CAROLYN BLANKENSHIP,

Grievant,

v. Docket No. 96-10-449

FAYETTE COUNTY BOARD OF EDUCATION,

Respondent,

and

BARBARA NEAL,

Intervenor.

D E C I S I O N

Grievant, Carolyn Blankenship, states "a less senior teacher who is teaching home economics, for which I am certified, will be teaching full time in 1996-1997, and I will be teaching half time. The relief I seek is the restoration of my full-time contract for 1996-1997." This grievance was denied at Levels I and II and waived at Level III. The parties agreed to submit the case on the record developed at the lower levels of the grievance procedure, and this case became mature for decision on January 7, 1997, the deadline for the parties' proposed findings of fact and conclusions of law.

At the Level II hearing, Grievant stated she was not interested in and did not want to displace Intervenor, Barbara Neal, the other home economics teacher, but wished to have herposition at Mount Hope High School ("MHHS") restored to full-time because of need. Grievant mistakenly thought, at the time she filed this grievance, that Intervenor taught only home economics, and when she found out at Level II this was not true she changed her grievance. Level II Trans. at 7 & 22.

The facts in this case are not in dispute and will be set out below.

Findings of Fact

1. During the 1995-1996 school year, Grievant, a teacher with six years of seniority, was a full-time home economics teacher at MHHS.

2. Due to decreased enrollment, Grievant's principal recommended that her position be reduced to half-time.

3. Grievant received timely notice of her reduction-in- contract, stating she was reduced to a half-time position "due to a lack of need because of low enrollment."

4. Grievant is certified only in home economics.

5. Intervenor, who has less seniority than Grievant, is certified in home economics and health and physical education. During the 1995-1996 school year, she was employed as a full-time teacher and taught home economics and had her planning period at Gauley Bridge High School ("GBHS"). She also taught P. E. for two periods at Gauley Bridge Middle School.

6. Intervenor received a timely reduction-in-force notice in the Spring of 1996, as one of her schools, GBHS, was to be closed. She was to be placed on the preferred recall list. 7. Prior to the end of the 1995-1996 school year, the West Virginia Supreme Court of Appeals ruled that GBHS would remain open for the 1996-1997 school year, and on June 3, 1996, Intervenor was restored to her former teaching position.

8. Grievant testified she was not certified to perform Intervenor's duties, and did not want to displace Intervenor.

9. Last year, when she was teaching full-time, Grievant had a total of 44 students in her six classes at MHHS. (See footnote 1)

10. Grievant currently teaches a total of 36 students in her two block periods at MHHS, and she has room for more students in both classes.

Discussion

The only relief Grievant currently seeks is to be restored to her former, full-time teaching position at MHHS. She testified there was a need for her to work full-time, and supported this contention with the statement that her principal, Mr. Ward, (See footnote 2) had told her he could use her for one more period. She did not call Principal Ward to testify at the Level II hearing. This is also the same principal that recommended her reduction to half-time because of lack of need.

Grievant also seems to feel that the situation between she and Intervenor was basically unfair because Intervenor, who is lesssenior than she, is working full-time when she is only working half-time. She stated at the Level II hearing, "If [Intervenor] is going to be employed full-time with less seniority, then I'm just asking that the rest of my position be reinstated so that I can be full-time too." Level II Trans. at 20.

Grievant was reduced pursuant to W. Va. Code § 18A-4-7a due to lack of need. Grievant did not present any evidence to support her contention that she was improperly reduced or that there was a need to increase her contract to full-time. Indeed, the facts indicate Grievant is teaching less students in her two periods a day than she had when she was teaching full-time. This evidence demonstrates Grievant's position was properly reduced as there was not a need for Grievant's services full-time at MHHS during the 1996-1997 school year.

As Grievant was not interested in seeking Intervenor's position, it is sufficient to say that when a RIF loses its stated justification prior to the end of the school year, the employee is entitled to keep the position absent some extraordinary circumstances. See Clay v. Mingo County Bd. of Educ., Docket No. 94-29-516 (Dec. 29, 1994); Hollins v. Wyoming Count Bd. of Educ., Docket No. 92-55-23 (Mar. 18, 1993). See also Brown v. Logan County Bd. of Educ., Docket No. 90-23-177 (Oct. 31, 1990). This is what happened to Intervenor, and no violation of W. Va. Code § 18A- 4-7a is found in Respondent's actions.

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

Conclusions of Law

1. In a nondisciplinary action, the burden of proof is on the grievant to prove her case by a preponderance of the evidence. Napier v. Logan County Bd. of Educ., Docket No. 94-23-541 (Apr. 23 1995).

2. Grievant has not demonstrated that the Fayette County Board of Education violated W. Va. Code § 18A-4-7a when it reduced her contract to half-time.

3. Because Grievant stated she did not want Intervenor's position, the issue of Grievant's placement into this position is rendered moot, and it is not necessary to decide if Grievant should have been allowed to retain a full-time position by splitting her time between MHHS and GBHS (See footnote 3) .

Accordingly, this grievance is DENIED.

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

JANIS I. REYNOLDS

Administrative Law Judge

Dated: May 29, 1997

Footnote: 1

During the 1995-1996 school year, Grievant taught on a regular schedule. Prior to the beginning of the 1996-1997 school year, MHHS switched to a block schedule, and there are now four periods during a school day.

Footnote: 2

The first name of Mr. Ward was not given in the record.

Footnote: 3

It is also unknown whether Intervenor's current position was posted as a P. E. and Health/Home Economics position. If it were, Grievant would not be qualified to hold the position as she does not possess the proper qualifications.