ROSEMARY HARVEY,

Grievant,

v. **Docket No. 02-23-177**

LOGAN COUNTY BOARD OF EDUCATION,

Respondent, and

LINDA GORE,

Intervenor (See footnote 1) **.**

D E C I S I O N

Grievant, Rosemary Harvey, filed this grievance against her employer, the Logan County Board of Education ("LBOE"), in late April or May 2002. The statement of grievance reads:

> I've been transferred, for lack of need, from a position I've held 22 yrs. My run is still available.

As relief Grievant seeks “to remain in my present position.” (See footnote 2)

The following Findings of Fact are made from the evidence presented at the Level II hearing.

FINDINGS OF FACT

1. Grievant has been employed as a Transportation Aide by LBOE for 22 years. She works out of the Logan bus garage.

2. LBOE has three garages where buses are parked and fueled: the Logan bus garage, the Man bus garage, and the Chapmanville bus garage. Bus operator and Transportation Aide positions are posted by bus garage, and bus operators and Transportation Aides are assigned for payroll purposes to one of the three bus garages. LBOE considers Transportation Aides and bus operators to be assigned to a particular bus garage.

3. During the 2001-2002 school year, there were three special needs runs from the Logan bus

garage, and three Transportation Aides for the three runs. At the end of the school year, one of the runs was eliminated, and Grievant was placed on transfer. The Transportation Aide whose run was eliminated was placed on Grievant's run.

4. Grievant was placed on transfer because she is the least senior Transportation Aide stationed at the Logan bus garage. She is not the least senior Transportation Aide in the county.

5. LBOE makes transfer decisions involving Transportation Aides based upon seniority within the Aide classification at the affected bus garage, in accordance with a policy voted upon by the Aides in the county.

DISCUSSION

Grievant bears the burden of proving the elements of her grievance by a preponderance of the evidence. Tibbs v. Mercer County Bd. of Educ., Docket No. 96-27- 074 (Oct. 31, 1996). Grievant argued she should not have been placed on transfer, because she was not the least senior Transportation Aide in the county. She disagreedwith the policy approved by the Aides in the county of basing transfer decisions upon seniority at the particular bus garage, and she argued there were not three bus garages. This latter argument was based upon the fact that there is only one transportation manager, not three, and there are no supplies at the three garages. She also argued seniority should mean seniority earned as a Transportation Aide, not in the Aide classification, as her 22 years of service have all been as a Transportation Aide, whereas the other 2 Transportation Aides at the Logan bus garage have worked as Transportation Aides for a much shorter period, after working as other types of Aides previously.

Respondent pointed out that seniority is properly earned in the Aide classification, not by category of Aide, that it makes assignments by bus garage, and that it followed the policy approved by Aides. Intervenor pointed to the fact that transfers need not be based upon seniority, but need only meet the arbitrary and capricious standard of review. She also noted that this Grievance Board has recently been presented with the very same argument that Grievant makes with regard to whether there is one bus garage or three bus garages in Logan County, and found in Lawson and Baisden v. Logan County Board of Education, Docket No. 01-23-355 (September 13, 2001), that there are three bus garages to which Transportation Aides and bus operators are assigned.

It should be pointed out that one of the Transportation Aides obviously had to be transferred from

the Logan bus garage, as there was no longer a need for three Aides at that location. It appears that Grievant's complaint is that she will no longer work in Transportation, and will have to work at a school, which she does not want to do.

Transfers of school service personnel are governed by W. Va. Code § 18A-2-7, which provides, in pertinent part:

> The 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. . ..

"[T]he statutes which govern the employment of school personnel do not mandate seniority-based transfers. Moreover, teachers, and other school personnel, have no 'vested right' to be assigned to a particular school. See State ex rel. Hawkins v. Tyler County Bd. of Ed., 275 S.E.2d 908, 912 (W.Va. 1980)." Perry, et al., v. Fayette County Bd. of Educ., Docket No. 96-10-205 (July 25, 1996). Watts v. Lincoln County Bd. of Educ., Docket No. 98-22-348 (Nov. 30, 1998); Eckenrode v. Kanawha County Bd. of Educ., Docket No. 96-20-302 (Jan. 22, 1997). "County boards of education have broad discretion in personnel matters, including transfers, but must exercise that discretion in a manner which is not arbitrary or capricious." Dodson v. McDowell County Bd. of Educ., Docket No. 93-33-243 (Feb. 15, 1994). Transfer decisions "are based on the needs of the school, as decided in good faith by the superintendent and the board. [State ex rel.] Hawkins v. Tyler County Bd. of Educ., 166 W. Va. 363, 275 S.E.2d [908 (1980)], and Post [v. Harrison County Bd. of Educ., Docket No. 89-17-355 (Feb. 20, 1990)]. See Jochum v. Ohio County Bd. of Educ., Docket No. 91-35-396 (Jan. 31, 1992)." Stewart, et al., v. Kanawha County Bd. of Educ., Docket No. 96-20-370 (Jan. 31, 1997). "No statutory limitations have been placed on the superintendent's authority to transfer school personnel. The power to transfer employees must be exercised reasonably and in the best interests of school systems and may not be exercised arbitrarily or capriciously. State ex. rel. Hawkins [supra]; see also, Wellman v. Mercer County Bd. of Educ., Docket No. 95-27-327/300 (Nov. 30, 1995)." Eckenrode, supra.

The evaluation of a personnel decision under the arbitrary and capricious standard entails close examination of the process used to make the decision. Considerable deference must be afforded the professional judgment of those who made the decision. Cowen v. Harrison County Bd. of Educ., 195 W. Va. 377, 465 S.E.2d 648 (1995). Baird v. Kanawha County Bd. of Educ., Docket No. 95-20-445 (Sept. 16, 1996). "In applying the 'arbitrary and capricious' standard, a reviewing body applies a

narrow scope of review,limited to determining whether relevant factors were considered in reaching that 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, 169 W. Va. 162, 286 S.E.2d 276 (1982). 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." Hill and Cyrus v. Kanawha County Bd. of Educ., Docket No. 96-20-362 (Jan. 30, 1997).

It is clear that LBOE assigns bus operators and Transportation Aides to one of three bus garages. It is not necessary for LBOE to have a manager in place, or to store supplies at each garage, in order to make assignments by areas. LBOE has a policy in place, voted upon by the Aides in the county, which provides that transfers of Transportation Aides will be made based upon seniority at the affected bus garage. Whether Grievant agrees with that policy or not, or would not have voted as she did several years ago had she realized how it would affect her in this situation, is of no relevance here. LBOE followed that policy in this case, as it has done for years. LBOE's decision to transfer Grievant as the least senior Aide at the Logan bus garage was not arbitrary and capricious. Lawson and Baisden, supra.

As to Grievant's argument that LBOE should only consider seniority as a Transportation Aide when making transfer decisions, Grievant cited no authority for this proposition. W. Va. Code §§ 18A-4-8b and 18A-4-8g provide that seniority is accumulated in the statutory classification category. There is no Transportation Aide classification category or class title. There are only Aide I, Aide II, Aide III, and Aide IV class titles, which are within the Aide classification category for purposes of accruing seniority.

The following Conclusions of Law support the Decision reached.

CONCLUSIONS OF LAW

1. The burden of proof is upon Grievant to prove the elements of her grievance by a preponderance of the evidence. Tibbs v. Mercer County Bd. of Educ., Docket No. 96- 27-074 (Oct. 31, 1996).

2. “[T]he statutes which govern the employment of school personnel do not mandate seniority-based transfers.” Perry, et al., v. Fayette County Bd. of Educ., Docket No. 96-10-205 (July 25, 1996). Watts v. Lincoln County Bd. of Educ., Docket No. 98-22- 348 (Nov. 30, 1998); Eckenrode v. Kanawha County Bd. of Educ., Docket No. 96-20-302 (Jan. 22, 1997).

3. “An employee . . . has no vested right to any particular assignment within the county school system. State ex rel. Hawkins v. Tyler County Bd. of Educ., [166 W. Va. 363], 275 S.E.2d 908 (W. Va. 1980); Cawthon [v. Lewis County Bd. of Educ., Docket No 21-87-244-2 (Feb. 16, 1988)].” Gunnells v. Mingo County Bd. of Educ., Docket No. 97-29- 398 (Dec. 10, 1997).

4. "County boards of education have broad discretion in personnel matters, including transfers, but must exercise that discretion in a manner which is not arbitrary or capricious." Dodson v. McDowell County Bd. of Educ., Docket No. 93-33-243 (Feb. 15, 1994). Transfer decisions "are based on the needs of the school, as decided in good faith by the superintendent and the board. [State ex rel.] Hawkins,[supra], and Post [v. Harrison County Bd. of Educ., Docket No. 89-17-355 (Feb. 20, 1990)]. See Jochum v. Ohio County Bd. of Educ., Docket No. 91-35-396 (Jan. 31, 1992)." Stewart, et al., v. Kanawha County Bd. of Educ., Docket No. 96-20-370 (Jan. 31, 1997). “No statutory limitations have been placed on the superintendent's authority to transfer school personnel. The power to transfer employees must be exercised reasonably and in the best interests of school systems and may not be exercised arbitrarily or capriciously. State ex. rel. Hawkins[, supra]; see also, Wellman v. Mercer County Bd. of Educ., Docket No. 95-27-327/300 (Nov. 30, 1995).” Eckenrode, supra. 5. The evaluation of a personnel decision under the arbitrary and capricious standard entails close examination of the process used to make the decision. Considerable deference must be afforded the professional judgment of those who made the decision. Cowen v. Harrison County Bd. of Educ., 195 W. Va. 377, 465 S.E.2d 648 (1995). Baird v. Kanawha County Bd. of Educ., Docket No. 95-20-445 (Sept. 16, 1996). "In applying the 'arbitrary and capricious' standard, a reviewing body applies a narrow scope of review, limited to determining whether relevant factors were considered in reaching that 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, 169 W. Va. 162, 286 S.E.2d 276 (1982). 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." Hill and Cyrus v. Kanawha County Bd. of Educ., Docket No. 96-20-362 (Jan. 30, 1997).

6. LBOE followed the policy approved by the Aides in the county when it transferred Grievant, who was the least senior Aide at the Logan bus garage. Absent this policy, it could have transferred Grievant anyway, so long as the decision as to which person to transfer was not arbitrary and capricious. LBOE's decision to transfer Grievant was not arbitrary and capricious. Lawson and

Baisden, supra.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Logan County. Any 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

BRENDA L. GOULD

Administrative Law Judge

Dated: September 27, 2002

Footnote: 1

This grievance previously erroneously included Peggy Browning as an Intervenor in the case style. The Level II transcript reveals that Ms. Browning attended the Level II hearing in her capacity as Vice President of the School Service Personnel Association, and she was not made a party to this grievance.

Footnote: 2

The record does not reflect what occurred at Level I. Grievant appealed to Level II, where a hearing was held on May 21, 2002, and a decision denying the grievance was issued on June 4, 2002. Grievant appealed to Level III, where LBOE waived participation. Grievant appealed to Level IV on June 16, 2002. The parties agreed to submit this grievance for decision based upon the record developed at Level II. Grievant was represented by Gary Archer, Respondent was represented by Brian R. Abraham, Esquire, and Intervenor was represented by Kimberly A. Levy, Esquire. This matter became mature for decision on August 26, 2002, upon receipt of Intervenor's written argument. Neither Grievant nor Respondent submitted written argument.