

SHIRLEY RAMEY,

Grievant,

v.

DOCKET NO. 96-22-298

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Shirley Ramey, filed this grievance on June 7, 1996, alleging:

Violation of WV Code 18A-4-8b and 18A-2-7 in regard to the re-bidding of grievant's position and the reason for the reduction in force had been removed.

Relief sought is to be reinstated to her full time position as Cook at Hamlin HS/JRH.

Following adverse decisions at the lower levels, Grievant appealed to level four on July 16, 1996, and this matter was submitted on the record developed below. This case became mature for decision on September 18, 1996, the deadline for the parties' proposed findings of fact and conclusions of law.

The material facts are not in dispute and are set forth in the following findings.

Findings of Fact

1. Grievant was employed as a full-time Cook II at Hamlin High School for the 1995-96 school year.
2. Midkiff Elementary School was scheduled for closure at the end of the 1995-96 school year. Joyce McCallister was employed as a full-time Cook II at Midkiff and had more seniority than Grievant.
3. Grievant was released from her position in accordance with W. Va. Code § 18A-4-8b, and

placed on the transfer list in accordance with W. Va. Code § 18A-2-7, in order to provide a position for Ms. McCallister at Hamlin High School.

4. Grievant requested and was given a hearing before the Board in accordance with W. Va. Code § 18A-2-7. [\(See footnote 1\)](#) At that hearing, Grievant was told that the reason for her transfer was to open up a position for Ms. McCallister, who had more seniority than Grievant.

5. In the meantime, Geraldine Barrett, Cook III, at Hamlin High School, retired effective sometime in April, 1996. Her position was posted and Ms. McCallister bid on and received the Cook III position.

6. Consequently, there was a vacancy for Cook II at Hamlin High School (Grievant's former position), and that position was posted.

7. All of the above events occurred prior to June 30, 1996, the end of the 1995-96 school year.

8. Grievant and Ms. McCallister bid on the Cook II position and Ms. McCallister was awarded the Cook II position. [\(See footnote 2\)](#) 9. As this opened up the Cook III position at Hamlin, that position was posted and Grievant bid on and received that position. [\(See footnote 3\)](#)

Discussion

Grievant alleges a violation of W. Va. Code §§ 18A-4-8b and 18A-2-7, alleging that, since the justification for her transfer, i.e., opening up a Cook II position for Ms. McCallister, ceased to exist when Ms. McCallister bid on and received the Cook III position, Grievant's transfer should have been rescinded and she should have been placed back into the Cook II position. Grievant relies on Barberio v. Harrison County Bd. of Educ., Docket No. 89-17-351 (Feb. 13, 1990), and its progeny, to support her position. Respondent contends that it properly followed the reduction-in-force and transfer provisions in placing Grievant on the transfer list, and there is no provision in either statute which supports Grievant's "justification" theory, i.e., that an employee is entitled to be placed back into his or her position if the reason he or she was reduced-in-force or transferred no longer exists prior to the end of the school year.

The undersigned agrees with Respondent that there is no language in the applicable statutes which mandates that a transfer be rescinded when the justification for the transfer ceases to exist prior to the end of the school term. Nevertheless, this Grievance Board has addressed this issue with regard to professional employees, and has held that county boards of education must rescind

reductions-in-force and transfers when the justification for them no longer exists prior to June 30, the end of the school year. Barberio, supra; see also, Berry v. Logan County Bd. of Educ., Docket No. 95-23-421 (Mar. 29, 1996); Clay v. Mingo County Bd. of Educ., Docket No. 94-29-516 (Dec. 29, 1994); Kuhns v. Hancock County Bd. of Educ., Docket No. 91-15-360 (Dec. 30, 1991); Brown v. Logan County Bd. of Educ., Docket No. 90-23-177 (Oct. 31, 1990). This protection was extended to service personnel in Conner v. Kanawha County Bd. of Educ., Docket No. 92-20-204A (Sept. 23, 1992); see also, Hixenbaugh v. Monongalia County Bd. of Educ., Docket No. 92-30-353 (Mar. 30, 1993); notwithstanding the fact that the applicable reduction-in-force and transfer statutes contain no language which governs this situation. See W. Va. Code §§ 18A-4-8b and 18A-2-7.

This Grievance Board adheres to the doctrine of stare decisis in adjudicating grievances that come before it. Belcher v. W. Va. Dept. of Trans., Docket No. 94-DOH-341 (Apr. 27, 1995). This adherence is founded upon a determination that the employees and employers whose relationships are affected by the decisions of this agency are best guided in their actions by a system that provides for predictability, while retaining the discretion necessary to effectuate the purposes of the statutes applied. Consistent with this approach, this Grievance Board follows its previous decisions unless a reasoned determination is made that the prior decision was clearly in error. See also, Foley v. Grant County Bd. of Educ., Docket No. 96-12-069 (July 26, 1996); Peters v. Raleigh County Bd. of Educ., Docket No. 95-41-035 (Mar. 15, 1995). The undersigned does not find that this Grievance Board's prior decisions on this issue are clearly wrong. Therefore, Grievant must prevail.

Conclusions of Law

1. In a non-disciplinary grievance, the burden of proof lies with the Grievant to prove her case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995).
2. Respondent did not violate the reduction-in-force or transfer provisions of W. Va. Code §§ 18A-4-8b or 18A-2-7, when it placed Grievant on the transfer list in order to provide a position for a more senior Cook II.
3. Nevertheless, when a service employee's transfer, otherwise valid, loses its stated justification prior to the end of the school year in which the transfer was processed, absent some extraordinary circumstance the employee is entitled to reinstatement into the position she would have

held but for the transfer. Hixenbaugh v. Monongalia County Bd. of Educ., Docket No. 92-30-353 (Mar. 30, 1993); Conner v. Kanawha County Bd. of Educ., Docket No. 92-20-204A (Sept. 23, 1992); see also, Brown v. Logan County Bd. of Educ., Docket No. 90-23-177 (Oct. 31, 1990).

4. Grievant has proven by a preponderance of the evidence that the stated justification for her transfer, i.e., opening up a position for a more senior Cook II, ceased to exist prior to the end of the school year in which the transfer was processed.

Accordingly, this grievance is **GRANTED**, and Respondent is hereby **ORDERED** to reinstate Grievant into the Cook II position at Hamlin High School.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln 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. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

MARY JO SWARTZ

Administrative Law Judge

Dated: October 30, 1996

[Footnote: 1](#)

The record does not contain information regarding the dates of the transfer notice or hearing before the Board. Grievant does not dispute the notification provisions of the applicable statutes.

[Footnote: 2](#)

It is unclear from the record why Ms. McCallister bid on the Cook III position and then bid on the Cook II position.

[Footnote: 3](#)

Respondent argues that this grievance is moot because Grievant has accepted another position. This argument must fail. Grievant is not expected to refrain from accepting employment in order to guarantee she has standing to pursue a grievance over another, more desirable position with Respondent.