PHILLIP HULSEY,

Grievant,

v. Docket No. 05-52-151

WETZEL COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Phillip Hulsey ("Grievant"), employed by the Wetzel County Board of Education ("WCBE") as a teacher, filed a level four grievance appeal on May 6, 2005, in which he alleged a violation of W. Va. Code § 18A-2-7 and § 18A-4-7a when he was placed on the transfer list. For relief, Grievant requests reinstatement to the position he held during the 2004-2005 school year. (See footnote 1) **Grievant, represented by Owens Brown, WVEA Representative, and WCBE counsel Gregory Bailey of Bowles Rice McDavid Graff & Love, agreed to submit the grievance for decision based on the record, supplemented with proposed findings of fact and conclusions of law filed on June 27, 2005.**

The following facts have been derived from a preponderance of the evidence found in the record.

Findings of Fact

1. Grievant has been employed by WCBE for twelve years, and was assigned as a sixth grade teacher at the Short Line School during the 2004-2005 school year. The Short Line School (SLS) includes grades K-8. Grievant taught fifth and sixth grade math classes at the school.

2. Dr. Paul Barcus, Superintendent of WCBE, determined early in 2005 that itwould be necessary to eliminate approximately sixteen positions to stay within the school aid formula. WCBE would be financially responsible for any positions beyond that number allowed by the formula.

3. To achieve the desired number of positions, Dr. Barcus made a number of recommendations, including a reduction of a sixth grade teacher at SLS. Because the least senior teacher at SLS lacked sufficient seniority to displace another teacher in her area of

certification, Dr. Barcus recommended that her employment be terminated as part of a reduction in force.

4. As the sixth grade teacher with the least seniority, Grievant had previously been asked, and agreed to, assume the position to be vacated by the least senior classroom teacher at SLS.

5. WCBE did not approve the recommended termination of the least senior teacher at SLS.

6. WCBE then approved the recommendation that Grievant be placed on the transfer list for subsequent assignment. The recommendation was the result of a determination that three sixth grade teachers would not be needed at SLS during the 2005- 2006 school year, based on projected enrollment.

Discussion

As this grievance does not involve a 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 (2004); 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, because he was not the least senior teacher in the school, he should have been allowed to bump one of the less senior teachers. WCBE argues that it acted in compliance with W. Va. Code § 18A-4-7a which merely requires that the least senior teacher in an elementary school be *recommended* for transfer, and does not require an automatic transfer of the least senior teacher, as a board of education may exercise its discretion to reject such a recommendation. Because the provision does not restrict the authority of the superintendent to recommend the transfer of any other classroom teacher, WCBE asserts that Grievant was properly placed on transfer. WCBE further argues that because Grievant was a subject matter teacher, rather than a classroom teacher, he was not entitled to bump the least senior classroom teacher.

The outcome of this case hinges upon one's interpretation of W. Va. Code § 18A-4- 7a(q), which provides:

Reductions in classroom teaching positions in elementary schools shall be processed as follows:

(1) When the total number of classroom teaching positions in an elementary school needs to be reduced, the reduction shall be made on the basis of seniority with the least senior classroom teacher being recommended for transfer; and
(2) When a specified grade level needs to be reduced and the least senior employee in the school is not in that grade level, the least senior classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the least senior classroom teacher in the school without that position being posted: Provided, That the employee is certified and/or licensed and agrees to the reassignment.

(Emphasis added.) Initially, it must be determined whether Grievant was a subject matter teacher or general classroom teacher. WCBE's argument that Grievant was a subject matter teacheris not persuasive for two reasons. First, it conceded that Grievant had been employed as a sixth grade teacher. Second, while the three sixth grade teachers had been allocated specific subject-areas to teach, Superintendent Barcus testified that based upon projected enrollment for the 2005-2006 school year, only two teachers would be required for sixth grade. Therefore, the evidence establishes that Grievant was a grade-level classroom teacher.

Having determined Grievant's status, Subparagraphs (1) and (2) of W. Va. Code 18A-4-7a(q), govern the instant situation. Superintendent Barcus acted in compliance with the statute when he recommended the reduction in force of the least senior classroom teacher at SLS. It is generally true, as WCBE asserts, that no teacher is entitled to any specific assignment, and may be transferred upon the recommendation of the superintendent, subject only to the approval of the board. W. Va. Code § 18A-2-7. See Hawkins v. Tyler County Bd. of Educ., 166 W. Va. 363, 275 S.E.2d 908 (1980). However, this general rule does not apply during a reduction in force, in which specific statutory language directs which teachers are to have their employment terminated, and which are to be placed on transfer. Because WCBE did not approve the recommendation to terminate the employment of the least senior teacher during a reduction in force, Grievant was improperly transferred to accomplish the reduction, and should be allowed to retain his previous position at Short Line School for the upcoming school year. WCBE may choose to place the least senior teacher on the preferred recall list, or absorb the cost of the additional teacher. The following conclusions of law support this decision.

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 the total number of classroom teaching positions in an elementary school needs to be reduced, the teacher with the least seniority must be placed on transfer. W. Va. Code § 18A-4-7a(q); Cline v. Mingo County Bd. of Educ., Docket No. 95- 29-240 (Sept. 29, 1995). 3. A board of education may not circumvent statutory directives to avoid eliminating the employment of the least senior employee, or placing the least senior teacher at a school on transfer, during a reduction in force. Accordingly, this grievance is GRANTED, and Respondent is ORDERED to return Grievant to his position at Short Line School for the 2005-2006 school year.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Wetzel 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. DATE: AUGUST 10, 2005

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

.There are no lower-level decisions in the record which consists of a transcript, with exhibits, of the hearing held by WCBE prior to voting on the recommended action.