JENNIFER JOHNSON and LISA CLUTTER

v. Docket No. 94-51-633

WEBSTER COUNTY BOARD OF EDUCATION,

ANITA HESS and CHARLES LITTLE, INTERVENORS

DECISION

Grievants, Jennifer Johnson and Lisa Clutter, employed by the Webster County Board of Education (Board) as remedial reading teachers, complain that they were improperly denied positions posted on July 19, 1994. The grievance was denied at level two and was advanced to level four on October 31, 1994. An evidentiary hearing was conducted on April 3, 1995, and the matter became mature for decision with the submission of proposed findings of fact and conclusions of law by both parties on or before April 25, 1995.

The facts of this matter are as follows:

1. Grievant Lisa Clutter has been employed by the Board since 1992 and is certified to teach Multi-Subjects, K-8.

2. Grievant Jennifer Johnson has been employed by the Board since 1991 and is certified to teach Social Studies, 5-8, and Multi-Subjects, K-8.

3. Both Grievants were assigned as remedial reading teachers during the 1993-94 school year.

4. In the spring of 1994 Grievants were notified that their employment was to be terminated at the conclusion of the school year as part of a reduction in force (RIF). The reason given for the RIF was "decreased funding through the State Funding Formula."

5. Intervenors Charles Little and Anita Hess, both employed by the Board since 1989, were also terminated during the reduction in force.

6. Both Grievants and Intervenors were placed on the preferred recall list pursuant to W.Va. Code §18A-4-7a.

7. By posting dated July 19, 1994, the Board announced vacancies for one full-time position at Diana Elementary School (DES) teaching grades 1-8, and one half-time position at Hacker Valley Elementary School (HVES) grades 1-3 (Reading Recovery for at risk students). Both positions required certification for Multi-Subjects, K-8, although certification in Elementary Education, 1-6, was also acceptable for the position at HVES.

8. The posting indicated that the Board preferred training in the Reading Recovery program for the position at DES. This training was also preferred for the position at HVES; however, that posting additionally stated that the "[s]uccessful applicant must Complete Rdg. Redv. Training."

9. The State Department of Education does not issue certification in Reading Recovery. Grievants were issued a certificate identifying them as National Diffusion Network Reading Recovery Teachers after they completed a year-long course offered by the College of Graduate Studies in 1993-94.

10. Intervenors had not completed the training program in Reading Recovery in July 1994.

ll. Based upon seniority, Intervenors Hess and Little were awarded the positions.

Grievants offer three arguments. First, that the provisions of Code §18A-4-7a do not apply because the positions are not classroom positions and are not lateral under Board Policy CGL-A. Second, Grievants are more qualified than Intervenors who had not completed the training program. Third, the reposting of the position which Grievants previously held indicates the RIF was without justification prior to the school year, therefore, they are entitled to keep the positions.

Intervenors argue that the preferred recall provisions of W.Va. Code §18A-4-7a are controlling in this matter. Pursuant to statutory authority, Intervenors assert that teachers on the preferred recall list are to be returned to employment in the certification area in which they were previously employed, or in another area in which they are certified and licensed, in order of seniority. Intervenors claim that they were properly certified for the positions in question and thatGrievants are not entitled to instatement based upon specialized training.

Grievants' argument, that the positions are not lateral to classroom teaching positions, is without merit. W.Va. Code §18A-1-1 defines the following categories of school personnel: classroom teacher; principal; supervisor; central office administrator; other professional

employee; and service personnel. Classroom teacher is defined as a "professional educator who has direct instructional or counseling relationship with pupils, spending the majority of his time in this capacity." There is no other category for instructional personnel. Although Grievants work with a lesser number of students in a limited, specialized area of instruction, as compared to the standard teaching assignment, and funding may be provided by a federal rather than state entity, for general purposes of classification, Grievants must be considered classroom teachers.

Board Policy CGL-A, defining lateral positions, states "a classroom teacher shall be lateral to other classroom teachers." The category of "professional personnel other than classroom teachers, principals, and assistant principals," most likely was intended to mirror the "other professional employee" category defined in Code §18A-1-1, specifically nurses, in that it states these positions shall be lateral "only to others of like rank in terms of title, nature of responsibilities and general salary level as determined by thecounty board of education." Clearly, special program teachers were not specifically included in this category. Because classroom teachers are specifically addressed, it would be improper to expand the intent and meaning of the policy as Grievants suggest.

W.Va. Code §18A-4-7a provides in pertinent part:

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. . . All professional personnel whose seniority with the county board is insufficient to allow their retention by the county bard 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. . . .

___

Although a board of education may include specific requirements or preferred training beyond the required certification or licensure, and these matters may be considered in determining the most qualified applicant when filling a vacancy under regular circumstances, qualifications are not a factor to be considered when a position is filled from the preferred

recall list. Code §18A-4-7a unequivocally requires that former employees on the preferred recall list be reemployed in an area in which they are certified, on the basis of seniority. No reference is made, and none will be inferred, that seniority may be discounted in favor ofqualifications.

Finally, even though the positions held by Grievants were not eliminated, there is no evidence that the RIF was not completed. Because Grievants had less seniority than Intervenors, they were properly released from employment under the provisions of Code §18A-4-7a.

In addition to the foregoing findings of fact and discussion it is appropriate to make the following conclusions of law.

CONCLUSIONS OF LAW

1. In order to prevail in a grievance it is incumbent upon the Grievants to prove the allegations of the complaint by a preponderance of the evidence. Rupich v. Ohio County Bd. of Educ., Docket No.89-35-719 (June 29, 1990).

2. Grievants have failed to prove that the two positions in question were improperly filled from the preferred recall list, that Grievants had a superior claim to the positions, or that any violation of W.Va. Code §18A-4-7a occurred.

Accordingly, the grievance is DENIED.

DATED JUNE 30, 1995 SUE KELLER, SENIOR ADMN. LAW JUDGE