

BETTY CRUM, et al.,

Grievants,

v.

DOCKET NO. 95-29-224

MINGO COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievants, Betty Crum, Billie Baisden, and Dovetta Miller ([See footnote 1](#)), all former teachers at Marrowbone Elementary School ("MES"), allege the Mingo County Board of Education ("MCBOE") violated W. Va. Code §§18A-2-2 and 18A-4-7a when they were RIF'd for the 1995- 1996 school year. They argue that less senior teachers were retained in middle school positions they are qualified to fill. They request as relief that their RIF's be rescinded, and that they be reinstated to their former positions. ([See footnote 2](#)) This grievance was denied at Levels I and II, and waived at Level III. Grievants appealed to Level IV, and a hearing was held on August 9, 1995; however, this case did not become mature for decision until October 27, 1995, when the lower level transcript was received. ([See footnote 3](#))

The basic facts of this case, while confusing, are not in dispute, and will be set out below.

Findings of Fact

1. Grievants Crum and Baisden are certified as Multi-subject teachers, K-8. Included in this certification is Developmental Reading, 7-8.

2. Grievant Miller is certified in Elementary Education, 1-6.

3. Grievant Baisden's seniority date is September 14, 1988; Grievant Crum's and Grievant Miller's seniority date is September 28, 1988.

4. All Grievants have been employed throughout their teaching careers as elementary teachers only. ([See footnote 4](#))

5. In February 1995, Grievants received notice they would be RIF'd at the end of the school year.

6. Some teachers with less seniority than Grievants were allowed to remain in their positions in various middle schools, and some less senior teachers were placed on the transfer list. 7. All the teachers referred to in Finding of Fact Number 6 were teaching at junior high (soon to be middle) schools at the time of the RIF, and were certified in the content areas [\(See footnote 5\)](#) in which they taught or to which they were transferred.

8. Some individuals teaching in the middle schools and certified in content areas were RIF'd because they had insufficient seniority to be retained. For example, if there were too many certified science teachers, the least senior science teacher was RIF'd.

9. Some teachers with Multi-subject certification, K-8 or Elementary Education certification, 1-6, who were teaching in the junior high/middle school setting at the time of the RIF, remained in their positions. All these teachers had more seniority than the Grievants, and Grievants do not contend they are entitled to their positions.

10. It has been MCBOE's policy to fill junior high and middle school positions with teachers certified in content areas. If such a certified teacher was not available, these positions may then have been filled by a Multi-subject, K-8 teacher.

11. Some RIF'd or transferred teachers with less seniority than Grievants were selected to fill middle school, ECIA Chapter I Math positions. These positions were posted as Math positions, and the teachers selected to fill these positions were certified in Math, 5-8.

12. MCBOE always fills junior high or middle school ECIA Chapter I Math positions with teachers certified in Math if at all possible. Although the State Department of Education ("SDOE") does not mandate that these positions be filled with certified Math teachers, the Director of Chapter I, Charles Cline, requires all Math positions above the elementary level to be filled by Math certified teachers. [\(See footnote 6\)](#)

13. After the RIF's, and the principals at the various new middle schools had an opportunity to review and assess their schools' needs for the rest of the year, many Multi-subject, K-8 positions were posted. Grievants, at the time of the hearing, had not received any of these positions because of their lack of seniority.

Discussion

Grievants contend that since MCBOE has allowed teachers with Multi-subject, K-8 certification to

fill junior high and middle school positions in the past, that MCBOE must allow them to "bump" any content certified teacher teaching core content who has less seniority than they have. Grievants also state MCBOE cannot require a Math certificate for the Chapter I positions because the SDOE does not require it. MCBOE contends it followed Code §§18A-2-2 and 18A-4-7a, and it is within the Board's discretion to select content certified teachers to fill positions in the middle schools and in the Chapter I Math positions, if it is in the best interest of the students. MCBOE also argues these decisions are within its discretion, and not arbitrary and capricious.

The pertinent section of W. Va. Code §18A-2-2 states:

[A] continuing contract shall not operate to prevent a teacher's dismissal based upon the lack of need for the teacher's services pursuant to the provisions of law relating to the allocation to teachers and students ratios. But in case of such dismissals, the teachers so dismissed shall be placed upon a preferred list in the order of their length of service with that board, and no teacher shall be employed by the board until each qualified teacher upon the preferred list, in order, shall have been offered the opportunity for reemployment in a position for which they are qualified. . . .

The pertinent sections of W. Va. Code §18A-4-7a state:

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 . . . : 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: Provided further, That, if an employee subject to release holds certification and/or licensure in more than one lateral area and if such employee's seniority is greater than the seniority of any other employee in one or more of these areas of certification and/or licensure, the employee subject to release shall be employed in the professional position held by the employee with the least seniority in any of those areas of certification and/or licensure.

. . .

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 for which they had previously been employed or to any lateral area where 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.

The first issue to resolve is whether Grievants should have been placed on the preferred recall list. Grievants do not contest they were the least senior elementary teachers at their school and, thus, when a reduction-in-force was required, that they were the appropriate individuals to lose these positions. Grievants contend they should have then been placed on a transfer list and allowed to "bump" the less senior middle school teachers in the core subject content areas.

Grievants also argue they are certified to teach in the less senior content teacher's positions. Grievants did not submit the original postings for these positions, and the testimony at hearing from Assistant Superintendent Johnny Fullen indicated these positions were posted as content specific. For example, an English position would be posted as requiring an English certificate. The fact that these schools had been junior highs the year before lends credence to this indication. Given that some of the original postings were so long ago, it is possible a Multi-subject teacher may have been selected to fill one of these positions when a content certified teacher was not available.

W. Va. Code §18A-4-7a requires county boards of education to transfer more senior teachers, subject to release, to any other position for which they are certified and were previously employed or to any lateral area for which they are certified or licensed. This Code Section has a limited purpose. In a RIF situation, it provides placement of a displaced teacher, with sufficient seniority, in a position held by the least senior teacher in the displaced teacher's area of certification. *Donofoe v. Hancock Bd. of Educ.*, Docket No. 93-15-188 (Nov. 30, 1993). "[T]he multi-certified displaced teacher with bumping rights may not choose some preferred subject area to teach from among his or her subject-area certifications." *Id.* Since Grievants hold only one certification, Multi-subject or Elementary Education, they may only "bump" those teachers who have like certifications. *Id.* The testimony is that all Multi-subject, K-8 or Elementary Education, 1-6 teachers who were retained in their positions, or who were transferred were more senior than Grievants.

Further, MCBOE has set a standard for the certification of its junior high and middle school teachers. "A board of education's right to set standards is crucial, especially when it desires to hire the most qualified person for a specific position and the potential field of applicants may include the most minimally certified or qualified persons." *Gilkey v. Brooke County Bd. of Educ.*, Docket No. 91-05-489 (June 25, 1992). "The notion of favoring in-depth teachers for any content area . . . is educationally sound and directly relates to the interest of the schools." *Id.*

Grievant Crum's own testimony indicates Grievants are not the most qualified teachers for the

positions. Grievant Crum stated their degrees were designed for a self-contained classroom, as typically used in an elementary setting, but a county board could utilize them to teach core content in a middle school setting if it chose to do so. MCBOE has chosen not to do so. Although Grievants' certifications would allow them to teach in a middle school setting, they are not certified to fill the positions at issue because they do not possess the posted and required content certification. Because Grievants are not certified to fill these positions, MCBOE took the proper action by placing them on the preferred recall list.

Additionally, it is well-settled that "[c]ounty boards of education have substantial discretion in matters relating to hiring, assignments, transferring and promotion of school personnel," as long as they exercise this discretion "reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious." Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W. Va. 1986). The W. Va. Supreme Court recently expanded this discretion "to matters involving curricular programs and the qualifications and placement of personnel implementing those programs." Cowen, et al. v. Harrison County Bd. of Educ., Slip Op. No. 22704 (Dec. 13, 1995). Here, MCBOE has decided to require junior high and middle school positions to be filled by teachers certified in the content area, if at all possible. It chose to retain teachers specifically trained in the subject they teach, instead of choosing the less specific Multi-subject certification, which by Grievants' own testimony is intended for a self-contained, elementary setting. This action cannot be seen as an arbitrary and capricious act.

As far as the issue of whether MCBOE can require currently, as it has always done in the past, that middle school ECIA Chapter I Math teachers be Math certified, this decision is within their broad discretion as discussed in Dillon and Cowen. See Spaulding v. Mingo County Bd. of Educ., Docket No. 95-29-357 (Jan. 31, 1996). It cannot be seen as an abuse of discretion to require and prefer certified Math teachers to teach Math at the middle school level. Id.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. Grievants have the burden of proving their case by a preponderance of the evidence. Rupich v. Ohio County Bd. of Educ., Docket No. 89-35-719 (June 29, 1990).
2. "County boards of education have substantial discretion in matters relating to hiring.

assignment, transferring and promotion of school personnel," as long as they exercise this discretion "reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious." Dillon v. Bd. of Educ. of the County of Wyoming, 351 S.E.2d 58 (W.Va. 1986). The W. Va. Supreme Court recently expanded this discretion "to matters involving curricular programs and the qualifications and placement of personnel implementing the programs." Cowen, et al. v. Harrison County Bd. of Educ., Slip Op. No. 22704 (Dec. 13, 1995).

3. County boards of education are required to place an employee subject to a RIF into a position for which she is certified or licensed if she is more senior than another teacher. W. Va. Code §18A-4-7a.

4. "At the time the RIF was initiated [Grievants] had a limited right under Code §18A- 4-7a to displace or 'bump' less senior teachers then employed in [their] certification field." Lewis v. Mercer County Bd. of Educ., Docket No. 94-27-1053 (June 23, 1995).

5. Grievants failed to prove a violation of W. Va. Code §18A-4-7a with respect to their reduction-in-force.

6. Grievants, certified in Multi-subject, K-8 and Elementary Education, 1-6, "failed to demonstrate that [MCBOE] acted in an arbitrary and capricious manner when it retained a less senior but . . . certified teacher in a full-time teaching position in a middle school instead of placing [them] in that particular teaching slot." Donofoe v. Hancock County Bd. of Educ., Docket No. 93-15-188 (Nov. 30, 1993).

7. Grievants did not have the required certification necessary to "bump" the less senior content-specific teachers. Gilkey v. Brooke County Bd. of Educ., Docket No. 91-05-489 (June 25, 1992).

8. Grievants failed to establish that they were more senior than any of the Multi-subject, K-8 or Elementary Education, 1-6 certified teachers who were retained, thus, they could not "bump" any of these teachers.

Accordingly, this grievance is **DENIED**.

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

JANIS I. REYNOLDS

Administrative Law Judge

Dated: February 9, 1996

[Footnote: 1](#)

Originally there were seven Grievants, but only these three individuals proceeded to Level IV.

[Footnote: 2](#)

At Level IV, Grievants stated they would be satisfied to receive any positions as they realized their positions may no longer exist, and that to change teachers' positions at this time would be disruptive. It must be noted that Grievants presented no evidence to demonstrate they had more seniority than the teachers who remained at MES, or made any argument why they should retain positions at that school.

[Footnote: 3](#)

On November 7, 1995, the undersigned received a request from Crystal Ferguson to intervene. As this request was received after the case was mature for decision this motion is denied.

[Footnote: 4](#)

Grievants Miller and Baisden did not testify, and almost no information was received about them. Grievant Crum stated she had only taught kindergarten or first grade. It is assumed that if the other Grievants had junior high or middle school experience they would have informed the adjudicators somewhere along the way.

[Footnote: 5](#)

The terms "content area" is used to refer to the subject/content taught. Examples of content areas would be Math, Science, Social Studies, or English.

[Footnote: 6](#)

Testimony in other MCBOE hearings indicates a county board must explain to SDOE why it hired a non-certified teacher in a math position if a math certified teacher was available. Spaulding v. Mingo County Bd. of Educ., Docket No. 95-29-357 (Jan. 31, 1996).