DENNIE BROWN

v. Docket No. 97-55-143

WYOMING COUNTY BOARD OF EDUCATION

DECISION

The grievant, Dennie Brown, is employed by the Wyoming County Board of Education (Board) as a classroom teacher at Oceana Middle School. He filed a grievance at Level I on November 12, 1996, protesting the Board's decision not to post a vacancy in the principalship of Riverside Elementary School (RES). His supervisor was without authority to grant relief, and the grievance was denied at Level II following a hearing held February 26, 1997. The Board, at Level III, declined to address the matter and appeal to Level IV was made March 19, 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 April 25, 1997.

Background

The parties appear to have no dispute over the facts of the case, but the record lacks certain relevant information on several key issues. In accordance with orders from the West Virginia Department of Education, the Board voted to close Guyan Valley School (GVS), effective the end of the 1995-96 school year. GVS Principal Edsel Lafferty was notified that he would be placed on an administrative transfer list for reassignment during the following school year. Board administrators may have known then that the principal at RES was contemplating retirement or a return to teaching.

By the beginning of the 1996-97 school year, Mr. Lafferty had not been placed in another position. The RES principal became ill, apparently at or shortly after the beginning of the schoolyear, and Mr. Lafferty was assigned to substitute for her. In October 1996, the principal transferred to a teaching position, and the Board voted to award the job to Mr. Lafferty on a permanent basis. The position was not posted. All evidence of record indicates that Board administrators believed that certain statutory provisions on the reduction in force of principals mandated that Mr. Lafferty be awarded the position, and it was, therefore, unnecessary to post it.

Argument

The parties agree that pursuant to the holdings in State ex rel. Bd. of Educ. v. Casey, 349 S.E.2d 436 (W.Va. 1986), when a county board of education abolishes a principalship in a particular certification field, i.e., secondary, middle or elementary school administration, it is necessarily engaged in a reduction-in-force of professional personnel, and must terminate the administrative contract of the least senior employee then holding a principalship in that certification field. They also acknowledge that Casey requires that unless the employee holding the principalship which is abolished happens to be the least senior administrator in the field, he or she must be placed in the least senior administrator's position and posting is, therefore, unnecessary. Prior Level IV decisions have consistently followed this approach. See, e.g., Oxley v. Summers County Bd. of Educ., Docket No. 95-45-123 (February 13, 1997).

The grievant appears to concede that Mr. Lafferty and the RES principal were serving in the same administrative certification field, and that the RES principal was the least senior in that field. His arguments further imply that if Mr. Lafferty was placed in the RES slot at the time he lost his GVS position, there would be no error on the Board's part. He maintains that it was violative of W.Va. Code §18A-4-7a, to keep him on the unassigned transfer list past the beginning of the 1996- 97 school year, and that by doing so, the Board effectively allowed him to assume a position which opened because of attrition and not the reduction-in-force. The grievant requests that the positionbe posted, and he be awarded back pay and benefits if he is the successful applicant.

The Board's position also seems to assume that the grade configuration was the same for GVS and RES, and that Mr. Lafferty had a statutory right to displace the RES principal at some point. The Board asserts that it was not a violation of Code §18A-4-7a to delay Mr. Lafferty's placement at RES until the principal had resigned her post.

Findings and Conclusions

It is the grievant's burden in the case to prove each element of his claim by a preponderance of the evidence. Black v. Cabell County Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989). The grievant did not present any evidence which even tends to establish that Mr. Lafferty and the RES principal were not serving in the same administrative certification field or that the RES principal was not the least senior administrator in that field. The record is silent on their seniority and the grade

configuration of GVS. If the grievant is asserting that Mr. Lafferty had no statutory “bumping” rights at all to the RES post, he has failed to prove key elements of that assertion. The undersigned is constrained to rely on the inferences to be drawn from the parties' legal positions, and find that the two employees were in the same certification field, and that the RES principal's administrative seniority was such that she was subject to release from her administrative contract because of the elimination of the GVS principalship. Mr. Lafferty had a statutory right to her post.

The grievant does not explain, and the undersigned cannot discern what injury he sustained or what benefit accrued to Mr. Lafferty when the Board elected to place Mr. Lafferty in the RES post in October 1996, instead of the beginning of the 1996-97 school year or earlier. There is no provision in Code §18A-4-7a, or other portion of Code §§18A-1-1, et seq., which requires that an administrator with bumping rights must exercise them, if at all, at the time he is notified that his position will be abolished. Surber v. Mingo County Bd. of Educ., Docket No. 96-29-015 (Dec. 30,1996) suggests that transfers triggered by a reduction-in-force should become final at or near the start of the school year concerned, but that case was addressing the rights of the employee who was subject to a move to a different work site. The grievant does not cite, and the undersigned is unaware of any prior Level IV decision or other authority which holds that employees of a county board of education acquire a right to bid upon a position which is statutorily reserved for a senior administrator if he does not assume the position by a prescribed date. To the extent that Code §18A- 4-7a contains some implicit requirement that the county board make the appointment within a reasonable period, it is concluded that the Board did not abuse its discretion by waiting until October 1996, to appoint Mr. Lafferty to the RES post.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to 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 with West Virginia Education and State EmployeesGrievance Board nor any of its Administrative Law Judge 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

August 22, 1997