PHOEBE MCGUIRE

v. Docket No. 94-31-588

MONROE COUNTY BOARD OF EDUCATION

DECISION

The grievant, Phoebe McGuire, was employed by the Monroe County Board of Education (Board) as a home economics teacher at Union High School until the end of the 1993-94 school year when her position was eliminated in a reduction-in-force (RIF). She filed a grievance at Level II on August 24, 1994, (See footnote 1) alleging that the Board had failed to notify her of an opening in a teaching position at the Monroe County Vocational School in violation of W.Va. Code §18A-4-7a. The grievance was denied at that level following a hearing held September 7, 1994. The Board apparently declined to hear the matter at Level III and the grievant appealed to Level IV October 3, 1994. The parties subsequently agreed to submit the case for decision on the record developed at Level II. Althoughthe parties were given until November 24, 1994, to submit proposed findings of fact and conclusions of law, none were received.

There is no dispute over the facts of the case. The grievant's name was placed on a preferred recall list per W.Va. Code §18A-4-7a (See footnote 2) following the elimination of her position at Union High School. She holds certification in Vocational Home Economics, grades 7 through 12. On or about June 8, 1994, the grievant presented to Patty Hancock, one of the Board's central office secretaries, a letter addressed to Superintendent of Schools Lynn Guy in which she requested that the Board notify her of all future job openings in the school system regardless of whether they were in her area of certification. Ms. Hancock apparently read the letter and returned it to the grievant after advising her that because of her placement on the preferred recall list she would receive notices of all job openings.

On or about June 23, 1994, the grievant received notice via certified mail of vacancies in several teaching positions for which she was not certified. Shortly thereafter, Superintendent Guy concluded that Code §18A-4-7a required such notices only when those persons on the preferred recall list were certified for a vacant position. She directed her secretary to cease notifying persons of vacancies

unless they held the certification required in the posting for a particular position.

On July 29, 1994, the Board posted the position of "Technical Education" teacher at the Monroe County Technical Center. The posting required that applicants hold "proper certification in Technical Education." (See footnote 3)

Per Superintendent Guy's instructions, the grievant was not notified by certified mail of this vacancy. She did not learn of the opening until she read in a local newspaper that it had been filled on August 8, 1994. She subsequently learned that Dan Umberger, the successful applicant, did not have certification in technology education at the time of the posting and that he had obtained a permit in the field per State Board of Education Policy 5202. (See footnote 4) The grievant also determined that certain of her graduate level classes would have qualified her for the permit. This grievance ensued.

The grievant asserts that under W.Va. Code §18A-4-7a, the Board was obligated to provide her notice of the position via certified mail. The Board argues that it was not.

The pertinent portion of the statute provides,

> All professional personnel whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a preferred recall list. As to any professional position opening within the area where they had previously been employed or to any lateral area for which they have certification and/or licensure, such employee shall be recalled on the basis of seniority if no regular, full-time professional personnel, or those returning from leaves of absence with greater seniority, are qualified, apply for and accept such position. Before position openings that are known or expected to extend for twenty consecutive employment days or longer for professional personnel may be filled by the board, the board shall be required to notify all qualified professional personnel on the preferred list and give them an opportunity to apply, but failure to apply shall not cause such employee to forfeit any right to recall. The notice shall be sent by certified mail to the last known address of the employee, and it shall be the duty of each professional personnel to notify the board of continued availability annually of any change in address or of any change in certification and/or licensure.

The undersigned finds this language to be clear and unambiguous and must give it that effect. Lavender v. McDowell County Bd. of Educ., 327 S.E.2d 691 (W.Va. 1984). Since the grievant, by her own admission, did not have "certification and/or licensure" in technology education and had not "previously been employed" in that area, the Board was not required by the statute to notify her of the vacancy in issue. There is no language whatsoever in the statute upon which it could reasonably be

concluded that the Legislature intended that such notice be provided to employees who, like the grievant, may be eligible for a permit in a given field.

Further, and although the grievant does not raise the issue, the undersigned finds that while it would have been advantageous, from a personnel management perspective, to both the grievant and the Board, to grant the grievant's June 8 request for notices of all job openings, no abuse of discretion is found in the Board's failure to do so. The only legal duty imposed on the Board in the circumstances of the case was that created by statute.

Accordingly, the grievance is **DENIED.**

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

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JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: April 6, 1995

CERTIFICATE OF SERVICE

I, Jerry A. Wright, Chief Administrative Law Judge, do hereby certify that I have this 6th day of April, 1995 served a true copy of the foregoing **DECISION** upon the following by mailing to them by Certified United States Mail in a properly addressed and stamped envelope to their addresses as follows:

Ms. Lynn Guy, Superintendent

Monroe County Board of Education

P.O. Box 330

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Debra Dalton, Esq.

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Ms. Phoebe E. McGuire

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JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Footnote: 1W.Va. Code §18-29-3(c) permits school employees to file grievances at the level vested with the authority to grant the requested relief. It should be noted that the Grievance Board has ruled that persons whose employment has been terminated in a RIF may utilize the grievance procedure for the purpose of contesting a county board's recall procedures. See Moses v. Mercer Co. Bd. of Educ., Docket No. 93-27-001 (April 8, 1993).

Footnote: 2"All professional personnel whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a preferred recall list."

Footnote: 3The parties agree that the posting was in error in that it should have denoted the position as "Technology Education" and required certification in that field. The parties also agree, however, that the error was harmless.

Footnote: 4The record reflects that Mr. Umberger had also lost his former position in the RIF and that, because he heard rumors at the end of the 1993-94 term to the effect that a position like the one posted might be created, he took classes during the summer of 1994 to make himself eligible for the permit. Mr. Umberger also did not receive certified mail notice of the vacancy, but rather learned of the posting through almost daily telephone contact with the Board's central office.