REA N. COEN, et al.,

Grievants,

v. **Docket No. 99-52-243**

WETZEL COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

This grievance was initiated as two separate grievances, which were consolidated at level two on May 19, 1999. Grievant Rea N. Coen challenges the elimination of her position as a Language Arts teacher at Valley High School. The remaining grievants ("the Wildman grievants") filed a grievance challenging the same decision, due to their belief that the students at Valley High School would suffer as a result of the reduction in Language Arts teachers. A level two hearing was held on May 19, 1999, at which time the grievance evaluator consolidated the two grievances. The grievance was denied in a written level two decision dated June 4, 1999. Level three consideration was bypassed, and Grievants appealed to level four on June 11, 1999. A level four hearing was held in the Grievance Board's office in Wheeling, West Virginia, on September 9, 1999. Grievants were represented by Owens Brown of the West Virginia Education Association, and Respondent was represented by counsel, Larry Blalock. This grievance became mature for consideration on October 13, 1999, upon receipt of the parties' fact/law proposals. In order to expedite the level four decision in this matter, the grievance was reassigned to the undersigned administrative law judge on November 3, 1999.

The following findings of fact are made from a preponderance of the evidence ofrecord, including the testimony offered at levels two and four, along with all documentary evidence admitted.

Findings of Fact

1. Grievant Coen has been employed as a full-time Language Arts teacher by the Wetzel

County Board of Education ("WCBOE") since 1994, specifically at Valley High School ("VHS") during the 1998-1999 school year. She possesses a state certification in Language Arts.

2. The Wildman grievants are employed as teachers at VHS.

3. On or about January 15, 1999, Superintendent Martha Dean was advised that WCBOE would be subject to funding cuts for the 1999-2000 school year, which would require the elimination of 11 teaching positions in the Wetzel County school system.

4. All but one school in Wetzel County was subjected to reductions in teaching positions for the 1999-2000 school year.

5. After discussion with the administrators of VHS, Superintendent Dean recommended to the WCBOE that the Language Arts teaching positions at VHS be cut by one half of a position.

6. The elimination of one half of a Language Arts position at VHS resulted in the retention of one and one half Language Arts teaching positions. As a result, eleven Language Arts classes would be taught every day to the school's 230 students, with approximately 23 students in each class.

7. A Language Arts teaching position was eliminated at another Wetzel County high school, and, because the teacher in that position had greater seniority than GrievantCoen, she was allowed to "bump" into the remaining half of Grievant's position at VHS for the 1999-2000 school year.

8. The state Department of Education requires that "basic skills" courses, including Math, Language Arts and Reading, be taught to all students who score below the 50th percentile on standardized testing.

9. Basic skills classes may be taught by any teacher with a valid West Virginia teaching certificate, and they need not be certified in any particular subject area.

10. Grievant Coen was notified by letter dated February 26, 1999, that her position was to be eliminated for the 1999-2000 school year. She was provided a reduction in force hearing before the WCBOE on March 23, 1999, at the conclusion of which the Board voted to eliminate one half of Grievant's position and place another employee in the remaining half, as described above.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their 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). See W. Va. Code § 18-29-6. W. Va. Code § 18A-4-7a provides that, when a board of education must reduce the number of professional employees in a county, “the employee with the least amount of seniority shall be properly notified and released from employment.” The same statute further provides that boards of education may eliminate positions due to lack of need. Grievant Coen does not dispute that she was the least senior teacher, and that her “bumping” was appropriate. Rather, all of the grievants contend that the one half Language Arts position at VHS did not need to be eliminated, so there was no “lack of need” to justify the reduction in force.

It is well-settled that "[c]ounty boards of education have substantial discretion in matters relating to hiring, assignments, transferring and promotion of school personnel," as long as they exercise this discretion "reasonably, in the best interests of the school, and in a manner which is not arbitrary and capricious." Dillon v. Bd. of Educ. of Wyoming, 177 W. Va.145, 351 S.E.2d 57 (1986); Spaulding v. Mingo County Bd. of Educ., Docket No. 95-29-357 (Jan. 31, 1996). Further, the West Virginia Supreme Court expanded the Dillon standard "to matters involving curricular programs and the qualifications and placement of personnel implementing those programs." Cowen v. Harrison County Bd. of Educ., 195 W. Va. 377, 465 S.E.2d 648 (1995).

The arbitrary and capricious standard of review of decisions requires a searching and careful inquiry into the facts; however, the scope of review is narrow, and the undersigned may not substitute her judgment for that of the board of education. See generally, Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276 (1982). Additionally, the reviewer's role is limited to determining whether relevant factors were considered in reaching the decision, and whether there has been a clear error of judgment. Bowman Transp. v. Arkansas-Best Freight System, 419 U.S. 281, 285 (1974); Harrison v. Ginsberg at 283. Moreover, a decision of less than ideal clarity may be upheld if the agency's path in reaching that conclusion may reasonably be discerned. Bowman, supra, at 286.Generally, a board of education's action is arbitrary and capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects of the problem, explained its decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of view. Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985).

The crux of Grievants' argument is that a Language Arts certified teacher is needed to teach

basic skills classes at VHS. Due to deficient scores by many students on standardized tests, VHS had been placed on academic probation for the 1998-1999 school year. Those students scoring below the 50th percentile are required to take basic skills courses, which are taught by various teachers who have a variety of certifications. Grievants contend that the Language Arts basic skills courses should be taught by a teacher certified in Language Arts, in order to insure that test scores of VHS students will improve. Accordingly, Grievant Coen's position should not have been eliminated.

Grievants have introduced no evidence to dispute Respondent's contention that basic skills courses may be taught by any teacher with a current state teaching certificate. Moreover, Superintendent Dean and the principal of VHS testified at length in this grievance in order to explain how the decision was made regarding the reduction in force at VHS, which was required due to state funding cuts. As explained by Superintendent Dean, it was decided that the elimination of the one half Language Arts position would not be detrimental to the students, because class sizes would still be manageable, while allowing all students to obtain the required four English classes prior to high school graduation. Decisions based upon financial and economic factors regarding how to best serve the needs of schools are determinations which should be left to county boards of education. Sammons v. Mingo County Bd. of Educ., Docket No. 96-29-336 (Jan. 17, 1997). Furthermore, grievants have a difficult burden in challenging staffing decisions made by a board faced with funding cuts. In such situations, "[t]he employee must necessarily acknowledge the true underlying reason for the action, and show that the board erred or otherwise abused its discretion in deciding which terminations . . . were the most reasonable." Dial v. McDowell County Bd. of Educ., Docket No. 96-33-259 at 7 (April 30, 1997).

Grievants have failed to establish an abuse of the broad discretion afforded to boards of education when making decisions of this nature. The decision is supported by the financial and educational concerns faced by WCBOE. Moreover, the Wildman grievants have failed to demonstrate that they have standing to challenge the termination decision at issue in this case. "Standing, defined simply, is a legal requirement that a party must have a personal stake in the outcome of the controversy." Wagner v. Hardy County Bd. of Educ., Docket No. 95-16-504 (Feb. 23, 1996). In order to have a personal stake in the outcome, a grievant must have been harmed or suffered damages. The grievant "must allege an injury in fact, either economic or otherwise, which is the result of the challenged action and shows that the interest he seeks to protect by way of the institution of legal

proceedings is arguably within the zone of interests protected by the statute, regulation or constitutional guarantee which is the basis for the lawsuit." Shobe v. Latimer, 162 W. Va. 779, 253 S.E.2d 54 (1979). Without some allegation of personal injury, Grievants arewithout standing to pursue this grievance. Lyons v. Wood County Bd. of Educ., Docket No. 89-54-601 (Feb. 28, 1990). Grievant Wildman testified that she and the other teachers at VHS filed this grievance simply because they believed the students would be harmed by the Board's decision. They have not alleged any injury on their own behalf. This Grievance Board has previously held that teachers cannot file grievances on behalf of students. Super v. Randolph County Bd. of Educ., Docket No. 99-42-043 (March 5, 1999).

In accordance with the foregoing findings and discussion, the following conclusions of law are made.

Conclusions of Law

1. In non-disciplinary matters, Grievants have the burden of proving their 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). See W. Va. Code § 18-29-6.

2. "County boards of education have substantial discretion in matters relating to hiring, assignments, transferring and promotion of school personnel," as long as they exercise this discretion "reasonably, in the best interests of the school, and in a manner which is not arbitrary and capricious." Dillon v. Bd. of Educ. of Wyoming, 177 W. Va.145, 351 S.E.2d 57 (1986); Spaulding v. Mingo County Bd. of Educ., Docket No. 95-29-357 (Jan. 31, 1996).

3. Generally, a board of education's action is arbitrary and capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects ofthe problem, explained its decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of view. Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985).

4. "Standing, defined simply, is a legal requirement that a party must have a personal stake in the outcome of the controversy." Wagner v. Hardy County Bd. of Educ., Docket No. 95-16-504 (Feb.

23, 1996).

5. Students are not entitled to the benefits of the grievance procedure, so grievances cannot be filed on their behalf. Super v. Randolph County Bd. of Educ., Docket No. 99-42-043 (March 5, 1999).

6. Grievants have failed to prove by a preponderance of the evidence that the elimination of a one half Language Arts teaching position at Valley High School was an abuse of discretion or was arbitrary and capricious.

7. The Wildman grievants do not have standing in this grievance.

Accordingly, this grievance is **DENIED**.

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

Date: November 10, 1999 _____

DENISE M. SPATAFORE

Administrative Law Judge