

RANDALL RADER,

Grievant,

v. Docket No. 96-51-049

WEBSTER COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Randall Rader, alleges his RIF was improper, and violated W. Va. Code §18A-4-

7a. His grievance states:

I was placed on R.I.F. list when the Board was contemplating eliminating P. E. positions or changing positions to P. E./Health. The reason I was placed on the R.I.F. list was due to the fact that no P. E. position existed. They have posted a P. E. position which I should have been transferred in to [sic].

This grievance was filed on June 16, 1995. After a denial of his grievance at Level II, Grievant filed an appeal to Level IV where the parties agreed to submit the case on the record. This case became mature for decision on March 13, 1996, the deadline for the parties' proposed findings of fact and conclusions of law. [\(See footnote 1\)](#) The record in this case is very sparse and the testimony is somewhat confusing and contradictory. The following Findings of Fact are not in dispute.

Findings of Fact

1. Grievant was one of three P. E. teachers who were RIF'd for the 1995-1996 school year. Of the RIF'd teachers, Grievant was second in seniority. Level II Trans. at 5.
2. Webster County Board of Education ("WCBOE") posted a P. E. position some time after the RIF, and Grievant applied for the position. This position was originally posted as 50% at Diana Elementary ("DE") and 50% at Hacker Elementary ("HE").
3. Grievant was hired for this position for "approximately 10 minutes" at a Board meeting before WCBOE discovered it had posted the position incorrectly. The position was to

have been posted for part-time DE and part-time HE, at the discretion of Superintendent Ron Evans. The position was more likely to be 70% DE and 30% HE.

4. After reposting, the position was awarded to Mr. Reggie Stewart, a high school P. E. teacher, who has more seniority than Grievant. [\(See footnote 2\)](#)

5. Mr. Stewart was "called" to the ministry and requested a leave of absence for one year. This position was then posted for one year, with leave of absence, and Grievant did not apply for the position under these circumstances. 6. The position of Ms. Wanda Martin, a Social Studies/P. E. teacher, at Webster County High School was "RIF'd" [\(See footnote 3\)](#), and she was placed on the transfer list. She has more seniority than Grievant. She was placed in a Social Studies position at Webster Springs Elementary School. When Mr. Stewart applied for and received the elementary position at DE and HE, Ms. Martin moved from her Webster Springs position to the high school position vacated by Mr. Stewart.

7. Grievant is currently employed as a Special Education teacher at Webster County High School. He was recalled to employment prior to the beginning of the school year, thus, he was not monetarily harmed by the RIF.

8. All currently employed P. E. teachers have more seniority than Grievant.

Discussion

The testimony in the lower level record is very confusing. Although WCBOE testified it RIF'd three P. E. teachers and placed one on transfer, it also testified that there were currently seven P. E. positions this year as compared with nine last year. This just cannot be right. A review of the record reveals that a position at Webster Springs was eliminated, and this was Grievant's position. He was RIF'd because of his seniority and placed on the Preferred Recall List. Testimony also indicates a position at the high school was eliminated and resulted in Ms. Martin being placed on the transfer list because of her seniority. WBCOE also eliminated a position at Glade Elementary, which accounted for another RIF'd P. E. teacher. Although the testimony was confusing, it appears that a teacher was RIF'd from DE, but the position was not eliminated. This would be the third RIF'd P. E. teacher.

The majority of the confusion seems to come from an incorrect usage of the various terms involved in the case. Superintendent Evans used the term RIF to apply only to the loss of the

positions at various schools and not to what happened to the teachers involved. The end result of all the personnel changes within the P. E. category of teachers resulted in three teachers being RIF'd from various schools, and one teacher's position being eliminated which resulted in her being placed on the transfer list. It is clear from a reading of the transcript that there were only six P. E. positions left within the Webster County School system by the time all the positions were filled despite the Superintendent's testimony.

The key issue here is that Grievant was unable to demonstrate that WCBOE had a position into which he could be transferred. WCBOE is not required to place Grievant on the transfer list, when there is no position open into which Grievant could be properly placed. W. Va. Code §18A-4-7a requires boards of education to release the least senior employees in each area to be reduced. Three P. E. positions were eliminated, and three P. E. teachers were RIF'd. These RIF's naturally resulted in some transfers of the more senior employees. It appears that WCBOE had originally planned to transfer Ms. Martin to the DE P. E. position. When she was transferred to a social studies position, this resulted in the necessity of posting the position.

If Grievant had proven he was the most senior RIF'd P. E. teacher, demonstrated that his RIF was unnecessary, and that this change in circumstances occurred before the end of the school year, he then may have had a case for placement on the transfer list pursuant to the reasoning in Hollins v. Wyoming Board of Education, Docket No. 92-55-263 (Mar. 18, 1993). Although Grievant did demonstrate that there was a certain amount of shifting of positions, he did not show that this alone resulted in any change of circumstances that would reap a benefit to him. While it is true Ms. Martin was temporarily placed in a social studies position instead of a P. E. position, and this left a place open at DE/HE, he still did not prove he was the correct RIF'd P. E. teacher to place in the position. Thus, since Grievant failed to demonstrate the above-stated elements, his grievance must fail.

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

Conclusions of Law

1. A grievant, in a non-disciplinary action, must prove his case by a preponderance of the evidence. Napier v. Logan County Bd. of Educ., Docket No. 94-23-541 (Apr. 25, 1995).
2. W. Va. Code §18A-4-7a requires a county board of education to RIF the teachers

with the least amount of seniority within a certification.

3. Grievant has failed to demonstrate he had more seniority than any of the teachers transferred or retained in a P. E. position.

4. Grievant failed to demonstrate that his RIF should be rescinded and changed to a transfer as he did not establish that WCBOE had a position available for him at the time of the RIF, or that he was the most senior RIF'd P. E. teacher.

Accordingly, this grievance is DENIED.

July 31, 1996

JANIS REYNOLDS

ALJ

[Footnote: 1](#)

This case was reassigned to the undersigned for administrative reasons in July 1996.

[Footnote: 2](#)

It appears Mr. Stewart did not apply for the position the first time it was posted.

[Footnote: 3](#)

Throughout the Level II testimony, Superintendent Evans testified Ms. Martin had been RIF'd and placed on the transfer list. A careful reading of the evidence indicates that Ms. Martin's position was eliminated, and she was placed on the transfer list because of her seniority.