

GARNETTE CROWDER

v. Docket No. 96-45-129

SUMMERS COUNTY BOARD OF EDUCATION

DECISION

The grievant, Garnette Crowder, is employed by the Summers County Board of Education (Board) as a teacher assigned to Summers County High School (SCHS). She initiated a grievance at Level I July 3, 1995, protesting her non-selection for one of two SCHS Assistant Principal positions. Her supervisor was without authority to grant relief and the grievance was denied at Level II following a hearing held February 19, 1996. The Board, at Level III, declined to address the matter and appeal to Level IV was made March 25, 1996. The parties subsequently agreed to submit the case for decision on the record developed at Level II. Proposed findings of fact and conclusions of law were received by May 1, 1996.

The grievant and former Special Populations Coordinator Harry Keaton, and perhaps other applicants, met the minimum requirements of the June 7, 1995 posting for the position in issue. The Board ultimately accepted the recommendation of Superintendent of Schools Charles R. Rodes that Mr. Keaton be awarded the job.

The grievant made formal inquiry of Superintendent Rodes regarding the reasons for his recommendation, and in a July 7, 1995 letter, he explained,

The non-selection for this position is not a reflection on your qualification or your abilities as an administrator. There are a number of factors that had to be considered in recommending Mr. Keaton for the Assistant Principal's position. Mr. Keaton's position as Special Populations Coordinator was being abolished and as a result of this Mr. Keaton was placed on a transfer list for subsequent assignment for the 1995-96 school year. As a result of Mr. Keaton's current position being abolished, Mr. Keaton is entitled to be employed in any other professional position where he 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. In my opinion, Mr. Keaton's position, which was being abolished, is lateral to the Assistant Principal's job.

It seems clear that the references to Mr. Keaton's rights were drawn from the following portion of W.Va. Code §18A-4-7a,

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 [§ 18A-2-2] . . . 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.

At the time Mr. Keaton's position was abolished and he was placed on a transfer list for reassignment, the Board had adopted a policy in response to the following portion of Code §18A-4-7a,

For the purpose of this article, all positions which meet the definition of classroom teacher as defined in section one, article one of this chapter, shall be lateral positions. For all other professional positions the county board of education shall adopt a policy by the thirty-first day of October, one thousand nine hundred ninety-three, and may modify said policy thereafter as necessary, which defines which positions shall be lateral positions . . . In adopting such a policy, the board shall give consideration to the rank of each position in terms of title, nature of responsibilities, salary level, certification and/or licensure, and days in the period of employment.

The Board's policy did not list the Special Populations Coordinator position. It denotes Assistant Principal as being the only post lateral to an Assistant Principal.

The record reflects that the Special Populations Coordinator position was specially funded and created at the beginning of the 1994-95 school year, and that prior to his appointment to the position, Mr. Keaton had served a total of seventeen years as Principal at Bellepoint Elementary School, Sandstone Elementary/Junior High School and the Summers County Career Center. The evidence also establishes that he served two years as the Board's "ESEA" Director and one year as Elementary Supervisor. The grievant acknowledges that she has only five years of administrative experience.

The grievant advances at least two theories in her claim to the position. First, she asserts that she was more qualified for the post than Mr. Keaton and should have received it on that basis alone. Second, she contends that since Board policy did not list Assistant Principal as a position lateral to Special Populations Coordinator, Mr. Keaton had no right to the post by virtue of the elimination of his

former position. The grievant maintains that Superintendent Rodes' July 7 letter establishes that Mr. Keaton was placed in the position per statutory reduction-in-force provisions and not through an assessment of relative credentials. [\(See footnote 1\)](#)

A grievant must establish the truth of his or her allegations by a preponderance of the evidence. Canterbury v. Putnam County Bd. of Educ., Docket No. 40-86-325-1 (Jan. 28, 1987). The grievant's claims raise several issues with regard to the application of the reduction-in-force and "lateral" placement provisions of Code §18A-4-7a. The record, however, is not well developed and the evidence is insufficient for a reasoned analysis of those claims. The nature of the duties of the Special Populations Coordinator position and the certification requirements of the post, if any, would be particularly relevant to that inquiry, and there is virtually no evidence of record on those matters.

Further, while Superintendent Rodes' written explanation for recommending Mr. Keaton supports that he believed state law pertaining to reductions-in-force mandated Mr. Keaton's appointment to the post, his actions, particularly his decision to post the position and accept applications, do not. Also, it was Superintendent Rodes' credible and unrebutted testimony that all candidates were assessed per the criteria contained in Code §18A-4- 7a, ¶1, and that he determined that Mr. Keaton, by virtue of his considerable administrative experience, was the most qualified.

As noted, the grievant claims she was more qualified than Mr. Keaton. However, neither the evidence nor the argument even addresses the substantial disparity between her experience as an administrator and Mr. Keaton's. Summarized, a preponderance of the evidence in the case establishes only that Superintendent Rodes may or may not have believed that Mr. Keaton was entitled to the post per statutory reduction-in-force provisions; that his conclusion may or may not have been erroneous; that he nevertheless comparatively assessed the applicants' credentials; and that at least with respect to the grievant and Mr. Keaton, he chose the more qualified applicant. The undersigned finds no violation of the statute or abuse of discretion on the Board's part.

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.

JERRY A. WRIGHT
ADMINISTRATIVE LAW JUDGE

Dated: June 7, 1996

[Footnote: 1](#)

The grievant also makes a more vague assertion of “discrimination.” She contended at hearing that a second SCHS Assistant Principal post was filled on the basis of qualifications despite that, at the time, there was another administrator on the transfer list who could have “bumped” into the job. The short response to this disparate treatment argument is that there was no evidence whatsoever presented on the process by which the second SCHS post was filled.