LINDA ROBERTS and JAMES WORKMAN,

Grievants,

v.

DOCKET NO. 02-41-163

RALEIGH COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, Linda Roberts and James Workman, filed this grievance against their employer, the Raleigh County Board of Education ("Board") on April 1, 2002:

> Grievants claim a violation of 18A-4-8f when Raleigh County BOE moved students from Marsh Fork High School (7-12) and Trap Hill Middle School (6- 8) to a new building and only posted additional positions created by the influx of students from Marsh Fork High.
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> Relief sought: Grievants seek all positions, including 6-8, to be open to priority status at the new building.

The grievance was denied at level one by Clyde Stepp, Principal at Marsh Fork High School, on April 4, 2002. Grievants appealed and a level two hearing was held on May 23, 2002, before Grievance Evaluator Kathryn Reed Bayliss. Ms. Bayliss rendered her decision denying the grievance on June 4, 2002, and an amended decision was rendered on June 6, 2002, also denying the grievance. Level three was waived, and Grievants appealed to level four on June 7, 2002. The parties agreed to submit this matter on the record, and this case became mature for decision on July 8, 2002, the deadline for theparties' proposed findings of fact and conclusions of law. Grievants were represented by Sidney Fragale, West Virginia Federation of Teachers, and the Board was

represented at level two by Emily Meadows, Director of Personnel, and at level four by Erwin L. Conrad, Conrad & Clay.

SUMMARY OF EVIDENCE

Joint Exhibits

Ex. 1 -

Grievance and level one response.

Ex. 2 -

April 15, 2002 letter from Charlotte Hutchens to Linda Roberts and James Workman;
April 22, 2002 letter from Charlotte Hutchens to Linda Roberts and James Workman.

Ex. 3 -

Transcript of transfer hearing before the Board, dated April 8, 2002.

Ex. 4 -

May 3, 2002 letter from Gregory W. Bailey to Barry L. Bruce.

Ex. 5 -

Ballot on Seniority Rights of Classroom Teachers in Consolidated Schools.

Ex. 6 -

Election Results of Ballot on Seniority Rights of Classroom Teachers in Consolidated Schools, February 26, 2002.

Ex. 7 -

Official Ballot on Special School Bond Election, December 12, 1998.

Ex. 8 -

Website on construction of new schools.

Ex. 9 -

March 1990 Comprehensive Education Facilities Plan.

Ex. 10 -

January 2000 Comprehensive Education Facilities Plan.

Ex. 11 -

February 26, 1998 Superintendent's Interpretation.

Ex. 12 -

February 13, 2002 memorandum from Charlotte Hutchens to All Faculty Chairs.

Testimony

Grievants testified in their own behalf. The Board did not present witnesses.

After a careful review of the testimony and evidence in this matter, and the written submissions of counsel, I find the following facts have been established by a preponderance of the evidence.

FINDINGS OF FACT

1. At all times relevant herein, Grievant Roberts was employed by the Board as a teacher at Marsh Fork High School, teaching grades 7-9.

2. At all times relevant herein, Grievant Workman was employed by the Board ½ time at Marsh Fork High School, teaching grades 7-12, and ½ time at the Raleigh-Boone Vo-Tech Center, teaching grades 9-adult.

3. In the spring of the 2001-2002 school year, each Grievant received a notice of recommended transfer due to the closure of Marsh Fork High School (anticipated to occur at the commencement of the 2002-2003 school year). (See footnote 1)

4. Grievants do not allege that any procedural irregularities exist with respect to the Notice they were given, the hearings conducted by the Board, or the action taken by the Board to approve the Superintendent's recommendation that each be placed on transfer for the coming school year.

5. At the time of the level II hearing, the Board and the West Virginia Board of Education had approved the closing of Marsh Fork High School, a Grade 7-12 facility, commencing with the school year 2002-2003. As a result, Marsh Fork students in grades 9-12 would be moved to Liberty High School, and students in grades 7-8 would be sent to Trap Hill Middle School. (See footnote 2)

6. Trap Hill Middle School is an existing school within the Raleigh County school system. A

new building is being constructed and will be ready for occupancy at the beginning of the 2002-2003 school year. All Trap Hill Middle grades will be moved to the new facility, which is also known as Trap Hill Middle School.

7. Trap Hill Middle was not closed by Board action. The students and faculty are merely moving to a new building.

8. Members of the Marsh Fork faculty and all faculty members throughout the County voted on whether the teachers in the schools to be closed, or in schools where grade levels would be moved, should be given priority in filling new positions at schools impacted by merger or consolidation. The Marsh Fork faculty was unanimous in its vote to grant such "super seniority." Jt. Ex. 5. The County faculty as a whole approved giving the Marsh Fork faculty priority by a vote of 569 to 97. Jt. Ex. 6.

9. The ballot distributed to the faculty states, in pertinent part:

> The Raleigh County Board of Education is considering the closure of Marsh Fork High School and the consolidation of Marsh Fork 7th & 8th Grades with Trap Hill Middle School and Marsh Fork 9th through 12th Grades with Liberty High School. This closure is proposed to occur upon completion of the new Trap Hill Middle School. In the event that this proposed closure-consolidation is approved, all staff members at Marsh Fork High School would be placed on transfer (possible termination, depending upon seniority) and *any positions created at Trap Hill Middle School and Liberty High School to accommodate the students from Marsh Fork High would be posted. Only these newly created positions at Trap Hill Middle School and Liberty High School would fall under this statutory provision.* (Emphasis added.) Teachers assigned to Marsh Fork High 7th & 8th Grades would have priority at Trap Hill Middle School ONLY; teachers assigned toMarsh Fork High 9th through 12th Grades would have priority at Liberty High School ONLY; teachers assigned to Marsh Fork High School Grades 7th through 12th would have priority at Trap Hill and Liberty. (Emphasis in original).

Jt. Exs. 5, 6.

10. On March 11, 2002, the Board notified Grievants of their proposed transfer to Beckley-Stratton Junior High School.

DISCUSSION

Grievants have the burden of proving each element of their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (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.

Grievants contend that, giving priority to teachers from Marsh Fork High only for positions created at Trap Hill Middle School as a result of the influx students, is in violation of W. Va. Code § 18A-4-8f, which states, in pertinent part:

> [T]he board shall give priority to classroom teachers in any school or school to be closed as a result of a consolidation or merger when filling positions in the new school created by consolidation or newly created positions in existing schools as a result of the merger. . . . Provided, That a teacher shall only receive priority for filling a position at a school impacted by a merger, or consolidation with the position being created by the influx of students from a consolidated or merged school into the school receiving students from their closed school or grade level. . . .
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> For the purpose of this section only, a consolidation shall mean when one or more schools are closed, or one or more grade levels are removed from one or more schools and the students who previously attended the closed schools or grade levels are assigned to a new school. For purposes of this section only, a merger shall mean when one or more schools areclosed or one or more grade levels are removed from one or more schools and the students who previously attended the closed schools or grade levels are assigned to another existing school.

Grievants contend that the new facility being built to house the students and faculty at Trap Hill Middle School constitutes a new school, and the combination of Trap Hill students and Marsh Fork students is a consolidation, requiring *all* of the positions to be filled according to the priority provisions of W. Va. Code § 18A-4-8f.

The Board argues that Trap Hill Middle School is an existing facility; that the staff, faculty, and students remain the same, but are merely being moved into a new building. Thus, the influx of Marsh Fork students into Trap Hill is a merger, and only the positions created as a result of the influx should be posted and filled utilizing priority status.

Grievants point to the Board's Comprehensive Education Facilities Plan (Jt. Exs. 9, 10), the ballots (Jt. Exs. 5, 6), and Superintendent Charlotte Hutchens' February 13, 2002 letter to all faculty chairs regarding the ballot (Jt. Ex. 12), as evidence that a consolidation occurred. (See footnote 3)

The 1990 Comprehensive Education Facilities Plan, in a section titled “Facility Plans,” lists in order of importance, building projects the Board would like to accomplish in the next 10 years. Included in that list is a recommendation to renovate Trap Hill Middle School, as well as a recommendation to construct a new middle school that would serve the Trap Hill and Marsh Fork students. Jt. Ex. 9. The 2000 Comprehensive Education Facilities Plan, in a section titled

"Translating Education Needs Into Facility Needs," indicates the existing facility at Trap Hill Middle School "does not meet current guidelines," and recommends closing that facility and relocating "students to new 6-8 middle school as provided by '98 bond." Jt. Ex. 10. The Plan also recommends the closure of Marsh Fork High School with a recommendation to "transfer middle school students to new Trap Hill Middle School. Transfer high school students to Liberty High School." Jt. Ex. 10.

Grievants maintain that the references to a "new" Trap Hill Middle School support their contention that the Trap Hill facility is a new facility, as opposed to an existing facility.

The ballots which were presented to the faculty in anticipation of the closure of Marsh Fork High School are titled "Seniority Rights of Classroom Teachers in Consolidated Schools." The body of the ballot refers to voting for priority in filling new positions in the "new or merged schools," "filling a position at a school impacted by the merger or consolidation," the "consolidation of Marsh Fork 7th & 8th grades with Trap Hill Middle School," and the proposed "closure-consolidation." Jt. Exs. 5, 6. Grievants point to the use of the terms "new schools" and "consolidation" with respect to the proposed actions as evidence of the Board's intent that the resulting school will be the product of a consolidation, not a merger.

Superintendent Hutchens' cover letter to faculty chairs when sending out the ballots describes the election as a vote on priority for teachers "in any school(s) to be closed as a result of consolidation or merger," and indicates the "students from Marsh Fork High areto be consolidated with those at Trap Hill Middle School." Jt. Ex. 12. Again, Grievants point to the Superintendent's description of the action as a consolidation.

Finally, Grievants rely on a State Superintendent's interpretation dated February 26, 1998, regarding changes in the configuration of schools in Pendleton County, West Virginia, in which the Pendleton County Superintendent asks for an opinion whether, in building two new facilities, one a high school and one an elementary school, on the site of the old facilities, the resulting new facilities would be the product of a consolidation or a merger. In the situation presented, the resulting new schools would have new names. Jt. Ex. 11. The State Superintendent replied that the resulting school in each instance would be a consolidation. The Superintendent explained that "[t]he only difference between a consolidation and a merger under § 18A-4-8f is whether the students from the closed school(s) or removed grade level(s) are being assigned to a new school or to another existing school." He then concluded:

> Based on the information presented as stated above, it appears clear that the intention of the Pendleton County Board of Education in the case of both the high school and the elementary school is that the resulting school will be a new school and a consolidation and not a merger.

With respect to the new schools in the above scenario, the school board was closing two high schools and two elementary schools, building new schools, and placing the students from the two old schools into the new buildings, and giving the new schools new names. Jt. Ex. 11.

Grievants contend that the Marsh Fork/Trap Hill situation is identical to the situations described above, and that, combined with the rest of their evidence, proves that theresulting school is the product of a consolidation, and the positions should be filled accordingly.

The Board responds that the only thing “new” about Trap Hill Middle is the physical building. The action is distinguishable from the situation explored in the State Superintendent's opinion because Trap Hill Middle School has not been closed by Board action. The staff, faculty and students will remain the same, as well as the name of the school. Furthermore, while the Board cannot dispute that the term “consolidation” has been used to describe the action some correspondence, that term has also been used in conjunction with the term “merger,” and clearly in some instances, the terms have been used interchangeably. The Board contends that a clear reading of the ballot and Superintendent Hutchens' letter reveals the intent of the Board to merge the Marsh Fork students with Trap Hill Middle and Liberty High Schools. Furthermore, the 1990 and 2000 education plans classify Trap Hill Middle as a “permanent” school facility, defined as “[a] school facility that is to be utilized throughout the 10 year planning period without a change in its present use or grade configuration.” Thus, the report evidences no intent to close Trap Hill Middle School.

Although Grievants certainly make a good argument, the undersigned believes that on these facts, the moving of the Marsh Fork students to Trap Hill Middle School is a merger, not a consolidation. Despite the unfortunately inartful wording on the ballots and correspondence, utilizing the State Superintendent's method of determining the outcome by looking at the intent of the Board, it is clear the intent of the Board is to merge the Marsh Fork students into the *already existing* Trap Hill Middle School. The building of a newfacility at Trap Hill does not create a new school for the purposes of filling positions under W. Va. Code § 18A-4-8f.

CONCLUSIONS OF LAW

1. Grievants have the burden of proving each element of their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (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. W. Va. Code § 18A-4-8f states, in pertinent part:

> [T]he board shall give priority to classroom teachers in any school or school to be closed as a result of a consolidation or merger when filling positions in the new school created by consolidation or newly created positions in existing schools as a result of the merger. . . . Provided, That a teacher shall only receive priority for filling a position at a school impacted by a merger, or consolidation with the position being created by the influx of students from a consolidated or merged school into the school receiving students from their closed school or grade level. . . .
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> For the purpose of this section only, a consolidation shall mean when one or more schools are closed, or one or more grade levels are removed from one or more schools and the students who previously attended the closed schools or grade levels are assigned to a new school. For purposes of this section only, a merger shall mean when one or more schools are closed or one or more grade levels are removed from one or more schools and the students who previously attended the closed schools or grade levels are assigned to another existing school.

3. "The only difference between a consolidation and a merger under § 18A-4-8f is whether the students from the closed school(s) or removed grade level(s) are being assigned to a new school or to another existing school." State Superintendent's Interpretation, February 26, 1998. 4. Grievants have failed to prove by a preponderance of the evidence that the Board intended to close Trap Hill Middle School and create a new school resulting in the consolidation of students from Trap Hill Middle and Marsh Fork High School. Rather, Trap Hill Middle Schools is an existing facility, and the influx of students from Marsh Fork High School constitutes a merger.

5. Grievants have failed to prove by a preponderance of the evidence that *all* positions at Trap Hill Middle School should be filled utilizing the priority status afforded by W. Va. Code § 18A-4-8f. Rather, as the resulting action constitutes a merger, only those positions newly created as a result of the influx of students from Marsh Fork High School shall be filled utilizing the priority status.

Accordingly, this grievance is **DENIED**.

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

MARY JO SWARTZ

Administrative Law Judge

Dated: July 18, 2002

Footnote: 1

Grievant Workman actually received two Notices - one for each half-time position he currently holds.

Footnote: 2

The Marsh Fork closure was challenged and litigation was pending at the level two hearing. The Circuit Court of Raleigh County has since enjoined the closure, and that Decision is now before the West Virginia Supreme Court of Appeals with a decisionanticipated in September 2002. If the Marsh Fork closure does not take place, this grievance would likely be moot.

Footnote: 3

The Comprehensive Education Facilities Plans are required by statute, and are required to be revised every ten (10) years.