STEVE STOFFEL, JR.,

Grievant,

v. **Docket No. 03-20-193**

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Steve Stoffel, Jr., ("Grievant"), employed by the Kanawha County Board of Education ("KCBE" or "Respondent") as a teacher, filed a level one grievance on April 8, 2003, in which he alleged that the termination of his employment as part of a reduction in force was in violation of W. Va. Code § 18A-4-7a, and was arbitrary and capricious. Grievant seeks reinstatement to the assignment he held during the 2002-2003 school term. The record does not include a level one decision; however, the grievance was denied following an evidentiary hearing at level two. Appeal to level four was made on June 30, 2003. Grievant, represented by Rosemary Jenkins of the American Federation of Teachers, and KCBE counsel James Withrow, agreed to submit the matter for decision based upon the lower-level record, supplemented with proposed findings of fact and conclusions of law, filed on or before August 20, 2003. The matter was thereafter assigned to the undersigned for disposition.

The essential facts of this matter are undisputed and are set forth as the following findings of fact.

Findings of Fact

1. Grievant was first employed by KCBE effective August 23, 2002, as a Business/Social Studies teacher at Herbert Hoover High School (HHHS). 2. Grievant is certified to teach Marketing, and secured an out-of-field authorization to teach Social Studies. During the 2002-2003 school term Grievant taught two Computer Applications classes and one Social Studies class.

3. In Spring 2002, KCBE determined that it was necessary to reduce the number of teaching positions in the school system for the 2002-2003 school term. A Business position at Capitol High School, held by Debra Hanshew, was identified for elimination.

4. Ms. Hanshew was transferred into a position held by a less senior Business teacher, namely Grievant.

5. Grievant was properly given written notice that termination of his employment would be

recommended, and pursuant to his request, KCBE conducted a hearing prior to affirming Superintendent Ron Duerring's recommendation.

6. Ms. Hanshew does not hold certification to teach Social Studies; however, that class will be reassigned to other teachers and she was anticipated to teach a subject that does not require a specific certification endorsement, such as ALC, the daytime suspension program, or community service learning.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his 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. LoganCounty 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 argues that Ms. Hanshew was improperlu transferred to his position because she does not hold certification to teach Social Studies, and that it is arbitrary and capricious to transfer a full-time Business teacher to HHHS, when one is not needed. Grievant further argues that it is unreasonable and arbitrary and capricious to assign a teacher who is new to the school and community to teach community services and in- school suspension. KCBE asserts that the transfer was made in compliance with statutory directives, and was not arbitrary or capricious.

W. Va. Code § 18A-4-7a, which provides in pertinent part:

Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least seniority shall be properly notified and released from employment pursuant to the provisions of ... [18A-2-2] ... of this chapter .... Provided, however, That an employee subject to release shall be employed in any other professional position where such employee is certified and was previously employed or to any lateral area for which such employee is certified and/or licensed, if such employee's seniority is greater than the seniority of any other employees in that area of certification and/or licensure: Provided further, That if an employee subject to release holds certification and/or licensure in more than one lateral area and if such employee's seniority is greater than the seniority of any other employee in one or more of those areas of

certification and/or licensure, the employee subject to release shall be employed in the professional position held by the employee with the least seniority in any of these areas of certification and/or licensure.

Due to a realignment of the Social Studies classes at HHHS, this issue is now moot. In any event, it is likely that Ms. Hanshew could obtain the same out-of-field permit to teachSocial Studies that Grievant held. The assignment was predominately Business, and the transfer was lateral, in compliance with the statutory provisions.

Neither was the transfer arbitrary and capricious. 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).

Grievant has offered no evidence that Ms. Hanshew would experience any difficulty in assuming in-school suspension duties or a community service assignment. In fact, her greater teaching experience should make her very competent in either assignment. The evidence establishes that KCBE acted within its discretion to reduce the number of faculty,with the least possible disruption for the students. There is no indication that the decision was based on erroneous or inappropriate factors, or that the decision was otherwise flawed.

The following conclusions of law support the decision reached.

Conclusions of Law

1. In a non-disciplinary matter, Grievant has the burden of proving his claim 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 an employee is reduced in force, he or she is entitled to placement "in any other professional position where such employee is certified and was previously employed or to any lateral area for which such employee is certified" if the employee has more seniority than the person holding the position. W. Va. Code § 18A-4-7a.

3. Ms. Hanshew's assignment to the position previously held by Grievant at HHHS was a lateral transfer for which she was certified.

4. 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. Ginsbergat 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).

5. Grievant failed to prove that the decision to transfer Ms. Hanshew to HHHS, and to terminate Grievant's employment, was arbitrary and capricious.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha 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 servea 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: SEPTEMBER 15, 2003 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE