LINDA KELLEY,

Grievant,

v. Docket No. 05-15-160

HANCOCK COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Linda Kelley ("Grievant"), employed by the Hancock County Board of Education ("HCBE") as a half-time cook, filed a level one grievance on January 18, 2005, in which she alleged violations of W. Va. Code §§ 18A-4-8b, 18A-4-8h, and 18A-4-8a, when she was denied the opportunity to hold a second half-time position. For relief, Grievant seeks instatement to the second position, back pay with interest, and benefits. The grievance was denied at levels one and two. Grievant elected to bypass level three, and appeal to level four was made on May 17, 2005.

A level four hearing was conducted in the Grievance Board's Wheeling office on July 18, 2005. Grievant was represented by John E. Roush, Esq., of the West Virginia School Service Personnel Association, and HCBE was represented by William Fahey, Esq. The grievance became mature for decision on August 18, 2005, the due date for submission of proposed findings of fact and conclusions of law.

The following facts are derived from a preponderance of the credible evidence made part of the record at level two and level four.

Findings of Fact

1. Grievant has been employed by HCBE as a half-time cook assigned to New Manchester Elementary School at all times pertinent to this grievance.

2. On November 9, 2004, HCBE posted a vacancy for the position of half-time cook at Oak Glen High School. 3. Grievant works from 9:30 a.m. to 1:00 p.m. at New Manchester Elementary School.

4. The position at Oak Glen was from 6:00 a.m. to 9:30 a.m.

5. Grievant was not awarded the position due to an overlapping of responsibilities with

the two assignments.

6. The position at Oak Glen was awarded to an employee with less seniority than Grievant.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her 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 (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 travel time between the schools would be fifteen minutes, maximum, and that the principal at New Manchester had agreed to make an adjustment in her schedule to accommodate the second position. Grievant further argues that any delay in reporting to New Manchester would have no effect on the lunch program, since she serves only as "extra help."

HCBE asserts that flex scheduling is not approved for county employees, particularly when it would result in an overlapping of responsibilities. Because cooks are sometimes required to work beyond their scheduled hours, Grievant's arrival time at New Manchester could be even further delayed. Traffic and weather related school delays would also affect Grievant's ability to fill the two positions. Finally, Superintendent Danny Kaser expressedconcern that other employees with more seniority expressed an interest in the position, but may have had a longer distance to travel between schools. If Grievant's schedule was modified to allow her to accept the position, fairness would require that he allow other employees the same opportunity.

Although this question does not appear to have been previously addressed, the Grievance Board has held that it is not arbitrary and capricious for a board of education to deny an employee the opportunity to perform an extracurricular assignment when logistical problems exist. See Russell v. Wayne County Bd. of Educ., Docket No. 02-50-041 (Mar. 25, 2002), Smith v. Putnam County Bd. of Educ., Docket No. 99-40-058 (Apr. 2, 1999). The same analysis would be appropriate for regular positions.

County boards of education have substantial discretion in matters relating to the hiring,

assignment, transfer, and promotion of school personnel so long as that discretion is exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Syl. Pt. 3, Dillon v. Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986). Generally, an action is arbitrary and capricious if factors intended to be considered were not relied upon, important aspects of the problem were entirely ignored, the decision was explained in a manner contrary to the evidence before the decision maker, or the decision reached was 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).

At level two, Grievant testified that the schools in question are three to four miles apart, and under normal circumstances, could be traveled in ten minutes. While Grievant's desire for the second position is understandable, and her efforts to obtain it laudable, there is no requirement that a board of education adjust work schedules to accommodate anemployee's wish to accept an assignment. HCBE's concerns regarding Grievant's inability to report to the Oak Glen School on time was reasonable, and the undersigned cannot find an abuse of its ample discretion in such matters. (See footnote 1)

The following conclusions of law support this decision.

Conclusions of Law

1. In a non-disciplinary matter, Grievant has the burden of proving her 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 (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.

2. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel so long as that discretion is exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Syl. Pt. 3, Dillon v. Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986).

3. Generally, an action is arbitrary and capricious if factors intended to be considered were not relied upon, important aspects of the problem were entirely ignored, the decision was explained in a manner contrary to the evidence before the decision maker, orthe decision

reached was 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).

4. It is not arbitrary and capricious for a board of education to deny an employee the opportunity to perform an extracurricular run when logistical problems exist. Russell v. Wayne County Board of Education, Docket No. 02-50-041 (March 25, 2002); See Smith v. Putnam County Bd. of Educ., Docket No. 99-40-058 (Apr. 2, 1999).

Accordingly, this grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Hancock 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: SEPTEMBER 22, 2005

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

.Grievant did not prove any of the alleged statutory violations, and there were none. W. Va. Code § 18A-4-8b simply provides that service personnel positions be filled on the basis of seniority, qualifications, and evaluation of past service. Code § 18A-4-8h allows a service employee to hold one full-time or two part-time positions. Neither of these provisions are in dispute. Code § 18A-4-8a prohibits the changing of a service employees schedule without his or her written consent. It does not require a board of education change an employee's schedule to accommodate their employment endeavors.