JUDITH RHODES,

Grievant,

v. **Docket No. 00-42-233**

RANDOLPH COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Judith Rhodes ("Grievant") initiated this proceeding on March 30, 2000, challenging her reduction in force at the end of the 1999-2000 school year. She seeks to be reinstated to her previous assignment as a Cook II at Coalton Elementary School. The grievance was denied at level one, and a level two hearing was held on June 8, 2000. A written level two decision dated July 7, 2000, denied the grievance. Grievant appealed to level four on July 17, 2000, and alleged a default had occurred at level two. Following a default hearing held on December 4, 2000, default judgment was denied in an order dated January 17, 2001. A level four hearing on the merits of the grievance was held in the Grievance Board's office in Elkins, West Virginia, on March 12, 2001. Grievant was represented by John E. Roush of the School Service Personnel Association, and Respondent was represented by counsel, Kimberly S. Croyle. This matter became mature for consideration upon receipt of the parties' fact/law proposals on April 13, 2001.

The following findings of fact are made from a preponderance of the evidence of record.

Findings of Fact

1. During the 1999-2000 school year, Grievant was employed by Respondent as a Cook II assigned to Coalton Elementary School.

2. Grievant has been regularly employed in the Cook II classification since April 9, 1997.

3. As of the spring of 2000, four people employed as cooks had less seniority than Grievant. One of these individuals, Deborah Kyle, was a full-time employee, and the other three were half-time employees.

4. Due to a decrease in enrollment and resulting reduction in funding, Respondent determined that it needed to eliminate 7½ service personnel positions. Specifically, it was decided that the total number of cooks at Third Ward School would be reduced from three full-time cooks to two full-time and one half-time position.

5. In accordance with its policy, Respondent determined that the least senior employee in the cook classification at Third Ward School should be placed on the transfer list. This employee, Rosemary VanPelt, was employed as a Cook III/Cafeteria Manager.

6. Because Third Ward School still needed a cafeteria manager, and that position needed to be full-time, Respondent decided to reduce one of the remaining cook positions at that school by one-half. Accordingly, Ms. VanPelt and Shirley Currence were placed on the transfer list.

7. Both Ms. VanPelt and Ms. Currence had more seniority than Grievant.

8. In order to make sure the two cooks placed on the transfer list would have full-time positions, Respondent reduced in force the three half-time cooks at the bottom of the seniority list, along with Ms. Kyle, the full-time cook with the least seniority. In addition,Grievant was notified that her position would be reduced by one-half, and she would be placed on the transfer list.

9. A Cook II at Elkins Middle School retired at the conclusion of the 1999-2000 school year, and her retirement was approved by Respondent in March of 2000.

10. On May 11, 2000, Respondent posted four cook positions. Grievant ultimately bid upon and received a full-time Cook II position at Elkins Middle School.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); 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.

___Grievant contends that she should not have been transferred, because there was simply no need for Respondent to do so. While Grievant agrees that it was, indeed, necessary to make two full-time positions available for the two more senior cooks being transferred from Third Ward School, she contends that the additional position caused by the retirement of a cook at Elkins Middle School

created the needed vacancy and eliminated the need to reduce her position or place her on transfer. Although she has lost no income by virtue of having been awarded a full-time position at a different school, she would rather work at Coalton Elementary.

Respondent contends that, after all was said and done, it has accomplished exactly what it set out to do, which was to reduce the number of cook positions at Third Ward School by one-half. In addition, because the two cooks from Third Ward who were placedon transfer had more seniority than Grievant and Ms. Kyle, they had to be reduced and/or transferred in order to assure the two more senior cooks would have full-time positions. Respondent argues that the retirement of yet another cook is irrelevant, because that position was not implicated in the transfer and reduction process, which conformed with the statutory requirements. Finally, Respondent points out that no less senior cooks have remained employed in the county, and Grievant is still enjoying full-time employment.

The West Virginia Supreme Court of Appeals recognized in Lucion v. McDowell County Bd. of Educ. , 191 W. Va. 399, 466 S.E.2d 487 (1994), if a board of education decides to reduce the number of jobs for service personnel, it must follow the reduction in force procedures of W. Va. Code § 18A-4-8b which requires, first, that the board release the least senior employee in the classification to be reduced (See footnote 1) and, second, that the resulting vacancy be posted and filled under the requirements of that statute. That is precisely what the Board did in this case. Because the two more senior cooks placed on transfer were full-time employees, Respondent was first required to eliminate the three half-time cooks at the bottom of the seniority list. Then, it released the least senior full-time cook, Ms. Kyle, and reduced Grievant's position by one-half, placing her on the transfer list.

The transfer statute, W. Va. Code §18A-2-7 provides, in pertinent part, that “[t]he superintendent, subject only to approval of the board, shall have authority to assign,transfer, promote, demote or suspend school personnel and to recommend their dismissal pursuant to provisions of this chapter.” While this statute does not require the Superintendent or the Board to base transfer decisions upon any particular factor, a county which has adopted a policy whereby seniority is the basis of such decisions must abide by that policy. Norman v. Greenbrier County Bd. of Educ., Docket No. 90-13-345 (Nov. 30, 1990). That is exactly what Respondent did in the instant case, placing the least senior cooks at Third Ward School on transfer, and then following the seniority-based reduction- in-force requirements of W. Va. Code § 18A-4-8b by eliminating the least senior cooks in the county.

As to the additional cook vacancy created by a retirement, as Respondent argues, that is irrelevant to the facts presented here. Regardless of that retirement, the Board was still required to adhere to the requirements of its own seniority-based transfer policy, along with the reduction-in-force provisions of W. Va. Code § 18A-4-8b, in order to achieve reduction of the overall number of cook positions in the county and to insure that the most senior cooks would be transferred to full-time positions. Even though another cook retired, the Board was still faced with reducing the overall number of positions by one-half, and Grievant was still, in fact, the second least senior full-time cook, requiring that her position be reduced by one-half. Moreover, as pointed out by Respondent, Grievant was ultimately awarded another full-time cook position, so she is, in fact, better off than she would have been if she had only received a half-time position, which was all she was entitled to in this situation.

Grievant has repeatedly asserted that there was no “need” to place her on transfer or to target her position for reduction. However, as noted by Respondent, if Grievant hadnot been placed on transfer, then one of the two more senior cooks from Third Ward School who were placed on the transfer list would have only been assured a half-time position. As stated above, a county which has adopted a policy whereby transfers are based on seniority must abide by such a policy. Norman, supra. As noted by this Grievance Board in Dial v. McDowell County Board of Education, Docket No. 96-33-259 (Apr. 30, 1997):

> The employee must necessarily acknowledge the true underlying reason for the [transfer/reduction], and show that the board erred or otherwise abused its discretion in deciding which terminations and/or reassignments were the most reasonable. Since . . . these decisions often, if not always, involve numerous variables and subjective, countywide assessments of staffing patterns, the employee's burden, at least from an evidentiary standpoint, would be a difficult one. See generally, Travis v. Health and Human Resources, Docket No. 95-HHR-359 (March 24, 1997).

Grievant has failed to meet her burden of proving by a preponderance of the evidence that her transfer, or the related transfers and reductions of other employees, were accomplished in violation of applicable law Consistent with the foregoing, the following conclusions of law are appropriate.

Conclusions of Law

1. Grievant has the burden of proving her claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000);

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. When a board of education decides to reduce the number of jobs for service personnel, it must follow the reduction in force procedures of W. Va. Code § 18A-4-8b, which requires release of the least senior employee in the particular classification at issue.

3. W. Va. Code §18A-2-7 provides, in pertinent part, that "[t]he superintendent, subject only to approval of the board, shall have authority to assign, transfer, promote, demote or suspend school personnel and to recommend their dismissal pursuant to provisions of this chapter."

4. Although not required by W. Va. Code §18A-2-7, it is permissible for a board of education to adopt a policy of using seniority as a determinative factor when placing employees on transfer. Norman v. Greenbrier County Bd. of Educ., Docket No. 90-13-345 (Nov. 30, 1990).

5. "County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the school, and in a manner which is not arbitrary and capricious." Dillon v. Bd. of Educ. , 177 W. Va. 145, 351 S.E.2d 58 (1986).

6. Grievant has failed to establish that her transfer violated any applicable statute, law, policy, rule, regulation, or written agreement.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Randolph County, and such appeal must be filed within thirty (30) days ofreceipt 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: April 30, 2001 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

"If a county board is required to reduce the number of employees within a particular job classification, the employee with the least amount of seniority within that classification or grades of classification shall be properly released and employed in a different grade of that classification if there is a job vacancy: Provided, That if there is no job vacancy for employment within the classification or grades of classification, he or she shall be employed in any other job classification which he or she previously held with the county board if there is a vacancy and shall retain any seniority accrued in the job classification or grade of classification."