G. ODELL DINGESS,

Grievant,

v. **DOCKET NO. 99-22-218**

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

G. Odell Dingess (Grievant), is employed by Respondent, Lincoln County Board of Education (LCBE), as an Assistant Principal/Teacher. Grievant alleges that LCBE should have allowed him to "bump" into a Principal's position. This grievance was denied by Immediate Supervisor David Bell, on April 13, 1999. A Level II hearing was held on May 25, 1999, with Grievant represented by Anita Mitter of the W. Va. Education Association, and LCBE represented by James W. Gabehart, Esq. The grievance was denied at Level II, by Hearing Examiner Charles S. McCann, on May 25, 1999. As authorized by W. Va. Code § 18-29-4(c), Level III proceedings apparently were waived. The parties agreed that the grievance could be submitted at Level IV based upon the record developed at the lower levels. The parties were given until June 30, 1999, to submit proposed findings of fact and conclusions of law, (See footnote 1) and this grievance became mature for decision on that date. The facts in this matter are undisputed. Accordingly, the following Findings of Fact are establishedby a preponderance of the evidence.

FINDINGS OF FACT

1. Grievant is an Assistant Principal/Teacher at Duval High School.
2. By letter dated February 24, 1999, LCBE notified Grievant that his contract as Assistant Principal/Teacher at Duval High School would be terminated, and that he would be transferred to Hamlin High School as a safety education/physical education teacher due to decreased enrollment.
3. All of Grievant's 10 years of administrative experience have been as an Assistant Principal.

4. At the time of Grievant's transfer, the only administrators employed by LCBE with less administrative experience than Grievant were Dwight Coburn, Principal of Hamlin High, who has six years of administrative experience, and Darlene Dalton, Principal of Atenville Elementary School.

5. Under LCBE's policy regarding lateral movement between professional positions, an Assistant Principal position is not lateral to a Principal position.

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DISCUSSION

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd., 156 C.S.R. 1 § 4.19 (1996); Payne v. W. Va. Dep't of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). See W. Va. Code § 29-6A-6. A preponderance of the evidence is defined as "evidence which is of greater weight ormore convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary (6th ed. 1991); Leichliter v. W. Va. Dep't of Health & Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. Id.

Grievant alleges that LCBE should have allowed him to "bump" into a Principal's position, that of Dwight Coburn, Principal of Hamlin High, because Principal Coburn has four fewer years of administrative experience. However, Grievant is an Assistant Principal/Teacher and, having previously unsuccessfully grieved this very issue, should know that he cannot bump a principal. Dingess v. Lincoln County Bd. of Educ., Docket No. 98-22-053 (May 29, 1998). An Assistant Principal cannot "bump" a Principal as "such a displacement would constitute a 'vertical' transfer, not a permissible lateral transfer, because a principal occupies a higher employment plane than does an assistant principal." Carson v. Harrison County Bd. of Educ., Docket No. 89-17-279 (Feb. 28, 1991).

This Grievance Board has recognized the principle that "finality is desirable in the law," and applied it to grievance procedures. Oxley v. Summers County Bd. of Educ., Docket No. 98-45-104 (Nov. 19, 1998); Spurlock v. Lincoln County Bd. of Educ., Docket No. 97-22-019

(May 29, 1997); Oxley v. Summers County Bd. of Educ., Docket No. 95-45- 123 (Feb. 13, 1997).

The Supreme Court of Appeals of West Virginia has explained the doctrine of stare decisis as follows: "[a] simple statement of this rule will be found in Black's Law Dictionary, 3d Ed., wherein it is stated that it means: 'To stand by decided cases; to upholdprecedents; to maintain former adjudications. . . [t]he doctrine of stare decisis rests upon the principle that law by which men are governed should be fixed, definite, and known, and that, when the law is declared by court of competent jurisdiction authorized to construe it, such declaration, in absence of palpable mistake or error, is itself evidence of the law until changed by competent authority.'" In re Proposal to Incorporate Town of Chesapeake, 130 W. Va. 527, 536, 45 S.E.2d 113 (1947).

The undersigned administrative law judge is bound by this Board's precedent. Accordingly, Grievant is not permitted to bump into Principal Dwight Coburn's position.

Consistent with the foregoing discussion, the following Conclusions of Law are made in this matter.

CONCLUSIONS OF LAW

1. In a non-disciplinary grievance, the grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. An Assistant Principal cannot "bump" a Principal as "such a displacement would constitute a 'vertical' transfer, not a permissible lateral transfer, because a principal occupies a higher employment plane than does an assistant principal." Carson v. Harrison County Bd. of Educ., Docket No. 89-17-279 (Feb. 28, 1991).

3. This Grievance Board has recognized the principle that "finality is desirable in the law," and applied it to grievance procedures. Oxley v. Summers County Bd. ofEduc., Docket No. 98-45-104 (Nov. 19, 1998); Spurlock v. Lincoln County Bd. of Educ., Docket No. 97-22-019 (May 29, 1997); Oxley v. Summers County Bd. of Educ., Docket No. 95-45-123 (Feb. 13, 1997).

4. Grievant did not prove, by a preponderance of the evidence, that he was entitled to be

placed in the Principal position held by Dwight Coburn.

Accordingly, this grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln 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. However, the appealing party is required by W.Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

ANDREW MAIER

ADMINISTRATIVE LAW JUDGE

Dated: July 28, 1999

Footnote: 1

This grievance was transferred, for administrative purposes, to the undersigned administrative law judge, and received by the Grievance Board's Beckley office on July 6, 1999.