ROY G. JONES,

Grievant,

v. **Docket No. 02-12-322**

GRANT COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Roy Jones ("Grievant") initiated this proceeding on September 11, 2002, challenging the Grant County Board of Education's ("GCBOE") decision not to accept his resignation from employment as a principal. Lower level proceedings were waived, and this grievance was heard at level three by GCBOE on September 24, 2002. The grievance was denied by letter dated September 27, 2002. Grievant appealed to level four on October 8, 2002, and a hearing was held in the Grievance Board's office in Elkins, West Virginia, on January 10, 2003. Grievant was represented by counsel, Jessica M. Baker, and Respondent was represented by counsel, Dennis V. DiBenedetto. This matter became mature for consideration upon receipt of the parties' fact/law proposals on February 10, 2003.

The following findings of fact are made based upon a preponderance of the credible evidence of record.

Findings of Fact

1. Grievant has been employed by GCBOE as principal of Petersburg High School since October of 1999.

2. Since early in his employment, Grievant has been searching for anotherposition closer to where his family lives in Ritchie County. (See footnote 1) The superintendent was aware of this situation and has, in the past, provided letters of recommendation for Grievant.

3. During the summer of 2002, Grievant applied for a position as principal of Sissonville High School in Kanawha County.

4. Grievant's annual contract of employment with GCBOE begins and ends on July 15 of each year.

5. On August 8, 2002, Grievant notified Superintendent Marsha Carr-Lambert that he had been awarded the Sissonville High School position and wished to be released from his contract with GCBOE. She advised him that she would discuss it with the Board, but that she would not recommend that his resignation be accepted.

6. Grievant submitted a written letter of resignation to GCBOE on August 20, 2002.

7. On August 27, 2002, GCBOE voted not to accept Grievant's resignation.

8. Sometime in 2001, GCBOE and the superintendent decided that any resignations submitted after July 15 for the upcoming school year would not be accepted. This was an informal decision not formally voted upon by the Board.

Discussion

Grievant has the burden of proving each element of his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State EmployeesGrievance 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 the July 15 cutoff for resignations was selected arbitrarily and never shared with employees, including himself. He has made no further legal arguments. Respondent, however, asserts that statutory provisions support its refusal to allow Grievant to resign just as the school year was beginning, and that its actions were justified due to its past difficulties of losing valuable employees who could not be quickly replaced after school is underway. The prior losses of such employees and resultant disruption of the educational system caused GCBOE to decide upon a date prior to the start of school by which “late” resignations would be accepted. July 15 was selected, due to its fiscal implications and the fact that is usually the date upon which contracts begin and end for each school year.

Respondent contends that, as an employee under a continuing contract, Grievant could not submit his resignation after the first Monday in April of the preceding school year, pursuant to the provisions of W. Va. Code § 18A-2-2(c). Respondent is correct that W. Va. Code §18A-2-2(c) governs this situation. That statute provides:

> The continuing contract of any teacher shall remain in full force and effect except as modified by mutual consent of the school board and the teacher, unless and until terminated: (1) By a majority vote of the full membership of the board on or before the first Monday of April of the then current year, after written notice, served upon the teacher, return receipt requested, stating cause or causes and an opportunity to be heard at a meeting of the board prior to the board's action thereon; or (2) by written resignation of the teacher before that date, to initiate termination of a continuing contract. Such termination shall take effect at the close of the school year in which the contract is so terminated: *Provided*, That the contract may be terminated at any time by mutual consent of the school board and the teacher and that thissection shall not affect the powers of the school board to suspend or dismiss a principal or teacher pursuant to section eight of this article[.]

Clearly, this provision contemplates that a board of education is only obligated to accept an employee's resignation if it is submitted before the first Monday in April, and resignations submitted after that date are within the discretion of the board to accept or deny. It is well established that county boards of education have broad discretion in personnel matters, but must exercise that discretion in a manner which is not arbitrary or capricious. Dillon v. Wyoming County Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986); Conrad v. Nicholas County Bd. of Educ., Docket No. 97-34-388 (Jan. 12, 1998); Mullins v. Logan County Bd. of Educ., Docket No. 94-23-283 (Sept. 25, 1995); Dodson v. McDowell County Bd. of Educ., Docket No. 93-33-243 (Feb. 15, 1994). Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. See Bedford County Memorial Hosp. v. Health and Human Serv. , 769 F.2d1017 (4th Cir. 1985); Yokum v. W. Va. Schools for the Deaf and the Blind, Docket No. 96-DOE-081 (Oct. 16., 1996). While a searching inquiry into the facts is required to determine if an action is arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply 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).

While the undersigned is extremely sympathetic to Grievant's personal situation, the evidence does not support a finding that GCBOE's decision in this case was arbitrary and capricious. GCBOE's frustration with the disruption to the learning process which iscaused by staff resignations during the school year is quite understandable. If Grievant's resignation had been accepted, it likely would have taken several months to find a suitable replacement, leaving the Board in the unenviable position of

having a high school with no principal or having to move other employees into the position temporarily, either of which would obviously have caused substantial disruption to the operations of that school and perhaps others. Respondent's position is further supported by the provisions of W. Va. Code § 18A-2-2(e), which disqualifies a professional who fails to fulfil his or her contract from teaching in any other school system in the state for the next ensuing school year. This provision lends further support to the concept of holding employees to their contracts, in order to prevent school boards from being forced to try to replace them after school is underway. Although the parties disagree as to whether GCBOE actually communicated its decision to use July 15 as the cutoff for late resignations, that would not alter the outcome here. Pursuant to statute, boards of education have discretion with regard to resignations submitted after the April deadline, and that discretion has not been abused in this case.

The following conclusions of law support the decision reached.

Conclusions of Law

1. Grievant has the burden of proving each element of his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (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. Pursuant to the provisions of W. Va. Code §18A-2-2(c), the continuingcontract of a professional employee may only be terminated by mutual consent of the parties, termination for cause or lack of need, or by resignation of the employee submitted prior to the first Monday in April of the preceding school year.

3. County boards of education have broad discretion in personnel matters, but must exercise that discretion in a manner which is not arbitrary or capricious. Dillon v. Wyoming County Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986); Conrad v. Nicholas County Bd. of Educ., Docket No. 97-34-388 (Jan. 12, 1998); Mullins v. Logan County Bd. of Educ., Docket No. 94-23-283 (Sept. 25, 1995); Dodson v. McDowell County Bd. of Educ., Docket No. 93-33-243 (Feb. 15, 1994).

4. The evidence submitted in this case does not demonstrate that Respondent's refusal to accept Grievant's resignation one week prior to the beginning of the school year constituted an abuse of discretion or was arbitrary and capricious.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Grant 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: February 24, 2003 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Grievant mentioned that his daughter has a bone disorder which requires regular medical treatment, and apparently, the family has determined that her medical needs are best met in her present location. No further information on this topic was presented.