KAREN C. EDWARDS

v. Docket No. 95-45-264

SUMMERS COUNTY BOARD OF EDUCATION

DECISION

The grievant, Karen Edwards, was employed by the Summers County Board of Education (Board) during the 1994-95 school year as a language arts teacher assigned to Summers County Middle School (SCMS). She filed this complaint April 27, 1995, protesting the termination of her employment in a Spring 1995 reduction-in-force of professional personnel. (See footnote 1) Her supervisor was without authority to grant relief and the grievance was denied at Level II following a hearing held June 6, 1995. The Board, at Level III, declined to consider the matter and appeal to Level IV was made June 22, 1995. The parties subsequently agreed that a decision could be rendered on the record developed at Level II. Proposed findings of fact and conclusions of law were submitted by October 30, 1995.

The grievant holds certification in elementary education, grades 1 through 6, and multi-subjects, grades Kindergarten through8. It is undisputed that in a "self-contained" classroom setting, whereby students receive instruction in all subjects from only one teacher, the grievant is fully licensed to teach all K through 8 subjects. According to West Virginia Department of Education regulations, she may also teach K through 8 subjects in a "non self-contained" setting, i.e., one in which students receive instruction from several teachers, "provided the depth and breadth of the curriculum [of the particular subject] remain the same as that of the self-contained classroom." The grievant was teaching language arts at SCMS in the latter configuration during the 1994-95 school year.

DOE also issues certificates which unconditionally qualify the holder to teach a specific Kindergarten through 8 subject in a non self-contained setting. The record reflects that in order to obtain this certificate, a teacher must have completed more college courses in the particular subject to be taught than that required for the multi-subject licensure. Provided the "depth and breadth" requirement is met, DOE regulations give a county Superintendent of Schools the "option" of requiring either certificate when filling non self-contained teaching posts.

The Board has concluded that persons holding the subject matter-specific certificate are more qualified to provide non self-contained instruction in art and music than multi-subject certified teachers, and for several years has required it of applicants for positions in those areas. Since the grievant was teaching sixthgrade language arts in a non self-contained setting, it is inferred that the requirement did not extend to that subject area.

The termination of the grievant's employment was triggered by the elimination of three teaching positions at Hinton Area Elementary School (HES). Apparently, the Board determined that at least one of the employees holding those positions had a right under W.Va. Code §18A-4-7a (See footnote 2) to displace or "bump" the grievant from her SCMS position. Since there is no evidence of record to the contrary, and the grievant does not target them in her complaint, it is assumed that these employees were teaching under multi-subject certificates and that they were more senior than she.

In compliance with W.Va. Code §18A-2-2, the grievant was advised of this pending action and was afforded a hearing before the Board. The Board ultimately accepted Superintendent of Schools Richard Rodes' recommendation that her contract be terminated.

At least three non self-contained SCMS art and/or music teachers with less seniority than the grievant were retained in thereduction-in-force. All held the subject matter-specific certificate.

The grievant was reemployed by the Board effective September 26, 1995. Seeking backpay for the brief period of unemployment, she asserts that the Board should have considered the two certificates equal for purposes of the reduction-in-force provisions of W.Va. Code §18A-4-7a. (See footnote 3) The Board contends that the college curriculum needed for the subject-matter specific certification distinguishes it from the more general multi-subject certificate. The Board notes that DOE's regulations recognize this distinction.

The question posed was extensively analyzed and answered in Donofe v. Hancock County Bd. of Educ., Docket No. 93-15-188 (Nov.30, 1993). There, the Administrative Law Judge found distinct differences between the multi-subject and subject matter specific certificates and ruled that it was not arbitrary or capricious or a violation of Code §18A-4-7a for a county board to rely on those differences in a reduction-in-force. The holding is fully applicable to the circumstances surrounding the grievant's termination.

Accordingly, the grievance is **DENIED**.

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

Summers 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

ADMINISTRATIVE LAW JUDGE

Dated: November 30, 1995

Footnote: 1As discussed herein, the grievant was rehired shortly after the beginning of the 1995-96 school year and seeks only the loss of pay for a brief period of unemployment. It is also noted that Nancy Lilly, another SCMS teacher was a party to the grievance through Level III but withdrew subsequent to her appeal to Level IV.

Footnote: 2The relevant part of the statute provides,

> *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 pursuant to the provisions of section two [§ 18A-2-2], article two of this chapter. . .Provided, however, That an employee subject to release shall be employed in any other professional position where such employee is certified and was previously employed or to any lateral area for which such employee is certified and/or licensed, if such employee's seniority is greater than the seniority of any other employee in that area of certification and/or licensure.*

Footnote: 3For clarification purposes, it should be noted that in her proposed conclusions of law, the grievant actually asserts that she should have been allowed to "bump" the art and music teachers. This argument misconstrues the nature of a reduction-in-force of professional employees and the provisions of Code §18A-4-7a. Reductions in force are made within a particular certification field, see, Lloyd v. Kanawha County Bd. of Educ., Docket No. 91-20-327 (October 29, 1991), and it is the employee with the least amount of seniority within that certification who has rights, if any, under the statute to displace less senior teachers. As previously noted, it appears that the Board's reduction-in-force targeted positions in the elementary education certification area. By asserting that the two certificates in issue are the same, the grievant is, in essence, saying that the Board should have considered the less senior SCMS art and music teachers as being employed in that field. Clearly, the grievant had no statutory right to displace any of those employees.

It is also noted that the grievant alleges, in her Level IV proposals, that there was no real need to eliminate the HES positions. The grievant presented so little evidence on this issue that it warrants little discussion. The record, particularly Superintendent Rodes' testimony, conclusively establishes that there was a need to make the cuts.