elementary program whereby the use of resource teachers was discontinued in the kindergarten area.
itself not eliminated, and because Grievant held the appropriate grade-level art certification, it was proper, pursuant Code 18A-2-7, to to transfer and reassign Grievant to the middle-school art teaching assignment.
Based on the record as a whole, the undersigned finds that Grievant has not met her burden of proof in this matter. Contrary to Grievant's assertions, the position she held during the 1994-95 school was not available, due to the elimination of the kindergarten art education classes. School administrators must be able to transfer and reassign school personnel due to realignment or reorganization. The purpose of Code 18A-2-7 is not to ensure that school personnel hold a particular position

forever, but, in part, to facilitate the movement of workers when the need arises. State ex rel. Hawkins v. Tyler County Bd. of Educ., 275 S.E.2d 908, 911 (W.Va. 1980). Grievant admitted that OCBE met the procedural safeguards mandated by 18A-2-7. Furthermore, Grievant has not demonstrated that OCBE's transfer and subsequent reassignment of her to a middle-school art teaching job, under the circumstances of reorganization and staffing needs in the art education area, was arbitrary and capricious.

In addition to the foregoing, the following conclusions of law are appropriate.

Conclusions of Law

1. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. Rupich v. Ohio County Bd. of Educ., Docket No. 89-35-719 (June 29, 1990); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. Grievant failed to establish a violation of W.Va. Code 18A-2-7, arbitrary or capricious treatment in regard to her transfer and subsequent reassignment, or any other wrongdoing on OCBE's part.

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Ohio 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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NEDRA KOVAL

Administrative Law Judge

Date: September 29, 1995