SHEILA HARRIS,

Grievant,

v. Docket No. 06-22-132

LINCOLN COUNTY BOARD OF EDUCATION/

DEPARTMENT OF EDUCATION,

Respondent.

D E C I S I O N

Sheila Harris ("Grievant"), employed by the Lincoln County Board of Education ("LCBE") as a Cook, filed a level one grievance on March 15, 2006, in which she alleged violations of *W. Va. Code* §§ 18A-4-8b and 18A-2-7. (See footnote 1) Specifically, Grievant transferred to another school because she believed her current position would be reduced to half-time, and LCBE declined to rescind the transfer after determining there would be no reduction. For relief, Grievant seeks reinstatement to the position she held during the 2005-2006 school year at Guyan Valley High School. Grievant's immediate supervisor lacked authority to grant the requested relief at level one. The grievance was denied at level two, and Grievant elected to bypass level three, filing a level four appeal on April 18, 2006. Grievant, represented by John E. Roush, Esq., of the West Virginia School Service Personnel Association, and LCBE/DOE counsel Heather L. Deskins, agreed to submit the grievance for decision based upon the level two record. The grievance became mature for decision upon receipt of proposed findings of fact and conclusions of law filed by the parties on or before May 30, 2006.

The following facts have been derived from a preponderance of the credible evidence made part of the record at level two.

Findings of Fact

1. Grievant has been employed by LCBE as a Cook assigned to Guyan Valley High School ("GV") at all times pertinent to this grievance.

2. Early in the 2005-2006 school year, LCBE administrators held a meeting for cooks, aides, and custodians regarding changes in school configurations for the 2006-2007 school year. At that time, based on projected enrollment, LCBE was planning to reduce the number

of cooks at GV from four to two and one-half. **(See footnote 2)**

3. Because Grievant was third in seniority at GV, and wanted to retain full-time employment, she understood that she would need to transfer to another school.

4. On September 28, 2005, LCBE posted vacancies for five Cook II positions at Lincoln County High School, effective the 2006-2007 school year. Grievant bid on, and LCBE approved, her transfer to one of these positions.

5. Sometime prior to March 15, 2006, Grievant learned that LCBE had determined that three, full-time positions would be retained at GV for the 2006-2007 school year.

6. Grievant bid on the third position which was vacant due to her own transfer, but the vacancy was filled by another employee with more seniority.

7. Grievant was never subject to a reduction in force.

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 argues that even through she was never placed on the transfer list, the same principals should be applicable, particularly since her transfer has not yet become effective. LCBE asserts that Grievant was not transferred as part of a reduction in force, but rather, by her request. Further, it would be no simple matter to rescind the transfer because many subsequent transfers have been approved, and the re-posting or reconsidering of applicants for the affected positions would require the expenditure of significant additional time and resources.

***W. Va. Code* § 18A-4-8b(k) provides in pertinent part:**

If, prior to the first day of August after a reduction in force or transfer is approved, the reason for any particular reduction in force or transfer no longer exists as determined by the county board in its sole and exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the affected employee in writing of his or her right to be restored to his or her former position of employment.

In this case, LCBE provided as much information as possible to the employees as early as

possible. Based upon the information available in September, Grievant opted to protect her full-time employment by transferring to another school, rather than taking a chance she would be reduced to half-time status. Understandably, now that the plan has changed, Grievant wants to return to her former position.

Under the circumstances of this case, the transfer was only requested due to an impending reduction in force. Since that reduction did not occur, rescission of the transfer is consistent with *W. Va. Code* § 18A-4-8b(k). Although the transfer was requested byGrievant before any action was taken to eliminate all or part of her position at GV, the request would never have been made but for the representation of LCBE administrators that it was planned. This process may well require the expenditure of considerable time and resources, the statutory provision is mandatory, not discretionary.

The following conclusions of law are consistent with 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. If the reason for any particular reduction in force or transfer no longer exists prior to the first day of August, a county board of education shall rescind the reduction in force or transfer, and shall notify the affected employee of her right to be restored to her former position of employment. *W. Va. Code* § 18A-4-8b(k)

3. Grievant has proven that the reason for the reduction in force no longer exists, and LCBE must rescind the transfer in compliance with *W. Va. Code* § 18A-4-8b(k). Accordingly, this grievance is GRANTED, and LCBE is Ordered to reinstate Grievant to the position she held at GV.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Lincoln 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 andState 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: JUNE 30, 2006

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

.Grievant did not pursue the alleged violation of W. Va. Code § 18A-2-7, which authorizes the transfer of employees. Thus, this claim is deemed abandoned.

Footnote: 2 ***The record indicates that Guyan Valley will be a middle school beginning in the 2006-2007 school year.***