**ELIZABETH PANRELL,**

**Grievant,**

**v.** **Docket No. 96-30-408**

**MONONGALIA COUNTY**
**BOARD OF EDUCATION,**

**Respondent.**

## DECISION

Grievant, Elizabeth Panrell, is regularly employed by Respondent as a bus driver. She initiated this grievance on July 10, 1996, alleging that she should have been selected for a summer paint crew position over the successful applicant, James Dalton. After a waiver at level one, a level two decision denying the grievance was issued by Jacob Mullett, Superintendent, on September 16, 1996. The grievance was then waived at level three, and a level four hearing was conducted in this Board's office in Morgantown, West Virginia, on November 26, 1996. This matter became mature for decision on December 23, 1996, upon receipt of the parties' proposed fact/law conclusions.

The relevant facts are not disputed by the parties and are contained in the following findings.

## Findings of Fact

1. Grievant has been regularly employed by Respondent as a bus driver since August8, 1986.

2. Grievant was employed for three summers doing maintenance work. During the summer of 1991, she worked in the handyman classification. For the summers of 1992 and 1993, Grievant was classified as a painter.

3. Grievant applied for summer employment on the paint crew for the summers of 1994, 1995, and 1996. However, fewer positions were available, and Grievant was not selected, because other painters had more summer seniority.

4. James Dalton was employed as a painter during the summers of 1992, 1993, and 1994. Due to the reduction of painter positions in 1995, Mr. Dalton was not selected. However, he applied for and received summer employment as a general maintenance worker in 1995.

5. For summer 1996, James Dalton applied for a painter position and was selected, based upon his seniority as a summer painter.

6. Grievant does not dispute that Mr. Dalton has more seniority as a summer painter than she does.

## Discussion

Grievant's argument is that, once Mr. Dalton accepted employment in the summer of 1995 as a general maintenance worker, he “abandoned” his accrued summer seniority rights in the painter classification. If Grievant were correct, she would have more seniority than him as a summer painter and should have been selected for the 1996 painter position. Hiring of service personnel for summer positions is governed by W. Va. Code § 18-5-39, which states in pertinent part:

> [T]he county board of education is authorized to employ school service personnel [for summer school programs]. . . . An employee who was employed in any service personnel job or position during the immediate previous summer shall have the option of retaining such job or position if such exists during any succeeding summer. If such employee is unavailable or if the position is newly created, the position shall be filled pursuant to [§ 18A-4-8b]. When any summer employee who is employed in a summer position is granted a leave of absence for the summer months, the board shall give regular employment status to such employee for that summer position which shall be filled under . . . [§ 18A-4-8b]. The summer employee on leave of absence shall have the option of returning to that summer position if such exists the succeeding summer or whenever such position is reestablished if it were abolished . . . .
>
> If a county board reduces in force the number of employees to be employed in a particular summer program or classification from the number employed in such position in previous summers, such reductions in force and priority in reemployment to such summer positions shall be based upon the length of service time in the particular summer program or classification.

The section goes on to provide that summer service personnel positions shall include, but not be limited to, the classification titles set forth in § 18A-4-8. “General maintenance,” “handyman,” and “painter” are classifications included in that Code section.

Respondent believes that its actions complied fully with § 18-5-39. When it selected Mr. Dalton for

the 1996 summer painter position, it did so based upon his accumulated summer seniority in that classification. Thus, it accomplished the “reductions in force and priority in reemployment . . . based upon the length of service time in the particular summer . . . classification.” Mr. Dalton was awarded the summer 1995 general maintenance position, a “newly created position,” based upon his regular seniority. Respondent argues that there is no basis for depriving Mr. Dalton of his previously accrued seniority as a summer painter and that it would be unfair to punish employees in this manner by discouraging them from seeking employment in other classifications after being reduced in force.

A very similar factual situation was the subject of the grievance in Kennedy v. Marion County Bd. of Educ., Docket No. 91-24-427 (Dec. 30, 1991). An individual was awarded a summer bus driving position in 1989, which position was not available in 1990 due to lack of need. Whenthe position again became available in 1991, both Grievant and the individual who had previously held the position applied. After the position was awarded to the other individual, Grievant complained that he should have received it, even though he had no summer seniority as a bus driver. The Administrative Law Judge ruled that § 18-5-39 was not violated, and that the successful applicant retained her seniority rights in the summer bus driver classification after the reduction in force.

There is no dispute in the instant case that Mr. Dalton had more years of summer seniority as a painter than Grievant, and, if not for the one year he worked in general maintenance, there would be no grievance. Grievant has failed to prove any basis for her argument that Mr. Dalton somehow “forfeited” the seniority he earned as a painter by working one year in another summer classification. Indeed, the language of § 18-5-39 exhibits an intent to allow service personnel holding particular positions the opportunity to remain in those positions during each succeeding summer that the positions exist. In the event that the number of positions in that classification is reduced, the statute is quite clear that employees' recall rights are to be determined by seniority in the summer classification. As determined in Kennedy, supra, there are three possible methods whereby properly hired personnel retain previously held summer positions: following a leave of absence, in the immediately following year after having held the position during the prior summer, or in the year that a position is restored after having been reduced in force.

Respondent correctly followed the seniority and reemployment procedures of § 18-5-39. After the summer painter positions were reduced, recall rights were determined by years of summer seniority in the painter classification. Mr. Dalton's summer seniority in that classification exceeded Grievant's,

so she has failed to establish she should have been hired as a summer painter in 1996.

## Conclusions of Law

1. County boards of education have substantial discretion in matters relating to hiring of school personnel, which discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Board of Educ. v. Enoch, 186 W.Va. 712, 414 S.E.2d 630 (1992).

2. In non-disciplinary matters, a grievant must 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).

3. Once a board of education employee is properly placed in a particular summer position, seniority rights are established for the employee to return to the position during any succeeding years, in the year following a leave of absence if the position still exists or at a later time if it is recreated following its abolishment, or in the year the position is restored following a reduction in force. Kennedy v. Marion County Bd. of Educ., Docket No. 91-24-427 (Dec. 30, 1991).

4. A summer service employee who has been reduced in force does not forfeit his accrued seniority rights in the classification title he has held by working in a different summer classification while the prior position is unavailable.

5. Grievant had fewer years of summer seniority as a painter than the successful applicant for the 1996 summer position, so she has not established entitlement to that position.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the circuitcourt of Monongalia 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.

**DATE: April 25, 1997** _____ **V.**

**DENISE MANNING**

**Administrative Law Judge**