CHARLES S. OXLEY

v. Docket No. 95-45-123

SUMMERS COUNTY BOARD OF EDUCATION

DECISION

The grievant, Charles Oxley, is currently employed by the Summers County Board of Education (Board) as a classroom teacher assigned to Talcott Elementary School. He filed a grievance at Level I April 27, 1993, protesting his impending transfer from the position of Principal of the Summers County Vocational Center (SCVC). His supervisor was without authority to grant relief, and the grievance was denied at Level II following a hearing held March 4, 1994. The Board, at Level III, declined to address the matter, and appeal to Level IV was made April 4, 1994. Upon the motion of counsel for the grievant, the case was held in abeyance pending the grievant's recovery from serious health problems. A hearing was held March 29, 1996, and the parties submitted proposed findings of fact and conclusions of law by June 27, 1996.

There is no dispute over the facts of the case. During the 1992-93 school year, the Board decided to close Bellepoint Elementary School (BES) effective July 1, 1993. The closure meant the elimination of the BES Principal position held by Harry Keaton, a nineteen-year administrator with principal's certificates in elementary education and vocational administration. Board administrators ultimately determined that state law on the reduction in force of professional personnel required that the contract of the least senior principal in the county, regardless of the grade level of the school at which he or she was employed, should be terminated, and that Mr. Keaton should be permitted to transfer or “bump” into his or her post. The grievant, who had just assumed the duties of Principal of SCVC in 1991, and who was serving in the post by virtue of his secondary principal certification and Vocational Administration license, was determined to be the least senior administrator in the school system. He was given notice, per W.Va. Code §18A-2-2, that his employment as a principal would be terminated effective the end of the 1992-93 school year due to the reduction in force of principal positions and because of Mr. Keaton's right to displace him. With teaching certifications and previous teaching experience, the grievant was able to transfer into his current position at Talcott

Elementary. Mr. Keaton assumed the principalship of SCVC at the beginning of the 1993-94 school year. The school closed at the end of that year.

Argument

The grievant advances several arguments for reversal of his transfer. His primary contention is necessarily predicated on the following portion of W.Va. Code §18A-4-7a:

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 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.

Characterizing Mr. Keaton's move to SCVC as a bump, the grievant asserts that his former principal position was not “lateral” to Mr. Keaton's BES principalship. He cites December 18, 1991 and April 17, 1992 Opinions of the State Superintendent of Schools and State ex rel. the Bd. of Educ. of the County of Kanawha v. Hon. Patrick Casey, Judge, etc., et al, 349 S.E.2d 436 (W.Va. 1986), as supportive of his stance. He seeks the additional salary andadministrative seniority he would have received had he remained in the SCVC post during the 1993-94 school year.

The Board also portrays Mr. Keaton's move to SCVC as a bump into the grievant's position; it maintains that it was proper to consider all Principal posts as lateral to one another. The Board suggests that the State Superintendent erred in his interpretation of the statute, and avers generally that the grievant has failed to show that it acted arbitrarily in the matter.

Findings and Conclusions

The State Superintendent's Opinions and the parties' respective views on the statute are somewhat skewed. Ultimately, it is the grievant who advances the most accurate interpretation of its provisions and how it should have been applied.

Initially, it is important, even crucial, to note that although it was Mr. Keaton's BES position which

was to be eliminated, he was never determined to be the “employee with the least amount of seniority” in the county in the certification field to be reduced. The statute is clear in its pronouncement that only the “employee subject to release” in a reduction-in- force has rights, if any, to “bump” into fields in which he holds alternative certification. Obviously, if the employee has only certification in the field to be reduced, his employment must be terminated. It is wholly inaccurate to say that the statute mandated that Mr. Keaton be allowed to displace anyone; he merely held the post targeted for elimination.

Application of the statute is a fairly straightforward three-step process. The county board of education must first discern which certification field is being reduced, and then determine which employee in the school system working in that field has the least seniority. Once that employee receives notice that his employment will be terminated, or, in the caseof an employee with multiple certifications, notice that he will be transferred to another field, the statute's requirements are met.

Unless the least senior employee in the certification field to be reduced happens to occupy the position to be eliminated, employee transfers are necessary. While the application of Code §18A-4-7a may trigger the transfers of particular employees whose positions are eliminated but who have sufficient seniority to remain in the school system, it does not address those actions; W.Va. Code §18A-2-7 is the controlling statute for the transfer of school personnel.

If, as the grievant asserts, elementary and secondary principals are not “lateral,” i.e., they do not serve in the same certification field, it was obvious error for the Board to terminate his administrative contract. On this issue, the holdings in Casey, supra, are clear and dispositive.

In Casey, the West Virginia Supreme Court of Appeals addressed a fact pattern similar to that in the present case. The Kanawha County Board of Education was eliminating a high school principal post because of the closure of the school where it was located. The Court did not hesitate to pronounce that the closure “clearly constituted a reduction in force in a distinct classification of professional educational personnel, secondary principalships. . .” Id. at 440. The Court went on to explain that the school closure and the application of the statute required the county board to notify the least senior employee in that classification that his employment would be terminated. Subsequent Level IV decisions have incorporated this differentiation between principalships for the purpose of reductions-in- force. See, e.g., Lloyd v. Kanawha County Bd. of Educ., Docket No. 91-20-327 (Oct. 29, 1991). The record in the present case does not reflect, and it is not necessary to determine

which elementary school principal in the Board's employ had the least administrative seniority when the decision to close BES was made. It is clear that the grievant should never have been considered part of the certification field which was being reduced.

Accordingly, the grievance is **GRANTED**, and the Summers County Board of Education is hereby **ORDERED** to compensate the grievant for any loss of wages he may have incurred as the result of the improper termination of his principal contract and credit him with the loss of administrative seniority.

February 13, 1997 JERRY A. WRIGHT

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