

PATRICIA FLORA

v.

Docket No. 96-13-145

GREENBRIER COUNTY BOARD OF EDUCATION

D E C I S I O N

While serving as a substitute teacher for Respondent Greenbrier County Board of Education (GCBE) in February 1996, Grievant Patricia Flora filed the following complaint: [GCBE] violated WV Code 18A-4-7a by failing to place me in a half-time English/Language Arts position at [Eastern Greenbrier Junior High (EGJH)]. To resolve this dispute, I request instatement to the position in question as well as back pay and benefits to which I am entitled.

Following adverse decisions at the lower grievance levels, Grievant appealed to level four and requested that a decision be made on the evidence adduced below. The case became mature for decision on May 15, 1996, upon receipt of the parties' level four fact/law proposals. [\(See footnote 1\)](#) Based on the record as a whole, the following findings of fact are made.

Findings of Fact

1. At all times relevant to this grievance, Grievant concurrently was a substitute teacher and also on the preferred recall list for regular employment.
2. Grievant, who holds a bachelors degree plus six hours, is certified to teach English/Language Arts, 5-12, and Social Studies, 5-8. She was issued her teaching license on July 1, 1994, and previously taught in a Chapter I reading program.
3. At the end of the 1994-95 school year, EGJH half-time teacher Cheryl Griffith resigned. Ms. Griffith was responsible for the production of the EGJH yearbook.
4. At the beginning of the 1995-96 school year, GCBE called a substitute, Mrs.

Zopp, to fill the half-time position and to assume the yearbook responsibility. Mrs. Zopp thereafter revealed she had a baby due in the spring and asked to be replaced as the substitute in the position.

5. On October 12, 1995, EGJH Principal Glen A. McClung called Grievant to substitute in the position vacated by Ms. Griffith (and Mrs. Zopp). He advised Grievant that the duties included two English classes and one journalism class, along with the EGJH yearbook responsibility in conjunction with the journalism class.

6. Also on October 12, 1995, GCBE posted a vacancy notice for a half-time position at EGJH teaching "English/Journalism or Language Arts." The posting advised that the successful applicant would be required to "teach and supervise students, maintain all appropriate records, and accept reasonable assignments necessary for a successful program."

7. Eventually, Grievant discovered some aspects of the yearbook duty that she was unwilling to assume, and informed Mr. McClung that she was resigning from the yearbook. She also advised school officials that she wished to continue as a substitute in the position, and that she intended to apply for the permanent posted position.

8. Grievant timely applied for the EGJH vacancy. Grievant met the certification requirements for the English component of the position but not the Journalism component of the position. When interviewed for the position, Grievant indicated she would not assume some crucial components of the yearbook responsibility. 9. On October 30, 1995, Grievant was replaced as the half-time substitute at EGJH with another substitute.

10. After Grievant had been replaced in the half-time slot at EGJH, Mr. McClung called Grievant out as a substitute for another class, but Grievant declined. T.70.

11. GCBE did not receive any applications from persons fully qualified in both certification areas and did not fill the half-time position pursuant to the October 12, 1995 posting.

12. GCBE reposted the position in question on November 16, 1995. This posting again advised that the successful applicant would be required to "teach and supervise students, maintain all appropriate records, and accept reasonable assignments necessary for a successful program." It also added, "Responsible for yearbook program."

13. Celia Moore and others applied for the November 16, 1995 posting. However, Grievant did not apply because it specifically contained the yearbook requirement, and she was not interested in assuming the yearbook responsibility. T.49-50, 58.

14. Ms. Moore was the successful applicant on the second posting. Ms. Moore is certified in English/Library Science, 7-12. She had nineteen years' teaching experience, a masters degree in communications, and extensive experience in mass media as well as successful school yearbook production.

15. Because she did not receive the job as posted on October 12, 1995, Grievant initiated a grievance on January 17, 1996.

Discussion

It is not necessary to develop fully and address all of the various arguments put forth by the respective parties in this dispute. As GCBE argued, in part, Grievant has not established that she is entitled to the EGJH position as a matter of law.

Grievant essentially claims she is entitled to the EGJH position set forth in the October 12, 1995 posting because GCBE did not fill the position or "formally abolish" it. [\(See footnote 2\)](#) She argues that because no fully certified, regularly-employed teacher applied for the job when it was initially posted and as it was initially posted, GCBE was obligated to award the position to her in accordance with her preferred status on the recall list. [\(See footnote 3\)](#) Grievant's reliance on W.Va. Code §18A-4-7a with respect to her "preferred status" is misplaced. The statute, in pertinent part, is as follows:

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 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 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.

[Emphasis added.]

Simply put, Grievant had no recall rights to a position that required journalism certification because she did not hold such certification. [\(See footnote 4\)](#) Spaulding v. Mingo County Bd. of Educ., Docket No. 95-29-357 (Jan. 31, 1996); Dunford v. Mercer County Bd. of Educ., Docket No. 94-27- 618 (Dec. 21, 1994); Stewart v. Tyler County Bd. of Educ., Docket No. 93-48-163 (Aug. 20, 1993); Estill v. Mercer County Bd. of Educ., Docket No. 92-27-455 (Mar. 31, 1993). Moreover, there is nothing in the statute that requires the employment of an uncertified teacher on recall, even if no other fully certified teachers have applied for the vacancy. Thus, Grievant had no recall right to the position under either posting.

In addition to the foregoing, the following conclusions of law are made.

Conclusions of Law

1. It is incumbent upon a grievant to prove all of the allegations constituting the grievance by a preponderance of the evidence. Rupich v. Ohio County Bd. of Educ., Docket No. 89-35-719 (June 29, 1990); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. Under W.Va. Code §18A-4-7a, recall rights for teachers are confined to areas in which certification is held. Spaulding v. Mingo County Bd. of Educ., Docket No. 95-29-357 (Jan. 31, 1996); Dunford v. Mercer County Bd. of Educ., Docket No. 94-27-618 (Dec. 21, 1994); Stewart v. Tyler County Bd. of Educ., Docket No. 93-48-163 (Aug. 20,

1993); Estill v. Mercer County Bd. of Educ., Docket No. 92-27-455 (Mar. 31, 1993).

3. Grievant failed to prove a violation of W.Va. Code §18A-4-7a, as alleged. 4. Grievant has failed to prove by a preponderance of the evidence that the Greenbrier County Board of Education acted arbitrarily or capriciously, or otherwise abused its discretion in this matter.

5. Grievant has failed to establish she is entitled to the relief she seeks as a matter of law.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Greenbrier 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

NEDRA KOVAL

Administrative Law Judge

Date: May 21, 1996

[Footnote: 1](#)

The record consists of the grievance pleading, lower-level decisions and the transcript and exhibits of the March 11, 1996, level two hearing.

[Footnote: 2](#)

Grievant stated her grievance was not in protest of Ms. Moore's employment following the November 16, 1995 posting of the half-time position at EGJH.

[Footnote: 3](#)

Grievant claims she was eligible for a "permit" or an authorization to teach the sole journalism class that was part of the EGJH vacancy.

[Footnote: 4](#)

According to GCBE, ninth graders at EGJH who enroll in the journalism/yearbook course earn graduation credit for the class. Accordingly, the teacher for the course must be certified in either journalism (Code 3900) or Comprehensive Language Arts (Code 0800). Grievant never claimed her English/Language Arts certification (Code 1001) was the same as the Comprehensive Language Arts certification, or that she was qualified to teach journalism.