PAULETTE BLANKENSHIP

v. Docket No. 96-55-478

WYOMING COUNTY BOARD OF EDUCATION

DECISION

The grievant, Paulette Blankenship, is currently employed by the Wyoming County Board of Education (Board) as a third grade teacher at Baileysville Elementary School (BES). She filed a grievance at Level I, on July 16, 1996, protesting the Board's failure to award her a fifth grade teaching position at the school. The case originally reached Level IV on November 1, 1996. Because Level II was bypassed, and upon the Board's motion, the matter was remanded for hearing. The grievance was denied following a March 26, 1997 Level II hearing, and the Board waived Level III proceedings. The grievant reappealed to Level IV on May 8, 1997. 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 July 1, 1997. (See footnote 1)

Background

There is no dispute over the facts of the case. During the 1994-95 school year, there were three fifth grade teachers, including the grievant, assigned to BES. Because student population predictions for school year 1995-96 indicated a need for only two, BES Principal Tim Wallsconcluded that one of the positions should be eliminated, effective June 30, 1995.

It has been Mr. Walls' practice at BES to ask the least senior teacher in a particular grade level to sign an agreement which provides that in the event a reduction of teachers on that grade level is necessary, the teacher will accept a transfer to another post within the school if there are vacancies on other grade levels. The grievant, who was less senior than BES fifth grade teachers Jim Blankenship and Steve Rose, signed such an agreement on March 28, 1995. With her consent, she was assigned to a BES art and music position for school year 1995-96. The job had become vacant through attrition, and was not posted.

It is not clear whether the grievant was ever notified in Spring 1995, that she would be the subject of a transfer as the result of the lack of need for fifth grade teachers at BES for school year 1995-96.

It is also not clear whether Board central office administrators were aware that Mr. Walls was assigning her to the art and music post. There is no indication in the record that he sought approval for the move.

Mr. Rose became ill and was off for most, if not all, of the 1995-96 school year. At the grievant's request, Mr. Walls allowed her to assume his duties. Various substitutes were hired to cover the grievant's art and music classes. The grievant understood that this arrangement would end upon Mr. Rose's return.

On or about March 11, 1996, Mr. Rose announced that he was resigning. The grievant approached and convinced at least one Board member that she should be allowed to keep the job. While it appears that, at some point, the Board may have voted not to announce the position as vacant, it is clear that with or without Board approval, Superintendent of Schools Frank Blackwell posted it on April 29, 1996. Three persons, including the grievant and Les Cook, made applications. The Board ultimately accepted Superintendent Blackwell's recommendation that Mr. Cook be awarded the job. The record does not reflect how the grievant obtained her current third grade teaching position at BES.

Argument

Articulating the grievant's legal position is no simple matter. It is very difficult to grasp the import and/or relevance of many of the numerous arguments contained in her extensive Level IV brief. Most, if not all, of the grievant's contentions are perplexing. An almost complete lack of supportive evidence on many of the claims only serves to make them more confusing. The record is so poorly developed that if it were not for certain agreements between the parties' fact proposals, it would not be possible to relate the foregoing background of the case.

After an exhaustive review of the grievant's written argument, the undersigned concludes that her primary contention is that the vacancy created by Mr. Rose's resignation was related to a reduction-in-force (RIF), and that under certain portions of W.Va Code §18A-4-7a, which address professional employee lay-offs, she was entitled to his position when her fifth grade post was eliminated and/or when he resigned. The grievant cites Melchiori v. Bd. of Educ. of the County of Marshall, 425 S.E. 2d 251 (W.Va. 1992), and Triggs v. Berkeley County Bd. of Educ., 425 S.E. 2d 111 (W.Va. 1992), as supportive of this argument. Despite that she did not present evidence on her or Mr. Cook's

credentials, or otherwise address the process by which Superintendent Blackwell determined that Mr. Cook should receive the post, the grievant also claims that she was entitled to the position under portions of Code §18A-4-7a, which control the selection of professional personnel. The Board disputes that Mr. Rose's resignation created a RIF-related vacancy, and maintains that it was statutorily bound to post the position and fill it competitively. The Board contends that Mr. Cook's appointment was in full compliance with all applicable statutory provisions, and the undersigned agrees.

Findings and Conclusions

W.Va. Code §18A-4-7a ¶6, (See footnote 2) provides that the least senior teacher holding a position in a certification field targeted for a reduction of personnel must be transferred to the position of the least senior teacher in all other alternative certifications he might hold. Obviously, there is no reason to treat the displacement of the teacher in the alternative certification as creating a vacancy which must be posted under W.Va. Code §18A-4-7a ¶10. (See footnote 3)

Other portions of Code §18A-4-7a provide limited exceptions to the posting requirementwhen a realignment or reduction of positions at an elementary school is necessary. (See footnote 4) These provisions are apparently the source of Mr. Wall's practice of obtaining prior agreements from his least senior teachers to move within the school if grade levels were reduced. The grievant appears to concede, and prior Level IV decisions hold, that there are no other exceptions in Code §18A-1-1 et seq., to the rule that a vacancy must be announced whenever an employee is permanently separated from an identified post, unless the county board intends to eliminate the post. See, Rose v. Nicholas County Bd. of Educ., Docket No. 93-34-063 (June 29, 1994).

The undersigned can discern no connection between the the elimination of the grievant's fifth grade teaching position in Spring 1995, and Mr. Rose's resignation in Spring 1996. If the elimination of her position triggered the application of Code §18A-4-7a, and she had a right to another job, she exercised it when she accepted the BES art and music post. Neither Triggs nor Melchiori lend any support to the grievant's claim that she had a statutory right to Mr. Rose'sposition; those cases are wholly irrelevant. It is clear that none of the exceptions to posting discussed were applicable to the resignation, and the Board was bound to announce the position as vacant.

There is so little evidence on the relative credentials of the applicants for the position or the

process by which Mr. Cook was selected, that it is not possible to make factual or legal conclusions regarding his appointment. The grievant made no showing whatsoever that the selection process did not conform to Code §18A-4-7a ¶1. (See footnote 5)

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Wyoming 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: October 8, 1997

Accordingly, the grievance is **DENIED**.

Footnote: 1 *Numerous documents, not admitted at the Level II hearing, were attached to the grievant's brief. Upon the Board's motion, the undersigned has excluded these documents. It is clear that grievant's counsel understood that when the case was submitted for decision on the record, it would be the record developed at the Level II hearing.*

Footnote: 2 *"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, That all persons employed in a certification area to be reduced who are employed under a temporary permit shall be properly notified and released before a fully certified employee in such a position is subject to release: 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 those 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."

Footnote: 3 *"Boards shall be required to post and date notices of all openings in established, existing or newly created positions in conspicuous working places for all professional personnel to observe for at least five working days."*

Footnote: 4 *Code §18A-4-7a ¶11, provides:*

Notwithstanding any other provision of the code to the contrary, where the total number of classroom teaching positions in an elementary school does not increase from one school year to the next, but there exists in that school a need to realign the number of teachers in one or more grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels for which they are certified without that position being posted: Provided, That the employee and the county board of education mutually agree to the reassignment.

Code §18A-4-7a ¶12, provides:

When the total number of classroom teaching positions in an elementary school needs to be reduced, such reduction shall be made on the basis of seniority with the least senior classroom teacher being recommended for transfer: Provided, That a specified grade level needs to be reduced and the least senior employee in the school is not in that grade level, the least senior classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the least senior classroom teacher in the school without that position being posted: Provided, however, That the employee is certified and/or licensed and agrees to the reassignment.

Footnote: 5 *"If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board of education shall make decisions affecting the filling of such positions on the basis of the following criteria: Appropriate certification and/or licensure; total amount of teaching experience; the existence of teaching experience in the required certification area; degree level in the required certification area; specialized training directly related to the performance of the job as stated in the job description; receiving an overall rating of satisfactory in evaluations over the previous two years; and seniority. Consideration shall be given to each criterion with each criterion being given equal weight. If the applicant with the most seniority is not selected for the position, upon the request of the applicant a written statement of reasons shall be given to the applicant with suggestions for improving the applicant's qualifications."*