JAMES RAMEY, JR.

Grievant,

v. **DOCKET NO. 97-29-293**

MINGO COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

James Ramey, Jr. (Grievant) claimed a violation of W. Va. Code §§18A-4-7a and -7b, "when the respondent BOE approved the grievant for Reduction in Force and kept a less senior employee."

The grievance was denied at Level II on June 19, 1997, after a brief hearing; and Level III was apparently bypassed, as allowed by W. Va. Code §18-29-4(c). A Level IV hearing was held on August 5, 1997, and this grievance became mature for decision on that day, as neither party chose to make post-hearing submissions.

The facts of this case are not disputed, and the sole issue to be decided is whether Grievant should have been allowed to displace, or "bump" another teacher, Barry Scraggs.

FINDINGS OF FACT

1 1. Grievant is certified to teach Physical Education and Health classes, and has at least five years' seniority. His employment was terminated as a result of a reduction in force (RIF) at the end of the 1996-97 school year. (L IV, R. Ex. 3; L II, p. 1.) (See footnote 1)

2 2. Barry Scraggs is also certified to teach Physical Education and Health classes, and has less seniority than Grievant. Additionally, Mr. Scraggs is certified to teach Social Studies. Mr. Scraggs' employment was not terminated due to the RIF. Mr. Scraggs is scheduled to teach World History 10 as well as Health at Tug Valley High School during school year 1997-98. (L IV, R. Exs. 1 and 3; L II, p. 1.)

3 3. Mr. Scraggs' certification to teach Social Studies encompasses certification to teach classes in World History.

4 4. Grievant's certifications do not allow him to teach World History. (L IV, R. Ex. 2; L II, p. 1.)

DISCUSSION

As a RIF action does not involve a disciplinary matter, Grievant bears the burden of proving the allegations in his complaint by a preponderance of the evidence. 156 C.S.R. §4.19 (1996); Jackson v. Monroe County Bd. of Educ., Docket No. 96-31-208 (Aug. 29, 1996); Steele v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989). See W. Va. Code §18-29-6. The essence of Grievant's complaint is that Respondent improperly prevented him from "bumping" Mr. Scraggs, a less senior Health and Physical Education teacher.

W. Va. Code §18A-4-7a requires county boards of education to transfer more senior teachers, who are subject to release due to a RIF, 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 provision has a limited purpose. In a RIF situation, it provides placement of a displaced teacher with sufficient seniority, into a position held by the least senior teacher in the displaced teacher's area of certification. Crum, etal., v. Mingo County Bd. of Educ., Docket No. 95-29-224 (Feb. 9, 1996) at 6, citing Donofe v. Hancock Bd. of Educ., Docket No. 93- 15-188 (Nov. 30, 1993).

A grievant may only "bump" those teachers who have like certifications. Id. Similar certifications are not sufficient to allow "bumping", particularly where specific certifications are required for a less senior teacher's position. Thus, that a grievant could legally teach in a position, without a specifically required subject-area certification, is irrelevant where the board of education has chosen to require the subject-area certification. Donofe.

The same rationale applies where the teacher a grievant seeks to bump teaches in two areas, one certification area in which the grievant is certified to teach, and one in which the grievant is not certified. Brammer v. Logan County Bd. of Educ., Docket No. 95-23-393 (Jan. 31, 1997). Although Grievant's certification would allow him to teach Mr. Scraggs' Health classes, he is not certified to teach the World History class Mr. Scraggs teaches. Thus, even though Grievant has greater seniority than Mr. Scraggs, he cannot "bump" Mr. Scraggs, because Grievant is not certified to teach all of the classes which Mr. Scraggs is certified and assigned to teach.

There is no evidence, or even an argument, that Respondent was required to separate the Health classes from the History class, so that Grievant would have a position into which he could bump. Nor is there any evidence that Respondent conspired to defeat Grievant's seniority and bumping rights by

its assignment ofclasses to Mr. Scraggs. Mr. Scraggs may have taught the same Health and History classes throughout his employment, or they may have been assigned to this position for the preceeding year.

In a June 12, 1997 memorandum, Mr. Scraggs' principal stated that Mr. Scraggs' proposed 1997-1998 class schedule included World History, and that "[u]nless there are significant enrollment changes or other causes, it is probable that his schedule will remain the same for the first and second term next year." (Respondent's Exhibit 1 at Level II.) The "remain the same... next year" language suggests that Mr. Scraggs' schedule for the preceeding school year also included World History. While the evidence is not free from conflicting interpretations, I infer that Mr. Scraggs previously taught World History classes, and that such assignments were part of his position's requirements. (See footnote 2)

Even if the inference were not made, it was Grievant's burden to prove that Mr. Scraggs had not been assigned World History classes prior to the RIF. He failed to prove this point. Had Grievant shown that the class schedule had been altered immediately prior to the RIF, he still would not necessarily prevail, as Respondent may exercise significant discretion in altering class schedules.

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 that discretion "reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious." Syl. Pt. 3, Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986). This discretion has been extended "to matters involving curricular programs and the qualifications and placement of personnel implementing those programs." Cowen v. Harrison County Bd. of Educ., 195 W. Va. 377, 465 S.E.2d 648 (1995).

W. Va. Code §18A-2-9 provides authority for a principal to schedule teachers to teach classes within their areas of certification. Piccirillo v. Brooke County Bd. of Educ., Docket No. 94-05-626 (Dec. 30, 1994). Such teaching assignment decisions are reviewed under the "abuse of discretion" standard. See Pockl v. Ohio County Bd. of Educ., 406 S.E.2d 687 (1991); Dillon; and Crawford v. Mercer County Bd. of Educ., Docket No. 94-27-958 (Apr. 13, 1995).

Here, Respondent has assigned one position to teach both Health and History classes, and the person holding that position is certified to teach those classes. There is no evidence that Respondent abused its discretion in making this assignment, nor that it was arbitrary and capricious in so doing.

Indeed, it appears a reasonable and efficient utilization of Mr. Scraggs' qualifications, in an era where fewer teachers are available to maintain curricular offerings. In summary, Grievant cannot "bump"Mr. Scraggs because Grievant is not certified to teach all of the classes one in Mr. Scraggs' position must teach.

CONCLUSIONS OF LAW

1 1. In a RIF grievance, Grievant has the burden of proving his case by a preponderance of the evidence. 156 C.S.R. §4.19 (1996); Jackson v. Monroe County Bd. of Educ., Docket No. 96-31-208 (Aug 29, 1996); Steele v. Wayne County Bd. of Educ., Docket No. 89-50- 260 (Oct. 19, 1989). See W. Va. Code §18-29-6.

2 2. "County boards of education have substantial discretion in matters relating to hiring, assignments, transferring and promotion of school personnel," as long as they exercise that discretion "reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious." Syl. Pt. 3, Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986). This discretion has been extended "to matters involving curricular programs and the qualifications and placement of personnel implementing those programs." Cowen, et al. v. Harrison County Bd. of Educ., 195 W. Va. 377, 465 S.E.2d 648 (1995).

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

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

5 5. Grievant failed to prove a violation, misinterpretation, or misapplication of any statute, policy, rule or regulation, by Respondent assigning a History class as well as Health classes to Mr. Scraggs' position, resulting in Grievant's inability to displace Mr. Scraggs in the course of the reduction-in-force. See Brammer v. Logan County Bd. of Educ., Docket No. 95-23-393 (Jan. 31, 1997).

6 6. Grievant failed to prove a violation of W. Va. Code §18A-4- 7a with respect to the reduction-in-force, as he did not establish that any less senior teacher employed to teach exclusively in his area of certification was retained during the RIF.

Accordingly, this grievance is **DENIED**.

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

Dated: September 19, 1997

JENNIFER J. MEEKS **Administrative Law Judge**

Footnote: 1

Exhibits submitted at Level IV of the grievance procedure are referred to as "L IV, R [Respondent's] Ex. __." The transcript of the Level II hearing is referred to as "L II, p.__."

Footnote: 2

Cf. Brammer v. Logan County Bd. of Educ., Docket No. 95-23- 393 (Jan. 31, 1997), where the grievant argued unsuccessfully that the employer had arranged the schedule of the retained teacher in order to protect him from a RIF action. There, the retained teacher's schedule had been altered beginning the second semester of the 1994-95 school year, to include a class the grievant was not certified to teach. The RIF was effective at the beginning of the 1995-96 school year. The evidence in Brammer specifically showed the retained teacher's original assignment, and when the assignment was altered to include a class requiring additional certification.